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HEARINGS

BEFORE THE

COMMITTEE ON

BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

S. 3133

TO AMEND THE SECURITIES EXCHANGE ACT OF 1934 TO
REQUIRE ISSUERS OF SECURITIES REGISTERED PURSUANT
TO SECTION 12 OF SUCH ACT TO MAINTAIN ACCURATE
RECORDS AND TO FURNISH REPORTS RELATING TO CERTAIN
FOREIGN PAYMENTS, AND FOR OTHER PURPOSES

APRIL 5, 7, AND 8, 1976

Printed for the use of the Committee on Banking,
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UNITED STATES SENATE

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FOREIGN AND CORPORATE BRIBES

MONDAY, APRIL 5, 1976

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The committee met at 10:05 a.m., pursuant to call, in room 5302, Dirksen Senate Office Building, Senator William Proxmire, chairman of the committee, presiding.

Present: Senators Proxmire, Sparkman, and Helms.

The CHAIRMAN. The committee will come to order.

This morning, the Banking Committee begins 3 days of hearings on overseas bribery by U.S. corporations and the proposed remedy, Senate bill 3133.

The committee has already held several days of hearings on the Lockheed affair in connection with our responsibility to oversee the Government-guaranteed loan to Lockheed.

By now, close to 100 publicly held corporations have made disclosures to the Securities and Exchange Commission under the SEC's so-called voluntary program, of literally hundreds of millions of dollars paid over the years as bribes to foreign officials and political parties. This bloodletting, unfortunately, is continuing. It is the disgrace of our free enterprise system.

In turn, the practice of bribing foreign officials has corrupted those paying the bribes, and has corrupted the free market system, under which the most efficient producers with the best products are supposed to prevail.

There was a time when defenders of corporate bribery argued that you had to make under-the-table payments in order to compete in certain parts of the world. By now, I think, no responsible person would make that claim. Dozens of corporate chief executives, men of the caliber of David Lewis of General Dynamics, Irving Shapiro of Du Pont, Fred T. Allen of Pitney Bowes, have made forceful statements that their companies do not pay bribes, and do not need to pay bribes in order to compete.

Secretary Simon, in testimony before this committee, has denounced bribery in the strongest possible terms. So has President Ford.

Yet, I fear, even though the issue is settled in theory, that many companies will continue paying bribes if they can get away with it, because the potential rewards are so great and the risks are minimal. Nobody has gone to jail. Only three corporations have fired their chief executive officers. At most, there has been some unfortunate publicity. Even Lockheed is reporting increased profits.

And so we come to the need for a remedy.

In my view, U.S. corporations should be prohibited from paying bribes anywhere in the world. They are already prohibited from

paying bribes at home. Ideally, we should give criminal enforcement power directly to the SEC because the Justice Department has been so timid about prosecuting prominent corporate criminals.

Second, rather than relying on ad hoc investigations by the SEC to sift through a corporation's records and interview its employees to ferret out improper payments, the law should require regular disclosure of all consultant fees and sales commissions paid to foreign agents.

That is what S. 3133 would do.

[Copy of S. 3133 follows:]

[S. 3133, 94TH CONG., 2D SESS.]

A BILL To amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such Act to maintain accurate records and to furnish reports relating to certain foreign payments, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 17 of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following:

"(h) The Commission shall, by rule or regulation, require issuers of securities registered pursuant to section 12 to maintain accurate books, records, or accounts of all transactions in such form and containing such information as the Commission deems necessary to carry out its enforcement responsibilities under this title."

SEC. 2. Section 13 of the Securities Exchange Act is amended by adding at the end thereof the following new subsection:

"(g) Each issuer of a security registered pursuant to section 12 shall file with the Commission periodic reports relating to any payment of money or furnishing of anything of value in an amount in excess of \$1,000 paid or furnished or agreed to be paid or furnished by the issuer during the period covered by the report (i) to any person or entity employed by, affiliated with, or representing directly or indirectly, a foreign government or instrumentality thereof; (ii) to any foreign political party or candidate for foreign political office; or (iii) to any person retained to advise or represent the issuer in connection with obtaining or maintaining business with a foreign government or instrumentality thereof or with influencing the legislation or regulations of a foreign government. Such reports shall be made available for public inspection and copying and shall include such details as the Commission may prescribe including—

"(1) the amount of each such payment or thing of value and the date it was made or furnished or agreed to be made or furnished;

"(2) the name of the person or entity to which the payment was or is to be made or the thing of value was or is to be furnished and in the case of a person who is an official of a foreign government or instrumentality thereof, the official position of that person; and

"(3) the purpose for which the payment was or is to be made or the thing of value was or is to be furnished."

SEC. 3. The Securities Exchange Act of 1934 is amended by inserting after section 30 the following new section:

"PAYMENTS TO OFFICIALS"

"SEC. 30A. It shall be unlawful for any issuer of a security registered pursuant to section 12 to make use of the mails or of any means or instrumentality of interstate commerce to—

"(1) offer, pay, or agree to pay any money or offer, give, or promise to give anything of value to an individual who is an official of a foreign government or instrumentality thereof for the purpose of inducing that individual to use his influence within such foreign government or instrumentality to obtain or maintain business for or with the issuer or to influence legislation or regulations of that government;

"(2) pay or agree to pay any money or give or agree to give any thing of value to any person knowing or having reason to know that all or a portion of such moneys or thing of value will be offered, given or promised directly or indirectly to any individual who is an official of a foreign government or instrumentality thereof for the purpose of inducing that individ-

ual to use his influence within such foreign government or instrumentality to obtain or maintain business for or with the issuer or to influence legislation or regulations of that government;

"(3) pay or agree to pay any money or give or agree to give any thing of value to any foreign political party or official thereof or any candidate for foreign political office for the purpose of inducing that party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to obtain or maintain business for or with the issuer or to influence legislation or regulations of that government; or

"(4) pay or agree to pay any money or give or agree to give any thing of value in a manner or for a purpose which is illegal under the laws of a foreign government having jurisdiction over the transaction."

SEC. 4. (a) The last sentence of section 21(d) of the Securities Exchange Act of 1934 is amended by inserting before the period at the end thereof a comma and the following: "or, notwithstanding any other provision of law, the Commission may initiate (through a presentation to a grand jury), prosecute, and appeal any criminal action arising under this title."

(b) The second sentence of section 20(b) of the Securities Act of 1933 is amended by inserting before the period at the end thereof a comma and the following: "or, notwithstanding any other provision of law, the Commission may initiate (through a presentation to a grand jury), prosecute, and appeal any criminal action arising under this title."

The CHAIRMAN. The SEC is doing an excellent job with a small staff. But this wave of disclosures is really the result of some threads that began unraveling when the Watergate Special Prosecutor got into domestic bribery. The SEC's voluntary disclosure program depends on the premise that foreign bribes are information material to investors which must be disclosed under existing law. The SEC has made the most of this approach, but the enforcement program would be much more effective if bribes were directly prohibited and there were systematic disclosure of all foreign consultants' fees.

Later this week, the committee will hear from administration witnesses. Their appearance is especially timely in light of President Ford's recent appointment of a Cabinet-level committee to recommend a remedy for corporate bribery abroad. Recent press stories that CIA or State Department officials may have known of bribes that were paid by Lockheed and other companies over the years raise very disturbing questions to which the committee will want answers. To paraphrase another investigation, what did the State Department know, and when did it know it? And what did we do about it?

One of our witnesses this morning, former Ambassador Braden, apparently had a much more direct approach to the bribery problem when he was the American Ambassador in several Latin American countries. He simply called in the American businessmen and told them that he would not tolerate payment of bribes. I wish the State Department had an equally tough policy today.

Another witness will be Mr. Ralph Nader, who is one of the most astute observers of corporate ethics and "crime in the suites," among his other accomplishments.

Our first witness is Mr. John J. McCloy, a man with a distinguished record of Government service, and the author of the most detailed report on corporate bribery to date under the SEC's voluntary program. Mr. McCloy chaired the special review committee of the Gulf Oil Corp.'s board of directors, which issued a report to the SEC last December.

Mr. McCloy, would you come forward, sir? I might say that you have a remarkable record: Assistant Secretary of War in World War II, President of the World Bank, U.S. High Commissioner in Germany, chairman of the board of the Chase Manhattan Bank, chairman of the board of the Council of Foreign Relations, chairman of the board of the Ford Foundation, director of numbers of corporations, including A.T. & T., Metropolitan Life, Westinghouse, and so forth. I can't think of anybody who is more qualified to speak knowingly about corporate ethics from the perspective of someone who's viewed the free enterprise system as a public official, diplomat, corporate lawyer, and most recently an investigator of corporate corruption for the SEC. I believe it was Richard Revere who once described you as "chairman of the establishment." We are honored to have you and you proceed in your own way, sir.

We don't have a copy of your statement. Do you have copies?

Mr. McCLOY. I have some copies.

The CHAIRMAN. I might explain that witnesses who appear this morning appeared on very short notice and for that reason we couldn't expect them to comply with the rules of the committee which require that statements be made available 24 hours in advance. So we appreciate your coming on short notice and go right ahead.

**STATEMENT OF JOHN J. McCLOY, MILBANK, TWEED,
HADLEY & McCLOY**

Mr. McCLOY. Thank you very much, Mr. Chairman. You referred to that Revere dictum. It always drives me up the wall when I'm called the head of the establishment. I don't know quite what that means.

The CHAIRMAN. I'm sure he meant it as the highest kind of compliment.

Mr. McCLOY. I'm sure he did, but it's plagued me ever since as being the chairman of the establishment. I don't know quite what it means.

Be that as it may, I thought, Senator, that it might be well if I gave you a little of my background.

I have been asked, as you know, to comment on S. 3133 which does deal with amendments to the Securities and Exchange Act of 1934, so as to require issuers of securities to maintain accurate records and furnish reports relating to certain foreign payments and other purposes.

But before commenting on this proposed legislation, I think I ought to give a short statement for the record which may give the committee at the outset the nature of my experience in this general area and thus aid it in questioning me in regard to the bill. I shall conclude my brief statement with some thoughts I have relating to the timing of any legislation on this subject.

I assume that you have already indicated that I was asked to appear before this committee primarily because I was chairman of the Gulf Special Review Committee which made a rather comprehensive and I hope objective report on the political contributions made by Gulf over a substantial period of time to political parties and candidates in the United States. The contributions were made over approximately a 12-year period and were paid out of an off-

the-books account. They amounted to about \$5 million and most of them were illegal according to the laws of this country. The committee's report has been filed with the Federal District Court in Washington, as well as with the SEC and the board of directors of Gulf. Probably this committee already has a copy. If not, I can readily supply one. The report referred to certain other payments abroad which may have been made to foreign officials or government representatives for the purpose of inducing them to take or recompensing them for having taken actions supposedly advantageous to the interests of Gulf in the country involved. We were not able to trace down in that instance just who was paid how much and for what. We do know that the President of a country was supplied with a helicopter which he used to some extent, at least, for political campaign purposes. It was eventually transferred over to the country's air force. There was another similar occasion where a relatively small amount of money was paid in order to induce local police authorities in a foreign country to release a Gulf employee from detention so that he could be returned home. The gravamen, however, of the claims of illegal payments against Gulf were not in the bribery area but relate to its illegal payments in connection with corporate political contributions to parties and candidates in this country usually made in the course of national and State election campaigns.

Some political payments were made abroad in the same general category, but in the main they were either legal or customary where they were made, and they seem to have been in large part induced by pressure from the governments or the political parties concerned. I am not suggesting that questions directed to me be confined to those relating to domestic political contributions, but I feel it appropriate to point out that I am perhaps more familiar with this area of political payments than any other as it constituted the main subject of the Gulf committee's report.

I would venture one other general observation on this whole subject. That is that I suggest before any legislation is adopted or, for that matter, recommended by any committee of Congress, the whole subject of political contributions and payments, whether here or abroad, should be more thoroughly examined. I think it is much too early to rush to statutory remedies before the whole case is in and all the factors weighed. In the first place, due in large part to the activities of the SEC to date, I do not think we are presently in any real need for legislation; and in the second place, I do not think any forum is presently in a position to recommend constructive and effective legislation to deal with a subject as involved as this one has become. I trust that this committee will accept this as an objective judgment on my part, but it is far from suggesting that nothing can or should ever be done by this committee or any other for that matter, but the more I study the problem of so-called questionable corporate payments abroad, and I presume to say that the more any Government agency studies the problem, the more difficult it becomes to define just what can or should be done by way of legislation or by the definition of statutory guidelines to remedy it.

I found, for example somewhat to my surprise, that in most countries of the world corporate political contributions are not illegal. Indeed, they are legal even in a substantial number of States of the

United States. I believe that the rationale of our present prohibition of corporate political payments in the United States could well be reexamined. Certainly, I think it should be reviewed before any attempt be made by the Congress of the United States to legislate against such contributions abroad. I believe that it will take comparatively little research to disclose that the absolute prohibition of corporate political contributions is a rather unique phenomenon of American political history. As I read it, one of the sections of this proposed bill relates, I think, most unwisely to just such foreign corporate payments.

I have been told quite authoritatively that the SEC has been unable or unwilling, as yet, to come up with any guidelines as to corporate behavior in this field of foreign payments. This is a matter on which I am sure this committee will seek the testimony of the SEC, but if it is true that the SEC is encountering difficulty in this respect, I doubt that the Congress is now in any better position to do so. I know I encountered difficulty in attempting myself to devise appropriate legislation to deal with the subject. Sooner or later, I would suppose, some agency of the Government—perhaps it will be the Congress—should bite the bullet and give some helpful guidelines. I do not think that this is a situation where the enforcement agencies of the Government can indefinitely sit back and simply say, "Let conscience be your guide but woe betide you if you make what we consider to be a misstep." I do not believe it is either just or appropriate to compel a large portion of our industry to proceed at its peril in this area when so many uncertainties and unknown factors still exist about the proper conduct to pursue. As I say, I doubt very much that reasonable and fair guidelines can be effectively incorporated into constructive legislation at this stage of our knowledge of the subject.

In the course of the Gulf committee's investigation, we could not identify a single country where a bribe of a government official to induce a government to enter into a contract with any company for the supply of its product to that government was not illegal in that country. The matter of enforcement may vary with jurisdictions, but a bribe of this sort is a crime wherever committed. There is a very wide area, however, where the subject is not so clear; one of them is in the field of political contributions and another is in the determination of what constitutes a bribe. Is a tip or present to a minor foreign government official for extra effort made by him in the course of his duties an offense which the Congress of the United States should attempt to proscribe? And is it important to the investing public of this country that the name of such a functionary be published in the records of the U.S. Government? I think the Congress has much more important things to deal with and I do not believe its failure now to do so would result in the encouragement of overseas corruption by American corporations.

Moreover, I believe a serious study should be undertaken of our past experience in attempting to extra-territorialize our laws before we undertake another such crusade. We went through this experience in connection with a determined attempt to extend our antitrust laws abroad. We then encountered heavy resentment on the part of foreign governments. Local laws were passed making it a crime to respond to any American subpoena. As I recall it, international com-

missions or studies were convened on the subject and the State Department became heavily involved. In the end that effort to extra-territorialize our laws was generally repelled abroad and the urge to do so here was considerably moderated. The extent to which one can wisely go in this direction has been explored in the past and I think our past experience could be profitably reviewed before we hasten again to move in this direction.

There is another aspect of this matter that I believe needs further exploration and that is the manner in which governments conduct their business. We have heard many charges cast at the conduct of American business abroad. I do not believe it compares unfavorably with most of its foreign competition but, be that as it may, we have heard little about the manner in which governments here and abroad conduct their business. Much of international trade is now being conducted through governments or their nationalized agencies. I suspect that it is no accident that most, if not all, of the questionable payments that are now being disclosed are related to government actions. I am not referring only to corporate political contributions where the role of potential recipient has never been fully investigated. I am referring to such things as demand on the part of governments or government agencies for kickbacks of one sort or another. After such an examination I believe it would appear that condemnation of questionable practices has been concentrated somewhat unjustly against the American corporate transgressor. In practically all of these questionable payments situations, one finds a government somewhere in the woodpile.

I assure you that this recommendation I make for more deliberate thought and consideration of this subject is not in the nature of a plea in confession and avoidance. I just greatly doubt whether under present circumstances we need any new substantive legislation to deal with this subject. If my experience with Gulf is any criterion, the barn door is now well fastened. A real alteration of attitudes in regard to these so-called questionable payments has already been brought about and it will be a long time before it is dispelled, if ever. I give a good bit of credit to the SEC for bringing about an awareness of the problem and a conscientious effort on the part of industry itself to cope with it. Moreover, I have no doubt that this committee is peculiarly well equipped to render at the appropriate time a real contribution to the subject after all the facts are in and after some of the political aspects of the present situation recede.

I recently gave a talk along with Mr. Hills, chairman of the Securities and Exchange Commission on this subject at the Bar Association in New York. The hall was packed with perplexed lawyers, accountants and businessmen. I think this is the first time I have seen such a large gathering at the Bar Association since the war days. Their perplexity was genuine and sincere. I suggest that though a congressional consideration of this subject should not be indefinitely postponed, you do have the luxury of a reasonable period of time in which to weigh the matter without current damage to anyone's legitimate interest either here or abroad. Certainly the results of the SEC experience through which we are now passing should be studied and weighed. I would also like to see results of the many discussions and studies now going on here and abroad to deal with the problem coordinated. I am somewhat skeptical about the efficacy of so-called

international codes of conduct, but I am interested in seeing how far they get. I do suggest that a commission could well be appointed composed of legislators and businessmen, foreign as well as American, with experience in the field of international trade, who could come forward with a workable ethic in this area. I think a representative group of this sort could produce a finding which could go a long way toward the acceptance of widespread reforms on the part of business itself. At that time any legislative need which was still exposed could then be filled with a far greater awareness than we now have of what the situation really requires by way of statutory enactments.

My general thoughts on this legislation cause me to defer any comment on the specific provisions of the bill until the question period, but I think I should say at the beginning that I have one or two comments which immediately come to mind. The first: Is that I would have no hesitancy in giving the SEC promptly whatever authority it reasonably needs to ensure that full and accurate accounts be maintained by all American controlled public corporations and that the maintenance of off-the-books funds in such corporations should be eliminated. I remain to be convinced, however, that with all the existing regulations demanding the maintenance of records in accordance with good accounting practice by existing governmental agencies, including the SEC, in seeing the need for new sets of laws, regulations or reports at this time. Second, I view with skepticism the advisability of extending to any Federal Administrative agency the power to institute criminal proceedings. It would violate a fundamental principle of our Government to give to an administrative agency already having rulemaking, interpretive and investigative responsibilities the role of a prosecutor with authority to institute Grand Jury proceedings and the other incidents of criminal prosecution. The Department of Justice traditionally had this responsibility and I believe it should continue to repose in the Department of Justice.

Thank you very much for your indulgence.

The CHAIRMAN. Thank you, Mr. McCloy.

Mr. McCloy, unfortunately, as I said, you didn't have a chance to provide this statement in advance to the committee, so we would have had a chance to study and consider it. In a way, it's a disappointment, frankly. I don't mean I'm disappointed in you or what you have said here as much as I think if we could have gotten the statement in advance maybe there would have been an opportunity to explore what you're really getting at here.

The problem is this.

Mr. McCLOY. I talked to one of your staff men.

The CHAIRMAN. Well, the problem is this. You saw the Gulf violations that you referred to and referred to so vividly in your report as very largely violations of law here in making contributions to political candidates, violations certainly of Federal law where a corporation cannot make a contribution to a political candidate.

Mr. McCLOY. And many State laws.

The CHAIRMAN. And you point out in your statement that this isn't a violation of the law in some of our States. It's not a violation of the law in foreign countries to make a contribution to political candidates. By and large, while that's a very important area and

one that certainly requires a lot of attention, that's not what we had in mind with this legislation.

What we are concerned about is the kind of payment that Lockheed, for example, engaged in and admits where a payment is made to a foreign official indirectly for the purpose of selling what that corporation has to sell to that country. It is a bribe.

Now that kind of payment is not outlawed at the present time in our law and while it is outlawed in many foreign countries—Japan, for example, where some of these bribes were paid, and Italy—it's very hard for those countries to prosecute because they don't have the facts. We may have the facts but we don't prosecute because it's not against the law. We are trying to bridge that situation and provide a provision in the law that would make this illegal so we have the basis for action.

Mr. McCLOY. I understand that, although my personal experience didn't relate to the type of case such as the Lockheed case, and I have said that the bribes as we found them were illegal wherever they were transacted. It may be that some legislation that could be constructively taken in this area would be appropriate. Where I have my difficulty is in determining what constitutes a bribe. I gave you an example here of the case of the tipping that goes on, the lubrication that goes on not only abroad but to some degree here. It's minor government officials. It isn't to bribe a government minister to sign a contract for the purchase of an airplane. It's to expedite the usual flow, the bureaucratic flow of papers involved in a substantial set of transactions. The customs process, the inspection process—it's to get—I don't know any better word for it than lubrication, and I have had difficulty how to define that.

The CHAIRMAN. Here's the way we try to define it in the law, and I recognize it is hard, but we are not concerned so much about the low level grease payments. What we are talking about is the payment, as I say, to make a sale.

Now on page 3, line 14, and I read:

It shall be unlawful to offer, pay, or agree to pay any money or offer, give, or promise to give anything of value to an individual who is an official of a foreign government or instrumentality thereof for the purpose of inducing that individual to use his influence within such foreign government or instrumentality to obtain or maintain business for or with the issuer or to influence legislation or regulations of that government.

It goes on to define that more precisely in two or three areas. At any rate, I agree with you that this definition is troublesome, but it seems in view of the revelations, in view of the fact that this is regarded as a crime in most foreign countries when you have this kind of payment, in view of the corrupting effect this has on our business system inasmuch as if one corporation pays it the pressure on the other corporation to match the bribery is very great, it would seem to me that some action, even if limited and even if the definition perhaps has to be circumscribed, would be highly desirable.

Mr. McCLOY. I think if you could get that, if you get the right definition, I think your definition here is too general, too broad. It covers situations that I don't believe are in what the lawyers say—"within the mischief" of what you're trying to accomplish, and I would just urge that you wait until the case is in. I would like to see what the SEC is coming up with. They have had enormous ex-

perience now with all kinds of cases, different varying cases, some more heinous than others, and I think they can give you a very good idea of what the area is, and then I would also like to see what is coming out of these manifold discussions that are now taking place in the international area to bring up suggestions of international codes of conduct, and I think out of it might evolve what I would believe to be the most desirable thing.

The CHAIRMAN. Why not try to supplement that by trying to provide and get information—on page 15 of your statement you make a very helpful concession. You say you wouldn't hesitate to give the SEC authority to require corporations to keep accurate books and records. Now that's exactly what S. 3133 would do.

Mr. McCLOY. Don't they already have that now?

The CHAIRMAN. Well, not with respect to corporations. I understand they only have that power with respect to brokers and dealers.

Mr. McCLOY. As I say, if they need that I'd give it to them. I have no question about that sort of an implementing provision. But what I would think is the desideratum here, Senator, is to permit this process, which is now going on which is really a revolutionary attitude that's now taking place in American business and I hope it's going to have an impact abroad—you talk about the impact of the foreign payments on the situation here. I think what's happening here is going to have also an impact on the other side and I think, as I indicated, it's important that this impact be relayed to the other side because there's where a good bit of the impetus of this thing comes from.

The CHAIRMAN. What I'm concerned about is that momentum we have now, because of the recent disclosures, is like so many other things that happens in Washington and the country, is likely to die down as time goes on and we are likely to accept this.

Mr. McCLOY. All I urge is that you take time to do it.

The CHAIRMAN. Many of your colleagues in the bar think the SEC's voluntary disclosure program right now is exceeding the SEC's authority. As you know, the SEC takes the position that foreign corporate bribes are material information that should have been disclosed to investors and failure to disclose is a violation of the law. To purge themselves, the SEC is requesting companies to do a thorough housecleaning whenever allegations of bribery have arisen. Now that's fine as far as it goes, but there are undoubtedly still cases of bribery the SEC doesn't know about.

Wouldn't it be more effective if the SEC didn't have to argue materiality? Shouldn't the law simply require that all foreign payments to so-called sales consultants be disclosed and then prohibit bribes?

Mr. McCLOY. Would you make those payments I'm talking about, the kinds for minor officials. Would you make those subject to disclosure and designate the individual that received the gift at Christmas time? It seems to me this is de minimis.

The CHAIRMAN. That's right, and the staff tells me under this law that wouldn't be required.

Mr. McCLOY. I don't read the law that way. I think it's rather confused.

The CHAIRMAN. We will try to clarify that.

Mr. McCLOY. I think you're going to get some experience from the SEC's examination of this subject. I think you're going to get some

very good experience from some of the—Trowbridge is doing a study of this. A lot of studies are going on here and abroad. I believe you do have time and I would urge you don't rush into print on it until you get a better perspective of the difficulties that are involved than you now have.

The CHAIRMAN. Well, can you support this if we left out the low level gratuities?

Mr. McCLOY. Yes. I'd leave that out and I wouldn't purport, as I think you do here, to require that political payments abroad are illegal or should be disclosed, if they are not material. I admit if a country abroad demands millions of dollars for its political contributions to the party that that has an effect on the value of the security.

The CHAIRMAN. Well, you can see the difficulty, Mr. McCloy, is that it's hard to determine what is material and it may well be that a corporation, especially a large corporation where very large sales could—say hundreds of thousands of dollars of payments or even millions are not really material in view of their size and how many shares they have outstanding, and so forth.

Mr. McCLOY. But what I think the SEC is saying there is materiality in the offense itself, if it's *malum per se*.

The CHAIRMAN. That's what we're trying to say.

Mr. McCLOY. I don't think it's *malum per se* to make a contribution abroad when it's legal. I have the experience of coming up to Canada and looking at their laws up there. I think they have got a very good law up there.

The CHAIRMAN. Why shouldn't it be disclosed?

Mr. McCLOY. It is disclosed. It's disclosed publicly on the part of the giver and the donee and there's none of this surreptitious business that we have had here so long. I think that's a very good guardian of proper conduct and I have a feeling that you ought to take a little more of an exploration of what is going on in the rest of the world before you purport to designate that a political contribution abroad is *per se* illegal or that it's *per se* material.

The CHAIRMAN. All right. That's fine. Then we agree on the fact that we should have disclosure?

Mr. McCLOY. Yes.

The CHAIRMAN. No dispute about that, and that's a major part of this bill. We agree in the second place, as I understand it, that to the extent that we have a definition that would satisfy you, that a bribe paid for the purpose of making a sale should be disclosed?

Mr. McCLOY. I think so. I'm just thinking out loud on this thing. Wouldn't it be proper to provide here that so you don't get into this conflict of laws problem which is really quite a brouhaha or whatever the word is, why couldn't you make it illegal here to conspire to commit a crime abroad? Wouldn't that be sufficient? You get into great difficulties when you try to exert your extraterritorial effect abroad and I wonder whether you wouldn't, by, let's say, having some understandings, maybe an agreement, an international agreement or bilateral agreement, providing for extradition, providing for transfers of information, providing for expeditious reporting something like what we are doing now. I'd rather do that sort of thing than to try to get into this area of conflict of laws of extraterritorial extension of our laws because you get resentments on the

part of the legislatures abroad to that if you purport to move into that area. I think you would get very great resentment, for example, in Canada or elsewhere if we purported to say here that it was illegal for an American subsidiary in Canada to make a political contribution in Canada which conforms precisely with their law with all of the disclosure provisions that they have, and the same thing—

The CHAIRMAN. You may well be right on that area. What we are concerned about, as I say, and trying to get at—and I think your testimony is most helpful in helping us modify the bill to do so—is bribery for the purpose of making sales abroad. This other area is something you have explored very expertly and been able to give us some very helpful information on.

Let me yield to Senator Helms.

Senator HELMS. Mr. McCloy, you have articulated some of my own concerns about this legislation. First of all, there is the matter of defining a bribe; second, I'm not all that certain that our Government has leveled with the American people about the Government's own involvement with respect to these activities. I have asked the chairman to invite Secretary Kissinger to appear before this committee, not to pillory Secretary Kissinger, not to assume that he has countenanced anything irregular, but simply for the purpose of having him speak frankly and candidly about a matter of considerable concern to a great many of us. I think it's safe to say that nobody really seriously is in favor of bribes. Going back to your question, what is a bribe? Is it the taking to dinner of a foreign official; is that a bribe? Is that a payoff? I share the concern that the bill before us is too general and too vague.

I find it interesting that Secretary Kissinger has declined to come before this committee. The distinguished chairman, once more at my request, has again invited Dr. Kissinger to come and I do hope that he will indeed come so that we can have a somewhat certain assessment of what has been the attitude of the U.S. Government toward this sort of activity in the past.

I share your view that unless and until we have a full exposition of what has been going on that it would be a matter of too much haste if Congress were to enact this particular bill.

Now, having said all that, Mr. McCloy, do you have any opinions satisfactory to yourself as to whether the State Department, in past years, has been aware of the activities in question here?

Mr. McCLOY. Although at one time I was an employee of the State Department when I was in Germany, my experience didn't bring me face to face with this at all. I have represented a number of companies abroad and I never have run into this situation of an outright bribe in any of my experience. I have been aware of the fact that they gave at Christmastime presents to some customs people because they wanted to get their goods across through the bureaucracy and, mind you, a good many of those minor officials are paid abroad very, very low rates—almost on the assumption that something in the nature of a "omaggi" is given, but it's never been my experience either as an official or a legal representative of a corporation abroad, or indeed when I was chairman of the Chase, I was never faced with this problem. I have known of a number of cases where attempts on the part of the governments on the other side to approach you were repulsed, but it has never been part of my experience that such

a thing as the Lockheed thing was a matter of common experience.

Senator HELMS. Thank you, Mr. McCloy. I have no further questions at the moment, Mr. Chairman.

The CHAIRMAN. Mr. McCloy, in your statement you say political payments were made abroad in the same general category. In the main they were either legal or customary where made and they seem to have been in large part induced by pressure from the governments or the political parties concerned.

Now certainly it's true in the sense that in order to pay a bribe a government official must accept it, but are you also saying that in most or many cases the foreign governments were officially involved? That is, that as a matter of official policy, are you saying that heads of state were involved in the bribes or kickbacks were required as a matter of government policy?

Mr. McCLOY. Let's leave the case of actual bribes out for the moment. I think I was referring in that case to the political payments abroad where I said they were either legal or customary and sometimes generated by pressure from the country involved. I was thinking of the situation that did arise in investigations that we made where there was a great deal of pressure brought to bear for a political contribution of a very large sum on the executives of the company that was operating in that country.

The CHAIRMAN. Then again, you say, referring to such things as demands on the part of governments or government agencies for kickbacks of one sort or another, such an examination:

After such an examination I believe it would appear that condemnation of questionable practices has been concentrated somewhat unjustly against the American corporate transgressor.

Now I ask about this in order to make the point that in the cases we are concerned with there were official corporate bribery. That is, the firms were making payoffs as a matter of official corporate policy from the top down. Do you agree that that's an important distinction?

Mr. McCLOY. Yes. That is an important distinction. In order that we be forthright about this, what I was referring to there was in the back of my head some cases we ran into in the Gulf investigation where there were demands for kickbacks from governments or government agencies, and they were complied with by the—the whole generation of it came from the government rather than from the corporate transgressor. This isn't limited to developing countries or undeveloped countries. These are in a number of cases sophisticated countries.

The CHAIRMAN. Do you know as a fact that any foreign government official required kickbacks or bribes?

Mr. McCLOY. I think from my experience in the Gulf case, I know of a couple of cases where—we didn't investigate it as thoroughly as we perhaps should and I ought to be cautious about it, but I do know that government agencies—that is nationalized agencies—or governments themselves have asked American companies—and there may be other countries too—for kickbacks in connection with a project.

The CHAIRMAN. Can you give us specific examples of that?

Mr. McCLOY. Yes. There was an example—it's mentioned in our report. Airlines, I think, I referred to, and I think also—of course, in the case of Korea, there was the Defense Ministry. I'm suggesting

that this is an area that ought to be explored a little more carefully before you begin to write your statutes.

The CHAIRMAN. Yet you agree on the disclosure part of the bill?

Mr. McCLOY. Yes, I do.

The CHAIRMAN. And you agree to the extent that we can specify the bribe paid for the purpose of making a sale abroad that is should be outlawed?

Mr. McCLOY. And I would explore the other area, what you can do to augment the extent of information that is made available—I'm talking about extradition; I'm talking about transfers of information; I'm talking about that diplomatic interchanges as well as the criminal prosecution here of a crime committed abroad.

The CHAIRMAN. I'm concerned about how long this is going to take, if we just drift along. Maybe we'd get a treaty sometime. Maybe we will get a little more information on this. It seems to me that the situation is so conspicuous that we should act forthwith.

Mr. McCLOY. Let me give you my philosophy on that. I have been through this affair and I don't want to talk too much about it. I have the feeling that there's now moving throughout the body corporate of the United States a very, very definite alertness and awareness to this whole problem that hasn't existed before. I believe it would be ideal if industry could reform itself. I think it's in the process of reforming itself. I'm not saying that it will be able to do it fast enough and you may want to implement it and supplement it. All I urge is that you have got some time here to explore this thing further before you burst into legislation and in doing that you will be advancing the whole subject because in the last analysis in my experience it's the tone of the top management that determines this situation.

The CHAIRMAN. I couldn't agree with you more and I agree there's been a commendable action on the part of many firms. What Gulf did is a fine example of this and it's not alone. I quoted several of the outstanding executives of the country—the head of Dupont, the head of other corporations. But they are in some areas at least—for instance, in aircraft sales—these firms are in a very disadvantageous position. If one of their competitors gets into this, they are in a position where they have to choose between the ethical road which may mean lower profits, losing money, or the unethical road which seems that is the practical step.

Now one more point I'd like to ask about. You indicate that you do not think that the SEC should have enforcement power, the kind the bill provides. I'm concerned about that because there's a serious problem here in the laxity of the enforcement agencies to enforce the law. The SEC has been an outstanding exception but it's a small and not very powerful independent agency. The attitude of the IRS, of Justice, of the Federal Trade Commission, State Department, Defense Department have been very disappointing. As a matter of fact, the Defense Department actually had a declaration by one of their top officials specifying that defense contractors should engage in bribery under some circumstances and telling them how to do it and emphasizing it. It was a shocking kind of action but it's very, very hard to get these other agencies to act. This is why we thought we would give enforcement power to the SEC.

Mr. McCLOY. Well, I suppose it's the lawyer's attitude toward this thing because I have been involved in the practice of law so long, but I just think that it's dangerous to give an administrative agency criminal prosecution authority to proceed with all of the prerogatives and the grand jury prosecution when you've got a Department of Justice. The Department of Justice is properly called the Department of Justice. It weighs both sides. The agency has a sort of an instinct to carry on its own particular motivation.

I have a feeling that it has in its interpretative and in its investigative processes all the power it really needs and when they've got the facts they can take them over to the Department of Justice for criminal prosecution.

The CHAIRMAN. If we learned anything in the Watergate affair, we learned that the Department of Justice is not a department we can always rely on, especially when you have top influential corporate officials that are involved. They have a good record in some areas. They prosecute the hoodlums. They haven't got such a good record on white-collar crime.

You stated you wanted to be sure the Gulf situation never recurs and, of course, that is the committee's concern here. Wouldn't you agree that we shouldn't have to have a John McCloy head a three-member investigating committee to investigate every American corporation doing business overseas? Don't we need an ongoing systematic deterrent?

Mr. McCLOY. Yes, and I don't want somebody else to have to go through the traumatic experience that I have had.

The CHAIRMAN. You are a good man but you're awfully busy I know.

Mr. McCLOY. But I don't think you need to have somebody sitting there looking over the shoulder of the executives forever. I believe you ought to see what is going to transpire out of this development. I believe the SEC should be given any powers it needs to compel disclosure in the proper areas, the disclosures certainly that relate to the validity of a security; and the taxing authority should have the same rights; but I don't think that that leads to the thought that you ought to have an administrative agency considering the criminal process. You would have—how many of them—20 or 30 of them in Government.

The CHAIRMAN. Senator Helms?

Senator HELMS. Mr. McCloy, one final question. Do you have an opinion as to what would be the effect on the U.S. balance of payments if this bill were to be enacted?

Mr. McCLOY. I don't know that I could relate this bill to the balance of trade. I believe we can carry on our trade abroad in a perfectly legitimate way. There may be a little lubricating process that you have to go through that you don't have to go through here, although in a good many places here you have to do a little greasing from time-to-time. I have a feeling that if we have a good product that the good product is going to sell itself. I don't believe in going to a defense minister and saying, "here, I'll give you a million dollars if you will buy my product" or to succumb to his importunities when he comes to you and suggests it. What I don't like to see is this constant beating on the head of the so-called multinational corporations.

I believe the multinational corporations are highly desirable figures in our economy and it isn't synonymous with vicious behavior. I think if we unduly restrict activities of our so-called multinational companies which are only American companies doing business abroad, then I think our balance of payments would be seriously affected. I feel that we have overdone this victimization of the so-called multinational companies because they are just another American citizen who has shown alertness and vigor and strength in trying to build up our balance of payments.

The CHAIRMAN. Thank you very much, Mr. McCloy.

Mr. McCLOY. Thank you. I did have ten copies of this statement. Was that sufficient for your purposes?

The CHAIRMAN. Well, we prefer to have about 150. We will do our best to make them available.

Our next witness is Mr. Ralph Nader, Center for the Study of Responsive Law. Mr. Nader, we are very happy to have you here. You also are at the disadvantage of being notified late, so we didn't expect statements in advance, but if you have copies we would appreciate having them now. Do you have a statement available?

Mr. NADER. I do not. The notice was very short.

The CHAIRMAN. Yes, it was.

Mr. NADER. But the thoughts will be just as compelling.

STATEMENT OF RALPH NADER

Mr. NADER. I do want to commend the committee for persisting in its inquiry in this area. Regardless of what political viewpoints any of the witnesses may have, I think it's clear that there has been an enormous amount of disclosure of corporate crime and not just relating to payoffs abroad in recent years, and it certainly behooves a congressional committee to look into this thoroughly.

There is, however, one interesting peril to disclosure of institutional crime and that is if nothing is done about it after it's disclosed the critical standard of ethic that holds sway in a society begins to crumble and a level of public cynicism and a reduced level of expectation by the people of what major institutions in a society should do and how they should behave is very severely undermined.

So if we are going to have disclosure, which is of course very important, we must have reform coupled with that disclosure. Otherwise, we will see an attitude spread in this country that often spreads in other countries where no matter how abusive both governmental and corporate and other institutions may be, the people just shrug their shoulders and say, "Well, what else is new?" That is perhaps the most destructive impact of any institutional crime, when the people themselves give up any standard of response to clean it up and start a new pathway.

I'd like to give the example of an election years ago in a north-eastern Brazilian state, Pernambuco, where one of the candidates for the governorship of that state had as his slogan the following, "To my enemies, the law; to my friends, facilities." And it came across and that's what I hope will not occur in this present series of disclosures about corporate crime.

It's only too recent to recall that after the Watergate crimes were disclosed and redisclosed again in recent weeks through the publi-

cation of another book and a movie, that those Watergate reforms proposed by Senator Ervin and Senator Weicker have not moved to the Senate floor. They may yet move to the Senate floor, but they are rather low priority in the Congress and there are no priorities in the White House to push for these changes.

So when you have these kind of disclosures uncoupled with reforms, you get an order of magnitude lower in public expectation for these institutions and a widespread cynicism and, after all, wasn't it Learned Hand who once said:

The liberty of people is ultimately in their minds and attitudes, not in constitutions or laws.

So we have to pay very close attention to that problem.

Of course, it would be desirable if the Congress could come up with an overall corporate crime deterrent bill that would deal with all the varieties of corporate crimes that have been disclosed in recent years. But within the limits of S. 3133, I would like to very briefly list the reasons why these foreign payments, whether they are bribes or whether they are payments to political parties and political groups, such as Exxon's payment to Italy of some \$46 million between 1963 and 1971, that regardless of which category they fall in, the following consequences obtain in varying degrees.

First, there's a misallocation of resources by the company itself. It begins to believe that if it can pay off it can cease providing more innovative, more efficient, more informative methods of merchandising its product. So within the company itself a kind of rot begins to develop. There's less money allocated to research, less money to inventive procedures in selling their product and more focusing on the corruption of the potential vendor or its instrumentality.

Second, this kind of foreign payoff and contributions to political parties and newspapers and other agencies is a clear method of criminal and unfair competition to U.S. competitors. So when people mention that this is an extra-territorial effect and other countries may resent the scope of U.S. law enforcement on U.S. companies abroad, I think people in this country can come back and say, well, it is clearly unfair competition to domestic competitors. In fact, the Federal Trade Commission has been studying this for about 6 months now as to whether to declare it an unfair practice and I would urge, Mr. Chairman, that you might ask the Federal Trade Commission where they are with that inquiry at the present time. It was first publicly announced I think in the early fall by the then-chairman Lewis Engman of the Federal Trade Commission. I think it's almost an axiom that dishonest business will drag down honest business in the marketplace or require the honest business to mimic the dishonest practices, just like bad money driving out good money.

Third: Many of these companies engaging in these kinds of pay-offs abroad are built on government contracts which means the taxpayer, and so the taxpayer has a clear role here in determining whether his or her taxes should go for companies bribing Japanese politicians, for example. In that regard, you might want to consider what kind of taxpayer remedies you wish to extend in this bill in a rather simple fashion so at least the large defense contractors and other government business companies would have some vulnerability to their ultimate beneficiary which is the taxpayer.

I might add in the context of the Japanese-Lockheed experience, our office has been flooded with letters from Japanese citizens and Japanese citizen groups urging that comparative efforts be made in this country to fully divulge the Lockheed payees in public and these letters were very thoughtful and very well conceived and I think reflected this fabric of public indignation that is so important to preserve and defend in whatever country it may reside. I think that the U.S. Government made a mistake in simply agreeing to pass on this information only to the Japanese Government and not to disclose it publicly to any citizen in any country in the world as a matter of course which, of course, this bill would require be done. There's no greater preliminary deterrent than to have public disclosure. It is a very early alert-type system and it makes the corporate executives think twice before they engage in that kind of activity. It also, to use one of Mr. McCloy's words in another context, lubricates the process of citizenship and citizen resurgence against this kind of corruption.

Fourth: Once the process of payoffs gets underway by a company vis-a-vis elements in another foreign country, there's really no end to it. You see, there begins to be a competition in payoffs and pretty soon simply paying off to one government official isn't enough; you have got to go further and further. So, in effect, it nourishes the criminal lineage of that whole process in many directions and before you know it the organizational crime of it all becomes stressful from both the payor and the payee. It sets up the payor for extortion, for example. It sets up the payor for developing a base in the country because simply paying off is not enough. You've got to have a base. What's the best base? Perhaps the best base is a political party. Perhaps the best base is another company in the country who ordinarily would have been a competitor and has turned into a collusive partner. There's also the further extension of this that these kinds of corporate bribes and contributions tend to support authoritarian regimes. They tend to support authoritarian tendencies and they tend to provide a capital investment reason for redtape in a government. That is, redtape no longer becomes the product of human frailty and bureaucratic torpidity. It becomes a kind of inventory whereby these government officials thrive on this redtape because the more redtape there is, the higher the ante is for the bribe to get around it. So it begins to shape the structure of government in the recipient country clearly along more authoritarian, inefficient, secret, if not outright criminal patterns.

Of course, the strongest argument against this kind of behavior is that it's unlawful in any country that anybody has observed and the fact that there may be varying degrees of enforcement has very little to do with the need to comply with the law. Obviously, nobody can make the comment that because this law is violated so frequently that ipso facto it's like prohibition, that there must be something wrong with the law. I don't think that parallel stands at all. Indeed, in observing the conduct of American businessmen in response to disclosures in recent months, it is very disturbing indeed to note that a significant portion of businessmen thinks that this is what has to occur and that if it has to occur it should occur because the company has to get the business away from its competitor.

In that regard, it's encouraging to note that at least two executives have spoken out strongly on this: Stanley Marcus of the Neiman Marcus firm in Dallas, in an article in the New York Times; and

Fred Allen, chairman of the board of Pitney Bowes, in an address October 16, 1975, called "The Case for Corporate Morality," and he puts the case in several dimensions—the moral dimension, but he also puts it in his own philosophic framework, and I'd like to quote one paragraph.

Singly or in combination, these practices have a corrosive effect on free markets and free trade which are fundamental to the survival of free enterprise system. They subvert the laws of supply and demand. They short-circuit competition based on classical ideas of product quality, service, and price, and free markets are replaced by contrived markets. The need for constant improvement in products or services is removed.

I would hope Pitney Bowes would reduce its prices, however.

He also made a very interesting point here which relates to this bill and a recommendation which I would like to make. That is the following, and I quote him:

Business organizations usually reflect the character of their leader. Thus it is necessary for corporate leadership to establish and push the pattern for business ethics which will permeate the entire company. I'm sorry to say that nearly all of the recently revealed incidents concerning shady practices were authorized by topmost officers, the kind of men we should have been able to look not only for corporate leadership but also national leadership. The potential loss of respect for such men may eventually mean that the public will look elsewhere for guidance.

Now what does that mean in terms of your proposed legislation? It means that there's an inherent administrative ease to the enforcement impact of this bill. If you were confronted with disclosures of corporate bribes conceived at very low executive levels, that are condoned and implemented at very low executive levels, that would make it even more difficult for the law to be effective, but here again, in one case after another, it's the top executive officers that are involved. This raises one of my suggestions for S. 3133, which is to have a provision that would have the SEC lodge specific responsibility for compliance with these provisions in a designated compliance officer appointed by the board of directors. In that way there would be an office within the corporation which would have a vested institutional interest in complying with these disclosure requirements and with the prohibition.

It's well known that the genius of the corporation is its ability to diffuse responsibility and authority. Anybody who has tried to locate responsibility for say a defective product, a car, or a dangerous drug, will experience both the horizontal and vertical elaboration of the corporate institution. You go up to the top executives and they say, "Well, we didn't know about this." You do down and they say, "Well, we were just following orders." You say, "Where were you following orders from," and they wouldn't say, "Straight up." It's out on a tangent. So it's much more effective for the SEC to be able to require the designation of a compliance officer, the person who will be on the hot seat figuratively and he will have an internal deterrent power which is much more leverage than any external deterrent power, however necessary that may be as a prerequisite for the internal deterrent.

Now I do have a couple of points I'd like to make on the bill. First of all, you're inherently limited by the SEC Act of 1934 limiting the corporations that come under S. 3133 to those who issue securities registered pursuant to section 12. This raises the question of

privately held corporations. It raises the question of the giant food grain exporters. It also raises the question of intermediaries that are privately held which basically are the advanced guard or advanced sales agents for the public corporations.

If there is some way that that problem can be handled, because as we know, the large grain exporters are not immune from the corporate crime syndrome, given what's been disclosed by the New York Times and the Wall Street Journal in the New Orleans cases of adulterating and misweighing the grain shipments.

I think there needs to be some attention, although it may not be within the rubric of this legislation, to the well-known fact that domestic bribery, just intercorporate bribery, is truly at a fantastic level and it has been for years. Anybody who works in many of these volume-purchasing industries like let's say companies that buy large volumes of tires. I was told, for example, by some officials within a large buyer of tires that the tire companies bid ferociously for the business and are not above providing free apartments, yachts and other inducements to get the business in any given year.

This raises the issue of condescension toward mere gifts. I think in many instances a small gift may be much more effective than a \$100,000 bribe. First of all, it's much more difficult to trace. Second of all, it can tailor itself beautifully to the particular individual in the company that is going to make the decision to buy the products and not expose the giver of the payoff to unnecessary legal vulnerabilities. So I would not downplay at all the need to disclose mere gifts.

In fact, in this discussion involving the tire matter, almost all the examples given were well under \$100,000. They were weekend yacht trips and relatively what might be called quantitatively petty bribery, but they were associated with friendship and community and fraternity which is, of course, or can be, even more influential than a major payoff to an executive. I think that should be taken into account.

Perhaps one might suggest the committee staff try to get in touch with 15 or 20 veteran purchasing agents in all these various industries in order to get some of these examples. I think Mr. McCloy had a point when he said that there is a lot more than can be learned in detail. Domestic bribery is the genesis of a good deal of the foreign bribery. It's really a bit disingenuous for grant American corporations to infer they were corrupted by people in Pakistan, Japan, Iran or South Korea. I don't know who invented that kind of corruption, but I don't think that in any lineup before the Patent Office, U.S. companies would be at the very end.

The situation at the SEC is not all encouraging. There is a split among the commissioners, Senator Proxmire, as you know, about how far to go in requiring disclosure and whether it's time to put the cap on this volcanic situation. This includes the Chairman, Roderick Hills, who's leaning towards lessening the rigors of disclosure for these kinds of overseas payments.

So I think efforts of the Congress are very much needed first to at least bolster those within the SEC who are trying to do a thorough job and second to do the job that only Congress can do.

Now as far as the extraterritoriality problem is concerned, I don't think that that is going to raise the problems of a leap overseas of

our antitrust laws. I think they are completely different issues involved and a much stronger case can be made for these kinds of corporate crimes than for restricting more traditional antitrust violations.

There is a problem, however, as to whether these multinationals can escape the embrace of this bill through elaborate intermediaries and perhaps that should be taken into account and a little tightening of the language that the bill now contains.

Finally, I don't give much credence to the likelihood of corporations policing themselves in such situations. First of all, the disclosure effect wears off very rapidly, particularly not only with the passage of time but the more companies that disclose, the more it's kind of a community of culprits and the public focus on one corporation diminishes. In fact, you can see the press accounts. They keep getting smaller and smaller as each company discloses, so now they are at the squib level day after day. When the first company disclosed it was a page 1 story. I think the deterrent effect of the disclosures is a highly depreciable commodity.

Second, I'd like to see how these corporations are really enforcing their so-called proscriptions. Exxon has just put out a directive to all hands saying the company will not give any political contributions, legal or illegal, around the world. Well, now, how is that going to be enforced? Is there an independent compliance officer who is not under the direct thumb of the chairman or president of the company? In other words, is there an ombudsman? It would be interesting for the staff to send a brief survey to all these companies asking them not just what their statements are deploring the situation or not just what their new verbal policies are to try to avoid them, but precisely what are the institutional structures and investigative resources given to any compliance unit within the corporation itself.

Those are my comments, Mr. Chairman. I will be pleased to answer any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Nader, and thanks for your interesting and original suggestions on the compliance officer and requiring at the very end reports on what resources corporations have made available to require compliance on the part of the corporation.

This is a limited bill and I think it has to be for a number of reasons. One is jurisdiction and another is the great difficulty of reaching small gifts, although you're right, they are very corrupting and perhaps domestically more significant.

I take it that you have come down very hard on the side of requiring both disclosure and the prohibition of payments to foreign public officials for the purpose of promoting or influencing legislation.

Mr. NADER. Yes. I think the argument that it's legal in many countries such as Canada for corporations per se to make political contributions tends to misread this bill. This bill says "political contributions in order to obtain or maintain business." There's a direct nexus, not just for the political climate or, as one company says, "to sustain the political process," whatever that may mean. This bill links it with the business, the orders.

The CHAIRMAN. Now what the bill would do would be to delegate criminal enforcement with respect to foreign bribery directly to the

SEC. That was contested by Mr. McCloy when he appeared. I'm sure it will be contested by some members of the committee and some members of the Congress. I'm not sure we can get that through. It would be a departure from the present system under which all criminal enforcement resides in the Justice Department. We have seen, however, how criminal enforcement can be corrupted by political influence, particularly where white collar crime is involved.

Do you believe the time has come to vest some criminal prosecution authority in the administrative agencies such as the SEC?

Mr. NADER. Senator Proxmire, that troubles me to a considerable degree, to have an administrative agency which is adjudicative, rule-making, and investigative, and also have the power to criminally prosecute troubles me. I think it can be subject—

The CHAIRMAN. Can you suggest what we can do about that? We have had such frustration so often with cases that are clear. The most conspicuous case in my experience was as a chairman of the Appropriations sub-committee and we had Mr. Bradford Cook up here as head of the SEC and he made statements before the committee which were untrue. He wrote me and asked if he could appear to correct those statements. We put him under oath the second time he appeared and he went into some detail in correcting his position. Later he appeared in New York testifying in a case related to this and said that he had perjured himself, before our subcommittee that he had not told the truth, that he had lied to our committee under oath the second time he appeared.

I referred that to the Justice Department for prosecution. They wouldn't prosecute him. Now with such a clear conspicuous example of perjury in which the official involved admitted that he engaged in perjury, it was very, very frustrating.

When you have situations of this kind involving people with great influence and financial and political power, the SEC, as I say, has a good record. They don't seem to be in awe of people of this kind over the years. That's the reason why we thought we could get action if we put it in the SEC and probably not if we didn't.

Mr. NADER. I agree the record of the Justice Department in entertaining requests for criminal prosecution from regulatory agencies is not good at all. That's putting it mildly. It's been characterized excessively by political interference, political indifference, lack of adequate resources dedicated to these corporate violations, and the U.S. District Attorneys around the country have not been instructed by the Justice Department to pay sufficient attention to these problems either. They tend to be more complex cases. They have large law firms representing defendants. They are not as easy going as some kidnapper that's been apprehended and has high publicity value. I do think attention has to be paid to the Justice Department's performance.

There have been a number of recommendations made. One, for example, to require the Justice Department to make up its mind more quickly so it doesn't have, for instance, the FDA hanging for years. The second is to give a reason why the prosecution is not undertaken. Professor Kenneth Culp Davis has pointed out it's very important for law enforcement agencies to give reasons why they don't act as well as reasons why they do act. There may even have to be an independent prosecutorial agency servicing regulatory agencies, quite

apart from the Justice Department, along the theory of the special prosecutor.

I suggest in trying to avoid a very real problem in the Justice Department, as you pointed out, there may be created even more serious problems in the administrative agencies.

The CHAIRMAN. Another suggestion which incidentally is not included in this bill would be to empower the SEC to remove officers or executives who have engaged in corrupt practices just as the SEC now has the power to suspend broker-dealers for bribery. Would you favor that?

Mr. NADER. Yes. The SEC has the potential to be given less than Draconian sanctions which are much more effective than Draconian sanctions, because of the difficulty of getting a conviction, the enormous time and resources. The most effective civil sanction of all is to remove the culprits from their office. You can imagine what that does in a company. That is an extremely powerful sanction—removal, extended suspension, along with more traditional fines.

The CHAIRMAN. And you would give that to the SEC?

Mr. NADER. Yes, most definitely.

The CHAIRMAN. Do you think prohibitions against overseas bribery by U.S. corporations would be enforceable?

Mr. NADER. Oh, yes. You see, these companies, first of all, are domiciled in the U.S. Second of all, they conduct a great deal of business in the U.S. Third of all, from a jurisdictional point of view, its unfair effect on other corporations in the U.S. and its linkage with the taxpayer, I think provide all that's needed for that kind of enforcement.

You may have difficulty extraditing from overseas countries, but I don't think that the enforcement authority can be challenged in U.S. courts at all.

The CHAIRMAN. Senator Sparkman?

Senator SPARKMAN. I have enjoyed Mr. Nader's discourse. It seems to me he's covered the field quite well. I was interested in this last answer that could reach other countries unless there's a problem of extradition. Do you think that could be a real problem?

Mr. NADER. I'm sorry, Senator. I didn't quite hear that.

Senator SPARKMAN. As I understood, he asked about punishing the people in other countries and you said that it could be done, but the only trouble might be extraditing them. Do you think that would be a real problem?

Mr. NADER. It would be, even in countries with whom we have extradition treaties because almost by definition, if the person is caught bribing a government official who is in good standing the government of, say, Brazil, is not going to be interested in permitting extradition. However, if you focus the responsibility for such activity on a compliance officer in this country that compliance officer is going to, with the law enforcement behind him—is going to try to curtail these kinds of situations because he won't escape some measure of responsibility. You know, there is in the law a whole series of standards of prudence—managerial due care, and all of these can be applied to the compliance officer back home.

Senator SPARKMAN. I believe that's all.

The CHAIRMAN. Thank you very, very much, Mr. Nader. We most appreciate your testimony.

Our next witness is Mr. Spruille Braden, former U.S. Ambassador to Argentina and Cuba. Mr. Braden, do you have copies of your statement?

Mr. BRADEN. I left a copy with the secretary outside and I have an extra copy here. I work out of my study so it's difficulty for me to produce them in any quantity.

The CHAIRMAN. All right. Fine. Go right ahead, sir.

STATEMENT OF SPRUILLE BRADEN, FORMER U.S. AMBASSADOR TO ARGENTINA AND CUBA, COLOMBIA, CHACO PEACE CONFERENCE, AND ASSISTANT SECRETARY OF STATE

Mr. BRADEN. With your permission, I would like to read the brief statement that I prepared in advance. In view of what I have heard since I came in the room, I may have a few additional comments afterwards.

It is an honor to accept Senator Proxmire's invitation to appear before this distinguished committee.

As an introduction, I respectfully submit the following:

One: Sixty-two years of successful experience as an engineer, businessman, and diplomat in and with Latin America, as well as the United States, I believe equips me to comment knowledgeably and as extensively or concisely as the committee may wish on the growth of corruption and bribery, illicit payments, and other unethical procedures in the conduct of U.S. business abroad and foreign affairs as related thereto. The two are closely interlocked.

Also, I have benefited from what I learned from my father, who developed several of the largest copper mines in the world.

Two: I request that copies of my March 8, 1976, letter addressed to Senator Jesse Helms, together with the attachments thereto, be considered as a part of this opening statement.

Three: With a few notable exceptions in the Western Hemisphere, the widespread growth of corruption did not commence virulently until after World War I. To begin with, more often than not, it took shape as extortion rather than bribery by U.S. corporations and individuals. As it became increasingly entrenched, the foreign companies began to take the initiative themselves.

Four: Unfortunately, since 1919 the many evils comprehended in the word "corruption" have expanded in both number and the amounts paid. Simultaneously they have spread rapidly over the world. There is no time for me now to delve into the reasons, nature and many facets of this burgeoning malignancy. It suffices to say that for more than 40 years I have said that "the major threat to mankind, the breakdown in morality, has multiplied everywhere."

Five: In respect of Senator Proxmire's March 12, 1976, release and his proposed bill S. 3133, I present the following comments:

(a) I agree entirely that for the protection of the foreign countries, as well as our own citizens and security owners, corruption should not be allowed to go unpunished. I emphasize the punishment is the one thing necessary by law. Therefore, I agree with the provisions of the Senator's proposed bill granting the Securities and Exchange Commission limited powers which on certain occasions may well prove necessary.

On the other hand, I fear any extension of such powers to the innumerable agencies now extant in Washington, such as SEC, IRS, OSHA, Affirmative Action, et cetera. In a multitude of cases they have seized not only investigative, but legislative and quasi-judicial powers which seem to be of debatable constitutionality and a harassment to the American people.

(b) Specifically, for these reasons I am dubious as to the wisdom of the proposed insert (h) granting the Securities and Exchange Commission such broad powers as it may "deem necessary to carry out its enforcement responsibilities . . .". Moreover, this phrase might conflict with the responsibilities of the Department of State.

Six: As stated in my aforementioned letter to Senator Helms, I find the State Department's proposal to handle the corruption situation abroad through international treaties, bilateral or multilateral, or even in the United Nations or the Organization of American States, to be futile and puerile.

Seven: The essence of the way in which I was able successfully to combat the corruption and extortion which I found in some of my ambassadorial posts is expressed in the first paragraph on page 295 of my Memoirs as follows:

Shortly after becoming ambassador, I formally announced I would receive no U.S. citizen, corporate or individual, who shared in any form of corruption. But I said I would go down the line 100 per cent in defense of their legitimate interests. At every opportunity thereafter I made it clear I would fight to prevent Americans being victimized by extortionists, but only if they kept their hands scrupulously clean.

For this policy to be successful across the board, there must be complete acceptance of responsibility and self-discipline by the State Department, our embassies and by private corporations and individuals operating in or dealing directly or indirectly with foreign affairs. Such a positive policy should be established and enforced by Presidential Executive order.

Secretary Kissinger appeared to be at variance with the objectives of this committee when he reportedly asked a Federal court to prohibit the SEC from releasing information on the Lockheed payoffs because it would jeopardize U.S. foreign policy interests. I cannot conceive that official acknowledgement of misdeeds by any of our citizenry ever could be prejudicial to the U.S. foreign policy.

To conclude, as recommended on page 464 of my autobiography, *Diplomats and Demagogues*, I urge that the U.S. Government and our Nation return to what I believe are the immutable principles which always must be the basis of our foreign policy and far outweigh any changes which may occur therein:

I. Respect is the sine qua non of all foreign relations. Irrespective of every other consideration and under all conditions, the U.S.A. must demand and get respect. To do so we must first have self-respect and exact from our own and other governments respect for their obligations and the sanctity of agreements.

II. The sole reason for being of the State Department and Foreign Service is to protect and advance the legitimate interests of the U.S.A. If ever they should become illegitimate, then they are unworthy of this great nation and should not be supported.

III. Every policy and action must be moral. Leaving ethics to one side, only in this way will we win and hold the confidence and respect from other countries which are so essential for a solid and enduring amity between peoples.

IV. While never attempting to impose our way of life or form of government, our ideas or even our moral standards, on others, we should ourselves

stand unswervingly for and practice the system of republican, constitutional, representative government laid down for us by the Founding Fathers in the Declaration of Independence, the Constitution, and the Bill of Rights.

In connection with what I have said there about the situation, I disagree with Mr. Nader in this particular: that I do not think that the cure rests in legislation. I think that we have learned from prohibition and other events that one cannot legislate virtue. On the other hand, a simple procedure under Presidential Executive order would be carried out—I didn't do it under Presidential order, I did it on my own as ambassador at my various posts, taking the stand that I did that I simply would not receive any American who went astray in any corruption.

On the other hand, I would defend their interests right down the line 100 percent. I think that is the kind of thing that we have got to do.

The CHAIRMAN. Thank you very, very much, Mr. Braden, and I think that's a very impressive statement which you have. I must say I'm concerned about what you say at the very end that you think we shouldn't provide legislation to meet this problem.

Mr. BRADEN. I say legislation to punish, but not to prevent. You can't prevent it. It will grow up just as we have seen crime burgeon in this country in all directions. You can't cure it very well after it's done. The thing to do is to prevent it, and that's what I did in my various posts.

The CHAIRMAN. Here's what I'm getting at. There are press reports that the State Department knew of the bribes paid by Lockheed and CIA was involved. Bribery in Korea by U.S. corporations there were apparently well known in the embassy. Wouldn't it strengthen the hand of an ambassador such as yourself if the United States had a clear policy against bribery and the payment of bribes of U.S. corporations overseas were against the law?

Mr. BRADEN. I think if it's a Presidential Executive order through the State Department to every ambassador that we have and the State Department itself, saying that we simply will not receive or do anything for anyone that indulges in any corruption, but we will help them 100 percent otherwise, I think that suffices to prevent their getting into it.

The CHAIRMAN. Well, that may well be. Of course, we have a President who changes or may change every 4 years and always changes every 8 years. Why shouldn't it be a settled policy that regardless of who is President, regardless of whether he's firm in this area or not, regardless of whether you have a Spruille Braden or somebody who doesn't have your deep strong moral conviction, that bribery is clearly not the policy of this country?

Mr. BRADEN. I think the high moral issue of this would induce any President we have, unless this country degenerates completely, to take such a stand irrespective of party, irrespective of who preceeded him. He would realize that it was his responsibility to have that courage and conviction to go ahead with that kind of Executive order.

The CHAIRMAN. Well, I wish that were the case, but we have had 38 fine men who have served as President of the United States, some of the greatest men who ever lived, and yet we haven't had this policy enunciated by any of them. It wasn't enunciated by President Eisen-

hower or President Truman and it wasn't enunciated by President Kennedy or Johnson or Nixon or Ford. It hasn't been enunciated.

Mr. BRADEN. Remember what I said there, that to begin with it was extortion from the other side. It wasn't the American companies.

The CHAIRMAN. Perhaps it was, but it certainly isn't that now.

Mr. BRADEN. Gradually the extortion grew and the American companies began to get into it. That was the time when action should have been taken. In my case I took it a little late, but nevertheless, it was still effective.

The CHAIRMAN. Now you said you oppose the State Department's proposal to handle the corruption issues with a treaty, that it's futile and puerile. Can you elaborate on that and explain why you think that approach won't be effective? I'm inclined to agree with you, but I'd like to have your observation.

Mr. BRADEN. In the first place, I don't think you can negotiate such a treaty. It would be complicated beyond words and you can't tell what the other country is going to do and, again, you're trying to legislate through treaty on virtue and I don't think virtue can be legislated in any way internationally or nationally.

The CHAIRMAN. Well, I would think a treaty would take a long, long time, and how we enforce it—would you have the United Nations enforce it?

Mr. BRADEN. Mind you, when I took my stand, for instance, in Cuba, which was one of the worst cases that arose, the President of Cuba, Batista, had enriched himself enormously. All the people around him had and the mere fact that I took this stand irritated him beyond words, and for a while we were more or less enemies because of the stand I took, but nevertheless, it was obeyed and his own people obeyed it and it worked. For instance, I can give you examples on that. The Consolidated Railways was an American-owned company. George Murnane was the chairman of the board and he told me afterward that he had had to budget \$500,000 a year for graft and bribery on those railways. From the day I made that speech publicly, he didn't have to pay a penny and from 6 months after that date he wasn't even asked for it.

Now going to the other extreme, in their own case, the Cubans themselves were so attached to this corruption that they had—it wasn't their fault—it came from the Spaniards originally and grew up with a long history and I won't go into it, but nevertheless, I had the Cardinal Archbishop of Cuba call on me one morning and ask my assistance because some years before he made an agreement with the Ministry of Defense to put on three chaplains and the church would pay for the uniforms, the travel and the other expenses that these chaplains had, and then they would every 6 months bill the Ministry of Defense for one-half thereof. This had gone on for several years and the bill amounted to a good many thousands of dollars. He could not get a penny and he came to me for assistance. That was a matter of Cuba, so I said, "I'm sorry. I couldn't help him." But in other cases, case after case, and when it came to the elections, there's some mention made I think by Mr. Nader about political parties getting into it—well, in the elections in Cuba it was the habit of the American politicians to contribute at the behest of those companies extortion again, usually to both parties. When Batista became so strong they

only contributed to his side. But when I came out and amplified my first statement about corruption and said the U.S.A. hopes the Cuban people will make a good choice for President but no American citizen should contribute a penny to any Cuban political campaign. A group of Senators and others called on a group of American citizens from large corporations in Cuba and said, "We want a contribution from you." And the Americans said, "We would be delighted to give it to you. In fact we will write a check, but we are going to send the check over to Ambassador Braden and you can go get it from him." That will stop the attempt in its tracks.

The CHAIRMAN. Now, as I understand it, you do not object to the disclosure requirements in the bill.

Mr. BRADEN. No.

The CHAIRMAN. It's the punishment.

Mr. BRADEN. I think that's part of the punishment. You have got to disclose.

The CHAIRMAN. You favor that part of the bill?

Mr. BRADEN. I favor that part of the bill. I'm only worried about granting more powers to any of the agencies and in this case to SEC.

The CHAIRMAN. I have a few more questions.

Mr. BRADEN. There are countless other anecdotes that I could tell you of what my experiences have been, both in Argentina where I was Ambassador and Cuba and elsewhere.

The CHAIRMAN. Senator Sparkman.

Senator SPARKMAN. As I get it, you would rely on the popular response to the publicity to test disclosure.

Mr. BRADEN. In this country. I would rely on that and the sense of responsibility and decency, and self-discipline is the word that I use, and self-discipline applied to the State Department, to the American Ambassadors, and to our corporations, and I think that our corporations have self-discipline. For instance, in the case of the Gulf Oil, when you heard the testimony shortly before mine, that brought out very clearly that they called Mr. McCloy to investigate; that showed self-discipline.

Senator SPARKMAN. Let me ask this question just for curiosity. How long were you American Ambassador?

Mr. BRADEN. 14 years, approximately, but before that I had vast experience first of all with my father in mining and then I took the contract for the Chilean State Railway which I think is still the biggest outside of the United States. And I can give you my word, my father and I, if we were indebted at all—I say if we were indebted—we were the ones that were indebted for luncheons and dinners in order to get together and talk as we do in this country, but so far as luncheons and dinners, we were more indebted to them than they were ever to us and there was never one sou or centime paid by anybody. When my father required a big change in the law in Chile in order to take advantage of a change in the law that would permit him to bring in all of the timber, all of the building equipment, and everything else to start the Braden Copper Co., he paid huge duties. Finally the law was altered accordingly. At the end of 6 months when the bill passed the Congress they gave him a check returning the duties within 24 hours. That was the kind of honesty there was at that time. We can lead the way in establishing

that type of honesty by taking such a stand as I did, as Ambassador and Assistant Secretary of State.

Senator SPARKMAN. I was trying to recall, were you one of the three who made recommendations toward the settlement of the China problem back there?

Mr. BRADEN. China? No; I was an Ambassador in the Chaco Peace Treaty in the war between Bolivia and Paraguay.

Senator SPARKMAN. I was not thinking of you necessarily being in the ambassadorial post at that time.

Mr. BRADEN. I had the rank of Ambassador in that and as a result I'm the only living citizen of the United States who can boast that he made a peace treaty that's still enduring after 38 or 39 years.

Senator SPARKMAN. I'm very much impressed with your policy and program. Thank you.

The CHAIRMAN. Senator Helms.

Senator HELMS. Mr. Chairman, I want to add my thanks to Ambassador Braden for coming here this morning. For a great many years he has exemplified to me what we should seek to achieve in terms of moral judgments in this country, not only in the work that he's done but in the positions he's taken as a citizen. I commend him.

Now, Mr. Ambassador, what reaction did you experience to your action in Cuba when you said, "There will be no more of this?" What did you hear from Washington on that?

Mr. BRADEN. From Washington, I didn't hear anything, and I had no assistance from Washington whatsoever in that, and Washington did nothing about it until I became Assistant Secretary of State in charge of American republic's affairs and then I continued that same policy and did the same thing and prevented any payments being made anywhere in the hemisphere because it was well known by all of the companies what the policy would be.

Senator HELMS. Well, would you refresh my memory as to the precise years? Who was President during those years?

Mr. BRADEN. Well, I served under President Roosevelt. Before that I served once under Presidents Wilson and Hoover, in the Inter-American High Commission. But my main service was under President Roosevelt and after his death under President Truman.

Senator HELMS. Mr. Chairman, I think the Ambassador's testimony falls in the category of *res ipsa loquitur*—it speaks eloquently for itself. I commend him and I appreciate his coming.

Mr. BRADEN. Thank you.

The CHAIRMAN. In your memoirs, Mr. Braden, you discuss your policy as U.S. Ambassador to Latin America of strongly discouraging U.S. businessmen from paying bribes and you have indicated this morning very vividly how you have done that and of using your influence with the host country to prevent bribery.

Was there any official policy then, one way or the other, by the State Department? You said they didn't say anything to you. Did they have any policy whatsoever?

Mr. BRADEN. There was no policy whatsoever until I became Assistant Secretary of State. I served under Secretary Hull who was a friend of mine, and Secretary of State Cordell Hull approved of what I was doing.

The CHAIRMAN. But neither Secretary Hull or Secretary Stettinius

or any of the other top people in the State Department gave you or indicated any resistance of any kind at any point?

Mr. BRADEN. Oh, Lord; no, none whatsoever.

The CHAIRMAN. You did get at least approval from Secretary Hull?

Mr. BRADEN. I got approval from Secretary Hull.

The CHAIRMAN. How about businessmen? Did they give you any problem?

Mr. BRADEN. Some of the businessmen would protest. I'll give you an example of what happened on this. Curtis Calder, who was the chairman of the board of the Electric Bond and Share and they through the American & Foreign Power Co. had huge interests in Cuba, very big, up in the hundreds of millions. They had a piece of property which they admitted to me had been appraised at approximately \$78,000 and they sold that piece of property for \$280,000 to the Ministry of Defense. But American & Foreign Power kept \$100,000 and the other \$180,000 went to the Ministry of Defense. So I called in the vice president and general manager of the company and it happened to be a cool day—if it had been a hot day my office would have been flooded, because by the time I got through with telling him what my policy was there was a puddle on the tile floor in front of where he was sitting. I then got on the telephone to Curtis Calder in New York and I said, "Curtis, this has happened. You know my policy and I want that man fired within 24 hours." He was fired within 24 hours.

Later on Curtis, after I became Assistant Secretary of State, told me 1 day, he said, "You know, your name is mud in some places here in Wall Street." I said, "Undoubtedly it will be with some people, but I think the majority are for it." He came back 6 months later and said, "You know, Spruille, I was wrong. They all think highly of what you did there and how you did it on this particular problem."

The CHAIRMAN. Was it ever necessary, in your judgment, for an American businessman to pay bribes in order to do business in the countries in which you served?

Mr. BRADEN. No; I had two experiences on that. Sassley Baines, who was head of I.T. & T., asked me to luncheon 1 day and Mr. Nader brought up the question of luncheons and dinners and so forth. I don't know how you can do business unless you do have some luncheons and dinners. They don't have to be glorious affairs but Baines was very much a gourmet and in his offices on Broad Street he had the most magnificent luncheon so far as food was concerned, and the narrow table—half the width of this table—and he sat opposite me and all of his officers and executives around us. He said, "you cannot carry out this policy of stopping all corruption and bribery. You can't operate without it. It's got to be done." We argued all the way through luncheon. Finally, he said, "Well, I'll make a promise to you that I will not pay more than \$30,000 a year." He was paying hundreds of thousands. "I will not pay out more than \$30,000 a year. Will that satisfy you?" I said, "It will not. I don't want a penny of bribery paid anywhere."

So after luncheon we went down to his office and he promised there wouldn't be any. A year later he came into my office in Cuba

and he said, "Mr. Ambassador, my nose is still clean." I replied, "You keep it that way."

I then had another occasion when I first came out with this policy. I called all the directors of the Cuban Chamber of Commerce and a number of other important American executives in Havana to have dinner with me at the Embassy and I told them what I was doing. They said, "You just can't get away with it. The pressures that are put on us are so great." The Cubans were really clever. They could draft a law or a decree that would hit one company and not hit others. So that the U.S. Government couldn't make an official objection on the thing. We were stymied on that. My dinner guests said, "We can't get away with it." I replied, "My father never paid a penny in his mining ventures. I never paid a penny in my ventures in Latin America. You can get away with it." And they finally came around, just as George Murnane of Consolidated Railways said. Afterwards, a group of Cuban businessmen said this thing is so good and so right they proceeded to follow the same procedure of non-submission to extortion.

The CHAIRMAN. That's marvelous. When you were Ambassador, would it have been possible for a major U.S. corporation to have paid a bribe without you knowing about it?

Mr. BRADEN. No. I was thoroughly apprized of what was going on in every particular deal.

The CHAIRMAN. Some people would argue that things were simpler in those days, corporations were smaller, governments were smaller. The United States had more influence in many parts of the world than it does today. An ambassador could be on a first-name basis with most American businessmen operating in a particular country. He had more influence with the host country.

Could U.S. ambassadors still conduct the kind of policy you did at that time today?

Mr. BRADEN. Of course, they could, if the ambassador will come out forthrightly he can do it. Of course, in all of this there are some humorous sides to it. For instance, during the war, all of the Nazi prisoners were sent over to the penitentiary on the Isle of Pines and they would bribe their way out. These wealthy Germans paid their way out. So we couldn't keep a Nazi in prison when he got there. So I appealed to the State Department, after discussing it with the Cuban Prime Minister. We needed \$184,000 so we could pay the expenses of the actual operation of that part of the penitentiary to keep these Nazis in prison.

Sumner Wells was Under Secretary of State and he turned me down on that. So I got Martha Gellhorn, who was going up to visit the White House and who was a great friend of Mrs. Roosevelt's, to talk to her about it and Harry Hopkins. They went in and talked to the President and I got the \$184,000 to put these Nazis away permanently, but we had a problem with the women. This is where the humorous edge comes in. The Cubans got a private house and put electrified barbed wired fence around it and put the women in there. But the woman that they put in as the matron of the prison had formerly run a bordello, a house of ill-fame, and we found—my FBI boys found she was renting these women out every night. So we had to put a stop to that. We were not financing that kind of business.

There are a number of funny things that came up in this matter. But the Cubans became very enthusiastic about the stands that I took and it did succeed.

The CHAIRMAN. Well, Ambassador Braden, I want to say this has been one of the most interesting appearances that I have witnessed in a long, long time. You know people are awfully cynical now and they think this stuff about virtue triumphing is all right for Sunday school but it just doesn't work. It's not practical. You're a practical man who's been immensely successful in business. You have served our country very well, as I said, and you can witness the fact that an anti-bribery policy does work and it works well.

Mr. BRADEN. Absolutely.

The CHAIRMAN. I think what you told us about the reaction of the people in Cuba who at first felt this was impossible, that it won't go, no way—they found it was much better, a great improvement. This has been very, very refreshing and inspiring for me and I'm sure other members of the committee and I, can't thank you enough. I want to thank Senator Helms for having suggested you as a witness. I think it was a very, very fine suggestion.

Senator HELMS. May I ask one more question in conclusion? Is it a fair assessment to say that you do not really feel that legislation is necessary if the proper moral tone is established at the top of our Government? Is this bill either necessary or desirable?

Mr. BRADEN. No. I actually am opposed to legislation.

The CHAIRMAN. Except you favor legislation requiring disclosure?

Mr. BRADEN. Requiring punishment, when they are caught cold-bloodedly if they have gone against this moral code, but I think we will get enough self-discipline and self-confidence and resourcefulness and honesty from the companies and from everybody else concerned once we get the thing started.

Senator HELMS. Mr. Ambassador, do you have any impression—and this may not be an entirely fair question—if it isn't, just decline to answer it. Do you have any impression as to whether our State Department as of this time and in recent years knew about such activities as has been attributed to Lockheed and others?

Mr. BRADEN. I have an impression—I couldn't prove it if I had to go on a witness stand—that they have, from all I have heard. I think I'm probably accurate in that. There's been a laxity there that is shocking.

Senator HELMS. I thank you, Mr. Chairman, and I thank you, Mr. Ambassador.

The CHAIRMAN. Thank you very, very much.

The Committee will stand in recess until 10 o'clock, Wednesday morning, and we will hear George Ball, Ian McGregor and Leonard Meeker.

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

FOREIGN AND CORPORATE BRIBES

WEDNESDAY, APRIL 7, 1976

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 5302, Dirksen Senate Office Building, Senator William Proxmire, chairman of the committee, presiding.

Present: Senators Proxmire, Biden, and Garn.

The CHAIRMAN. The committee will come to order.

This morning the Banking Committee continues hearings on S. 3133, a bill to prohibit bribery by U.S. corporations overseas and to require certain other disclosures.

The witnesses today we originally scheduled were Mr. George Ball, from Lehman Brothers, and the former Under Secretary of State, Mr. Ian MacGregor, the chairman of the AMAX Corporation, and chairman of the United States Council of the International Chamber of Commerce; and Mr. Leonard Meeker, a former U.S. Ambassador and now a lawyer for the Center for Law and Social Policy.

The committee is delighted that the distinguished senior Senator from Illinois has agreed to come before the committee and we are asking our previously scheduled witnesses to delay their appearance for a few minutes so that we can hear from Senator Percy to discuss with us the initiatives taken by the Subcommittee on Multinational Corporations to devise a remedy of the problem of corrupt payments overseas.

Senator Percy, go right ahead.

STATEMENT OF CHARLES H. PERCY, U.S. SENATOR FROM THE STATE OF ILLINOIS; ACCOMPANIED BY CHARLES F. MEISSNER, STAFF, FOREIGN RELATIONS COMMITTEE

Senator Percy. Thank you very much, Mr. Chairman.

I would like to introduce Dr. Charles Meissner, a member of the staff of the Foreign Relations Committee who has been working intimately with me on the Multinational Corporations Subcommittee. I would also like to acknowledge the presence of Francis Householder, president of the Illinois State Bar Association. The Bar Association has provided invaluable services to me in many, many areas and this is one area that I am going to call upon the legal community of Illinois to assist in helping as I try to discern what is the best course to follow for the Congress at this particular time.

I am really here today, Mr. Chairman, in my personal capacity, not representing in any official sense the Subcommittee on Multina-

tional Corporations of which I am the ranking minority member; however, what I have to say relates directly to the work of this subcommittee.

As you know, the Subcommittee on Multinational Corporations has spent more than a year conducting investigations and holding extensive hearings on the issue of international commercial bribery and corruption. The staff is presently investigating other cases brought to the subcommittee's attention but the revelation to date of practices by such corporations as Lockheed, Gulf, Exxon and Northrup have shocked the American people as well as the electorates of the other nations involved. I believe there is a need for legislation and I commend this committee for moving so expeditiously on this matter.

With similar concern, Senator Church and I sponsored last fall in the International Security Assistance Act, S. 2662, language requiring the reporting of bribes and other payments to the Department of State. A fortnight ago the House-Senate conferees adopted and in fact strengthened these reporting requirements. Reports must be submitted and records will now have to be kept as to the ultimate recipient and purpose of any payments. This amendment will go a long way toward ending those so-called payments in the sale of military articles and services, but because of the limited scope of the subject matter of this bill and subcommittee felt the need for more comprehensive legislation.

The subcommittee began preparation of a major piece of legislation early this year. Public disclosure is the major thrust of the legislation as it is now drafted. The legislation has four distinct but related sections.

First, corporations will be required to report payments information to the Securities and Exchange Commission as they presently do with other material business information. There will be public disclosure of this information.

Second, the State Department will obtain the information collected by the SEC, analyze it in terms of its foreign policy implications, and submit a report to Congress.

Third, self-policing mechanisms are built into the legislation so as to not overburden government agencies while at the same time guaranteeing accomplishment for the purpose of the bill.

Finally, there is a mandate for the President to move as expeditiously as possible to secure international agreement on the conduct of business.

While the subcommittee has reached agreement on the basic principles and purposes of the legislation, a number of details still need to be researched and carefully drafted. We are still struggling with the concept of extra-nationality, materiality, and the act of state doctrine items very relevant to our judicial system and the foreign policy implications of any of our laws.

We must also be very careful in writing legislation not to place American firms in a competitive disadvantage. To this end the U.S. Government, at the urging of myself and I'm sure others, has initiated negotiations in the OECD and the United Nations. It is imperative that no legislation impede or collapse these negotiations. Furthermore, the extent of disclosure and self-policing mechanisms in our proposed legislation need further thought and refinement. These mechan-

isms are critical in defining the economic system and its relationship to government.

We have and will continue to spend considerable amounts of time and resources in arriving at our legislative proposals. We expect to introduce them as soon as possible after the recess. They will be referred to your committee. I ask that you give them serious consideration. I believe it very laudable that the committees of the Congress work closely together on legislation of common concern. I believe that the importance of this legislation dictates we continue this tradition.

Mr. Chairman, I have always believed as a philosophy that you can't legislate to set a whole moral standard applied uniformly to everyone. In this instance, as in many instances, self-initiative of the business community is absolutely essential. To this end I addressed last December the Business Council and talked very frankly about what this is doing to the image of business abroad and multinational corporations, the relationship of this to our foreign policy and to the conduct of our affairs abroad. I urged companies to do everything in their power to police themselves, to strengthen outside auditors, and to appoint outside directors who will closely monitor and audit the affairs of the chief executive officers and officers of those corporations.

I think the biggest shock has come to outside directors who realized how little they knew about the operations of the company for which they had direct responsibility. I think our auditing firms in this country have not been fully diligent and I have met with some of the heads of the leading auditing firms, independent public accountants, to see what they could do, and also our law firms have a great responsibility now.

So there's a great deal that can be done short of legislation, but I think we have a duty and obligation now to legislate in this field. I certainly commend this committee for the diligent way in which it is going about that work, for the outstanding witnesses that you are hearing, including your distinguished witnesses today. Certainly George Ball, former Under Secretary of State and now in a great financial house in New York, has a perspective and an insight into this matter that can be extraordinarily helpful. I think he's typical of the kind of outstanding witnesses that you have been bringing before your committee.

Thank you.

The CHAIRMAN. Thank you, Senator Percy.

I have a few questions. First, I'd like to ask you about the legislation that is separate from what you discussed, the new language concerning fees in the Foreign Military Sales Act. That requires detailed reports by firms selling military articles to the Secretary of State and the reports are made available upon request to any standing committee of Congress or any government agency.

But as I understand this language, the reports will not be available to the press or the public. I don't know if it's the intent of the authors of this provision that there be no public disclosure of agents' fees or commissions except if the Secretary of State or the President of the United States discloses them.

Senator PERCY. I think it's not our intention to not have public disclosure. Maybe there will be provision for making public disclosure, but I think the very fact that it has to be reported to two branches of

government, the executive branch and the congressional branch, I don't imagine those companies can assume that those reports are going to be held confidential. There's no agreement that they will be held as such but, on the other hand, we did not provide at this time for public disclosure of those, not knowing what the ramifications are, and when we have hearings on it we can hear the pros and cons on it. If there's no damage, I would certainly want to see us move ahead with that, but I do not want to provide for it now really not knowing what the consequences may be.

The CHAIRMAN. Well, what bothers me is the criticism of the provisions of agents' fees in the Foreign Military Sales Act reported out of conference would tend to perpetuate the coverup of improper or illegal payments abroad. If we leave it to the discretion of the Secretary of State or the President or even chairmen of congressional committees, aren't we continuing a policy of secrecy and legitimatizing current practices?

Senator PERCY. I think we have to be very careful, Mr. Chairman, to not have an implication that the payment of a fee abroad is illegal, immoral, wrong in any respect. Many times the payment of a fee is the best way to conduct your business: that is, to pay a commission to someone abroad.

The CHAIRMAN. I couldn't agree with you more. I'm not talking about that. I'm talking about the payment of improper or illegal payments. But, at any rate, if they are proper payments and payments they can be proud of, there's no reason in the world why they shouldn't be disclosed.

Senator PERCY. That's right, and if they are improper payments Congress can decide, the executive branch can decide, on a case-by-case basis whether or not it's in the national interest and the public interest to make such disclosures and certainly the Multinational Corporations Subcommittee has had to make those decisions as we go along as to whether it's in the national interest to make disclosure.

The CHAIRMAN. Why wouldn't it be in the national interest to always disclose these payments?

Senator PERCY. It may well be.

The CHAIRMAN. Can you give me an example of when it would not be?

Senator PERCY. It may well be. I think we were reticent to put it in the bill until we had hearings on it, until we knew what the consequences were, to give accounting firms, lawyers and to give multinational corporations representatives the chance to say what the consequences would be. If public disclosure would not be injurious or overly injurious, would not place us at a totally uncompetitive position with respect to other countries, we might just as well go ahead and do it. But I think we erred on the side of caution here, leaving leeway to modify the legislation as we go along.

The CHAIRMAN. The way you describe this, you indicate that the Congress could, if they wished to do so, disclose this. Would there be a constraint inasmuch as the transaction would be stamped proprietary or confidential or something of that kind?

Senator PERCY. I don't know whether any company can classify something confidential unilaterally that carries any weight with us.

The CHAIRMAN. Companies do it all the time. They call it proprie-

tary and they say it should not be disclosed, as you know, and the statutes prohibit disclosure of proprietary information.

Senator PERCY. Counsel advises me that the President or Secretary of State cannot classify such documents as confidential. If the Congress decides it's in the public interest to reveal it, it would be revealed. I don't think we can make it a practice to always publicize every single transaction that the government has knowledge of. There are a great many transactions, including transactions in the Office of Patents, that are not revealed at a particular time. Disclosure is made after patents have been issued and so forth. There may be a time that disclosures should be made, but I think we have the option and the right to do it, but the legislation does not provide that once a report is filed that it is automatically published and the chairman knows himself that there are a great many reports now filed with the Fed which are classified as confidential and kept as confidential in which I think the chairman would agree should probably be kept confidential.

The CHAIRMAN. Yes. Senator Percy, I want to congratulate you on your testimony. I think it's very helpful and I agree there is proper proprietary information that corporations have every right to hold proprietary, and you referred to one obvious area, the patents, and so forth.

What I am saying, however, is that a payment to a foreign official, a payment that could be construed as a bribe, it seems to me is not in the same position as a patent or something of that kind where the proprietary nature of it is clear.

Senator PERCY. I imagine there are a lot of payments made—they are declared on income tax statements of companies, of individuals—that the individual would rather not have made public. Internal Revenue as a matter of course does not publicize everything that comes to it, but if it's decided the circumstances are such that it has to be brought out, say a court order, it is publicized. They have the right to do so if it's in the public interest, but I think we be equivocal in this regards. We go down one track, the right to privacy. Right downstairs I sat for 2 years with Senator Sam Ervin as we carved out legislation for rights to privacy and that was the best we were on at that time. We almost went overboard in that regard. Now suddenly we're on a binge to disclose everything and it's not always—including foreign policy—in the national interest to disclose everything we're doing. We get the information, then we have the option. We are not at this stage directing, because we don't know what the consequences would be, that all of this be in the public sector just as soon as it's filed.

The CHAIRMAN. I think that you and I probably agree on this completely and I think that we agree that there's proprietary information that is probably not subject to mandatory disclosure, but that the kind of payments that you and I are most concerned about very properly must be disclosed.

Senator GARN?

Senator GARN. I have only one question, Senator. I'm sorry I was late. But are you supporting S. 3133? From all the conversation I heard, you're speaking in terms of the bribery and so on, but are you supporting this specific bill before us?

Senator Percy. I'm not here to testify about—

The CHAIRMAN. I might say Senator Percy is appearing to inform the committee on the progress made by the Multinational Subcommittee which kind of parallels this and he asked to appear for that purpose rather than this legislation.

Senator PERCY. That's right. I'm not here testifying on this legislation. I have an open mind about it. I commend you for having legislation. I haven't made a determination at all on that. I'm merely asking that this committee give consideration to the legislation the Multinational Subcommittee is reporting.

Senator GARN. Well, that's what I wanted to clear up. My own feeling is, without getting into specifics, it's something that's needed. I'm not sure we are not being a little premature with the Presidential commission just being appointed to look into it. The SEC is involved in it, and I certainly don't condone the bribes and I think they ought to be eliminated, but I'm just not sure that any bill, whether it's S. 3133 or anything else, isn't premature until we have more facts on the extent and nature of the bribery, who's been involved, and who hasn't, and only when I think we have the full facts are we able to come up with a bill that will solve the problem.

Senator PERCY. Senator Garn, I completely agree. I think it would be foolhardy for us to rush ahead and feel that we've got all the answers on this highly complex problem. Because it is a matter of such grave concern to the American public and to foreign governments and to businesses and labor organizations in this country, I think we have an obligation to orbit something, to then have something specific that they can start to work on. They can react pro and con. You can't work on nothing and you can't react to it. All we're saying is it's time now to start to orbit some ideas in a concrete fashion and then get the pros and cons and finally carve out—ultimately when we act I hope we will act with a great deal more knowledge than we have now.

For instance, Dr. Meissner is very busy in presenting our legislation to various groups in the country now to ask for their reaction and response. Even prior to public hearing on our bills I think we should try to test out and refine it as much as we can to see what ultimate form it should have before we embody it in concrete in a sense.

Senator GARN. Well, I couldn't agree with you more. I think that process and the dialog should go on and we should not wait around for more information. We should be gathering it. I'm just not at the point where I want to start marking up bills is the only point I make. I completely agree with the way you describe it.

Senator PERCY. From a practical standpoint, I can say this. When I spoke last December to the business community, I urged every company to adopt a code of ethics, to have its board take a whole new role in the company, to think in terms of having control of the company in the hands of outside directors. There wasn't the impetus to do this until such time as we started to really talk legislation. Now I see it's moved up from the back burner to the front burner. There's going to be legislation. They know it. They had better act ahead of time on their own so that by the time the legislation comes down the pike their practices are right in conformity with what then becomes public policy.

Senator GARN. Thank you.

The CHAIRMAN. Thank you very, very much, Senator Percy.

Our next witness is Mr. George Ball, the former Under Secretary of State and senior partner of Lehman Bros. Mr. Ball, we are very happy to have you.

STATEMENT OF GEORGE BALL, LEHMAN BROTHERS

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

I have a brief statement that I might read to the committee. Let me say first of all, I appear here only as an individual. I am not representing my own firm or any organization. What my comments will do is to reflect a good many years of experience as a private lawyer in the private sector, as a banker, and as one who has some experience in the public sector as well.

To a great extent of the time this has been directed at the international business and relations with foreign governments, so I have necessarily formed some opinions of my own on this matter which I would like to suggest to the committee.

The subject that the committee is addressing this morning, the practice of some companies of paying bribes and arranging kick-backs in connection with sales of their products to foreign governments demands the attention of the Congress and the American people.

Frankly, I have been disappointed not merely at the unfolding evidence which indicates the widespread nature of this problem but also the reported reaction of a few leaders of American business—and I say a few because I think this has not been by any means a majority—who seek to condone these corrupt practices as a necessary feature of their operations in certain parts of the world. We hear again all the familiar excuses. Bribery, they contend, is an established part of the economic and social system in many countries, where underpaid bureaucrats are expected to achieve a living wage by supplementing their income through illegal exactions. Moreover, unless American business firms are prepared to pay such involuntary tribute they will lose business to foreign competitors. When in Rome, one must do as the Romans do.

Such self-righteous answers cannot stand analysis. That American business firms are compelled to engage in bribery is disproved by the example of a number of our most successful enterprises that rigorously reject such practices yet still do enormous business all over the world. By and large, I have been impressed with the fact that many of our best managed companies have long had strict rules against any form of bribery. Nor is it enough to argue that such corruption is a patriotic necessity to prevent the loss of business to foreign competitors to the detriment of the American balance of payments. Lockheed's only competitors for the sale of wide-bodied jets in Japan, for example, were two other American air frame manufacturers. It was a strictly intramural contest.

What all these excuses reflect is a slothful business habit and a carelessness reinforced in many cases by gullibility: for the record is replete with bribes paid quite unnecessarily to individuals who in fact have no effective influence or who have pocketed the funds they promised to pass on to influential ministers. Thus I do not find it

surprising that many of the same companies identified as practitioners of corruption in their international transactions have also been disclosed as corrupting our domestic electoral process by illegal political contributions. Nor is it surprising that a high percentage of the companies paying bribes are engaged in the sale of military equipment. Although the problem of excessive arms sales by the United States is separate from the question of bribes and kickbacks by multinational companies (since the question of excessive arms sales relates primarily to American government policy and the role of Pentagon agents as salesmen for our military hardware), the issues are not totally unrelated. The prevalence of bribery merely emphasizes the irresponsibility of our current arms policies. Not only are defense ministers and military commanders in small countries often persuaded by our military representatives on the spot to buy weaponry more advanced than they need—or even, in many cases, more advanced than they can use effectively—but bribes are part of the process of persuasion. Yet it is against American interests for either Pentagon salesmen or American companies to contribute to the delinquency of small nations.

But if most Americans are repelled by the thought that major American enterprises are paying baksheesh to shady characters in far-off countries, what is the best way to stop the practice?

The argument is often heard that the remedy must be sought, if at all, through international action; otherwise, American companies may be placed under constraints to which their foreign competitors are not subject. In theory, of course, that is correct; without doubt we should encourage host governments to enact harsh laws against such corruption, our Government should be prepared at all times to cooperate in the apprehension and punishment of those who break those laws, and we should take an active lead in the effort to develop international guidelines. Let me say in this I want to commend very much the efforts of some of the leaders of American business in this respect. I call your attention particularly to the efforts of the U.S. Council of the International Chamber of Commerce under the leadership of Mr. MacGregor who will be testifying here this morning. I think the attitude and activities of the Council and of the International Chamber of Commerce and the work they are doing is extremely salutary and I think it's certainly in the right direction. Yet I would not think that we can rely on actions such as this by themselves, no matter how useful they may be, where, in the present climate, this would seem to me to avoid and not fully face the problem.

Obviously, there is not yet a sufficient common approach among major trading countries to make effective international measures feasible. Measures now being considered by the OECD amount, for example, to little more than a pious expression of disapproval.

So let us be realistic, since this is far too serious a matter to dismiss merely with a procedural shrug. The only action that could materially reduce the practice—and mitigate its consequences—is for the U.S. Government to utilize its powers as the domiciliary state of most of the largest multinational companies by enacting and enforcing comprehensive laws imposing on American corporations a standard of conduct in their overseas dealings fully as strict as that re-

quired at home. Only when that is done will our Government be able to speak with authority in shaping an international set of rules and sanctions. Having put our own house in order, we will be entitled to insist that foreign governments do likewise—and, in time, this procedure should gradually bring some solid results.

I think the committee is well advised, as the proposed legislation now before the committee now does, to put the principal burden on the Securities and Exchange Commission to insist that companies maintain accurate records of such payments and report such information to the commission. It was Mr. Justice Brandeis who once said that "sunlight is the best disinfectant," and if the commission were regularly to make public not only information as to the payment of bribes—and I mean bribes as the commission might define it—but also the details of those payments and the names of recipients, it would certainly discourage the practice. Although Mr. Kissinger might not like this procedure, it would not only impose a new standard of rectitude and diligence on the managers and directors of corporations whom it might expose to bad publicity and even shareholders' suits, but it would also deter assiduous middlemen in foreign countries and even discourage the cupidity of foreign officials.

To be sure, for a limited time span some American companies might lose certain business opportunities, but that is an expense we should be able to tolerate for the good health of our political and economic system.

Nor am I impressed by the fact that such disclosure would be harmful to our relations with other countries. I do not think there is any obligation on the part of the U.S. Government to conspire with government leaders in other countries to conceal their own chicanery.

Excuses for collaborating in corruption reflect not only the counsels of moral bankruptcy but a disease of market economy countries that could in the end destroy them. It is no good to say: "We cannot impose too severe restraints on the purchasers of our nuclear equipment or other countries will get the business"; that argument will lose its persuasive quality when we come face to face with an irresponsible power with a nuclear bomb. And, by analogy, it is no more convincing when we are told that America should not prohibit its companies from paying bribes to foreign bureaucrats because that would give aid and comfort to foreign competitors.

America prides itself on proving by its example the benefits of free enterprise, but the vaunted machinery of the market mechanism is not impressive when competitive success depends not on market forces but the debauching of Government officials. To be sure, the correlative of bribery in many areas of the world is extortion, yet the managers of American corporations are not hired to give in to extortion. The vast volume of speeches, pamphlets, and advertising copy and propaganda leaflets extolling the virtues of free enterprise are cancelled every night when managements demonstrate by their conduct that a sector of multinational business activity is not free; it is bought and paid for. This is a problem that, like so many others, has relevance in the struggle of antagonistic ideologies; for, when our enterprises stoop to bribery and kickbacks, they give sub-

stance to the communist myth—already widely believed in Third World countries—that capitalism is fundamentally corrupt.

We cannot have it both ways. We cannot proclaim that competition is the lifeblood of our economic system, while slipping money under the table to foreign purchases. That is asking too much of human credulity.

The CHAIRMAN. Mr. Ball, thank you very much for what I think is a remarkably clear and emphatic statement and it's based on years of experience as Under Secretary of State as well as a banker and a lawyer and somebody who's been involved in the activities of American corporations for a considerable amount of time. This is a most welcome and impressive statement.

I take it that you would support the part of this bill, to be specific, that requires periodic disclosure of payments to foreign officials?

Mr. BALL. Yes. I think that's correct, Mr. Chairman. I think that the provisions of the bill that require the keeping of active records and furnishing information to the SEC is very useful. I think that the Commission obviously would make its own rules as to what should be disclosed, and this would be a matter it seems to me that would have to be considered very carefully, but certainly anything that was in the nature of a bribe or a payment to a foreign government official would be a matter that should be subject to public disclosure.

The CHAIRMAN. Now as you know, this legislation also would require disclosure of payments to sales consultants retained abroad for the purpose of obtaining business with a foreign government or engaging in lobbying activity. Would you also favor that provision?

Mr. BALL. Here again, I think there would have to be some discretion on the part of the Commission to make rules which would reflect the privacy in connection with the payment of commissions to private agents when there was no evidence that they were using those commissions for the purpose of corrupting of foreign officials or when the commission did not appear excessive.

The CHAIRMAN. But you would certainly require this disclosure to the SEC?

Mr. BALL. Yes, to the SEC.

The CHAIRMAN. Now, you urge the United States to enact comprehensive laws imposing on U.S. corporations operating abroad the same standard they follow at home. So you would support a prohibition on bribery by U.S. corporations abroad as contained in S. 3133?

Mr. BALL. Yes, I would. Just what the sanctions should be I think, again, is a matter for consideration. I notice that the approach that the proposed legislation takes I think is relying largely on the commerce clause and the use of the mail and so on. I would suppose that this is another case where the question of eligibility for defense contracts or for Government contracts themselves might be a possible means of possible sanction which might strengthen the constitutionality of the bill.

The CHAIRMAN. Now, in view of your experience in the State Department, I want to ask you about this. Secretary Kissinger has urged that recipients of corporate bribes not be disclosed because they might embarrass officials for friendly governments. As you

know, information is being furnished to the Japanese on a confidential basis. Secretary Kissinger intervened in the Lockheed case to petition the court to keep the files secret from the American public.

As a former Under Secretary of State, do you share that concern and that view?

Mr. BALL. Not at all. I think that's a very great mistake and I think that the fact that the U.S. State Department is taking that position at the moment suggests a kind of conspirator in collaborating and maintaining the practice or at least in covering it up. I think it creates a very bad impression around the world and I don't think it's necessary. Quite frankly, what is required here, if that practice is to be stopped, is not only that there be sanctions against American enterprises that engage in it, but there has to be a serious threat that middlemen and corrupt officials in foreign countries may themselves be subject to exposure and this should greatly relieve the pressure for such bribes. I think the problem that we face, Mr. Chairman, is this: I think we can all understand the problem an American company faces when it goes into a country where bribery has become a practice for 1,000 years and they are importuned and they are told that unless you pay this particular middleman a certain amount that he can distribute in largesse to government officials you're not going to get a contract. If they are in a position to say first, we don't dare do it because that would subject us to the penalties of American law, and in the second place, to say you don't dare insist on this because if we do it we will have to disclose it; and I think it could tend to relieve the pressure in some instances.

The CHAIRMAN. That's an excellent point. This legislation, as you say, would have the effect of giving the business the kind of opportunity to tell those who would extort a bribe that there's no way they can do it. If they do so, as you say, they are subject to the penalties of law and, as you say furthermore, they have to disclose it and then the people who receive the money could be not only embarrassed but probably prosecuted.

Mr. BALL. That's right.

The CHAIRMAN. When you served as Under Secretary did any instances of foreign bribery by U.S. corporations come to the attention of the State Department as far as you know?

Mr. BALL. I don't recall that they did at the time, Mr. Chairman.

The CHAIRMAN. Were there any cases where U.S. corporations operating abroad approached the State Department for assistance in resisting extortion demands?

Mr. BALL. Again, not in my experience. And let me say here again, as a matter on which I feel strongly and I think something the Senate might at some point give attention to, there are a great deal of complaints made about the State Department and the fact that it doesn't protect American business overseas as, for example, the Japanese Government is always reputed to. That comparison is not a very valid one because the Japanese Government also gives instructions to its enterprises which American enterprises would find quite intolerable, if, say the Department of Commerce, would tell them what to do to the extent of getting business in Japan. But there is another point here and that is, by and large, when American busi-

ness goes abroad, it tends to regard the American embassy in that country as its enemy and very often it stays away from the embassy. It tells them nothing and, as a result, if the company gets into some trouble, it then may feel indignant that it doesn't have the support of the State Department; but there's no basis of common conversation where the State Department has been able to keep itself informed and be able to act for it.

I think that what is needed here—I'm not suggesting that this isn't to a considerable part the fault of the State Department itself. It was something that Secretary Rusk and I tried to correct when we were in office but we certainly didn't go very far or get very far on it. But I think there ought to be a new relationship between American public representatives in countries and the companies that are doing business there and I think it would ease the situation on both sides. There is no reason why if the State Department representatives are advised in a foreign country of these bribery attempts that they shouldn't make representations to the Government and try to stop these practices, but I would be all for it.

The CHAIRMAN. I have some other questions but my time is up. Senator GARN?

Senator GARN. I have no questions.

The CHAIRMAN. Senator BIDEN?

Senator BIDEN. I have no questions. I have just one comment, Mr. Secretary.

As a member of the Foreign Relations Committee, I attended some hearings of the Multinational Corporations Subcommittee, closed and open, I was astounded at how American corporations not only engage in acts of bribery but how, as you put it, they wanted it both ways—they consistently complained that other countries helped in foreign markets, yet they also concurrently consistently complained that our Government delves into their operation, their business too much and that it shouldn't be involved. And also, the corollary that I found amazing with regard to the Lockheed Corp. is that they not only engaged in bribery, but that they engaged in activities that were directly against the self-interest of the United States of America, fully knowing they did it—in the Philippines, for example, they hired an agent to stimulate public indignation about the planes that the Defense Department gave the Philippines, advertising them to be lemons because they didn't buy Lockheed planes.

So I get really very upset and concerned about not just the bribery, but how it directly flies in the face of our own foreign policy and the best interests of our Government. I think that your statement is very straight and to the point and very well taken. I hope the rest of my colleagues on this committee come around to the point of view expressed by you in the statement.

Mr. BALL. Well, thank you, Senator Biden. Let me just say that I don't want to be misunderstood as suggesting that there's widespread banality among American companies doing business abroad. I think by and large they conduct themselves extremely well. I think they conduct themselves with a good deal of fidelity to the interests of the United States. It's the exception that attracts the notice, but I don't think there should be any wholesale condemnation of multi-

national companies in this regard and I think it's only unfortunate that a few companies have engaged in practices which have raised these questions.

Senator BIDEN. I think you made that point in your statement, and I'd like to underscore that. I share that point of view. As a matter of fact, I think that these disclosures have had a healthy effect on many very, very solid multinational corporations. I think it has had a very healthy effect. The proposed legislation gives a leg up to those multinationals those who were already operating in a manner in which we say here today they should operate and sort of gives a justified pat on the back for what they have been doing all along.

Mr. BALL. I would go even further, Senator Biden, and I would say this: In many cases the competition abroad as, for example, the situation in Japan on the wide-bodied jets, it's not really a competition with foreign countries and I think that to the extent that we discourage the occasional offender from engaging in practices to the disadvantage of the American competitors who do American business abroad it's good.

Senator BIDEN. I agree. It's not so much in Japan, as the Secretary knows. There were many instances where the major competitor when it got down to the wire in European countries were two American corporations. In a closed hearing some months ago, there was one major American corporation testifying and they made the very, very strong argument that the reason why they were involved in one European country was to keep free enterprise going in that country and the need to work against the advancement of communism and the Communist Party. That's the reason why they gave money to these other political parties. And as a joke—I was just being facetious—I said, "How much did you contribute to the Communist Party?" This was after 2½ hours. The faces sort of blanched and the attorney turned to the president of the corporation and conferred a second and said, "Well, \$88,000."

So my only point was that I agree with you that the vast majority of American multinational corporations operate in the international arena with dignity and do a great service to the United States of America, but that those who don't indulge themselves in an amazing rhetoric which contradicts itself. That's the point I thought you brought out so very, very well here, and I hope my colleagues are focusing on it.

The CHAIRMAN. Mr. Ball, there's another element here that is one possible explanation for the conduct of some of our Federal officials. It's a mystery to me how the Secretary of the Treasury and others can come up and be as emphatic and sincere in opposing bribery and saying it's wrong and we should stop it cold and stop it at once, and their reluctance to proceed to disclose or to prohibit it by law. One possible explanation of it—and I would ask your wise counsel on whether this is an element—what we ought to be concerned about is the fact that, as we know, the CIA has used American corporations as fronts and has been involved in payments to foreign officials in order that they who are friendly with this country stay in office and so forth.

Along that line, recent press reports point to a possible link between the CIA and Yoshio Kodama, the man who was Lockheed's

principal conduit in Japan. According to the New York Times, Kodama was the recipient of CIA funds for covert projects on several occasions. The Times also reports that the CIA was aware of Kodama's relationship with Lockheed from the late 1950's on. And it's well known that Lockheed has had a relationship with the CIA over the years.

From your experience, is it possible that the CIA had anything to do with the Lockheed relationship with Kodama?

Mr. BALL. I wouldn't have a judgment on it, Mr. Chairman. I have no independent knowledge at all of that.

The CHAIRMAN. Well, let me follow up a little bit on that. According to the New York Times, the CIA had knowledge of Lockheed's dealings with Kodama but didn't tell the State Department. Do you think that's plausible from your experience?

Mr. BALL. I think that's certainly possible, yes.

The CHAIRMAN. The CIA had knowledge that a major U.S. corporation was subsidizing a powerful right wing extremist or a friendly government in a country, isn't that something they should have told the State Department?

Mr. BALL. Well, normally matters of that kind would have been brought before the "40" committee—it's had various designations at different times—on which the State Department would be represented, but I would suspect that in most cases this would simply be a part of a larger package and might not have come to the attention of anyone except their officials who were sitting on that committee at that time.

The CHAIRMAN. Do you believe that a voluntary international code of conduct or a multilateral treaty on corporate bribery would be of any use?

Mr. BALL. Yes; if I may, let me amplify the answer I gave a minute ago. I'm not suggesting that the CIA would probably have acted on its own in providing funds to, say, a foreign political party. The conduit that it used and the manner in which it did that, however, would be very likely a matter that the Agency would determine for itself and it would not necessarily, in my judgment, have come to the attention of the State Department.

Now you raise the question as to whether international treaty of this kind would be useful. I would certainly recommend an effort on an international treaty, but again, it's a treaty that can probably only be enforced by municipal law. I don't think we are sufficiently advanced where an international treaty has any ability to put severe sanctions on either government officials or on corporations that might transgress it. But to the extent that there was an international treaty which was reinforced by municipal law passed by the signatory countries, then I would think that this would certainly be a very useful step. I'm all in favor of trying to internationalize this approach.

And another point I was trying to make in this statement was that I don't think the United States is going to get very far or has very much leverage in seeking to do this unless we first take measures ourselves. Then I think we can speak with some authority. We can say we have done it; it's up to you to do the same thing.

The CHAIRMAN. So you see this bill as a useful step along the path toward international treaty?

Mr. BALL. That's right.

The CHAIRMAN. Now one final question. We had testimony in the Joint Economic Committee by two businessmen, one of whom was a former ambassador to Australia, concerning extortion demands made on them, not in his capacity as an ambassador but in his capacity as a businessman, by officials in a foreign country. Their complaint was that neither the embassy in that country or the State Department did anything to help them when they reported the incident and they later were practically driven out of the country and they lost about \$3 million.

In your opinion, what should the U.S. Government do and specifically what is the responsibility of the State Department in this kind of situation?

Mr. BALL. I think they should have made representations to the foreign government that this effort was being made, that they had evidence of it, and ask the foreign government for a reaction and a report on it. I wouldn't have any reluctance to do that if I were in the State Department. I don't know why it wasn't done in this case.

The CHAIRMAN. That's what these businessmen wanted to have done. The embassy did not do it and you say they should have.

Mr. BALL. In my judgment, they should have, and this is certainly the position I would have taken in the Department when I was there.

The CHAIRMAN. Mr. Ball, thank you very, very much for your excellent testimony. It's most useful.

Our next witness is Mr. Ian MacGregor, chairman of AMAX Inc. Mr. MacGregor, we are honored to have you and you may proceed in any way you wish. You have a 13-page statement. If you wish to summarize it in any way we will put the entire statement in the record, and also your release that you appended and your other appendixes will also be printed in the record.

STATEMENT OF IAN MAC GREGOR, CHAIRMAN, AMAX INC. AND CHAIRMAN, U.S. COUNCIL OF THE INTERNATIONAL CHAMBER OF COMMERCE

Mr. MACGREGOR. Thank you, Mr. Chairman.

It's indeed a pleasure and a honor to have an opportunity to testify here. I am testifying, of course, on behalf of the U.S. Council of the International Chamber of Commerce. My occupation is chairman of the company known as AMAX which is engaged in mineral resource development in the United States and other foreign countries.

First of all, let me explain what the U.S. Council of the International Chamber of Commerce does. It is a division of the International Chamber of Commerce and consists of some 250 major American companies with international business interests. The International Chamber of Commerce—ICC—is a worldwide organization of businessmen which has been in existence since the First World War. Its headquarters are in Paris and it is represented today in most developed and many developing countries by about 50 councils similar to that which I represent in the United States. The inter-

national chamber is dedicated to the furtherance of the principles of individual enterprise throughout the world. From its earliest days, the international chamber has championed the freedom of trade and capital movements throughout the world in the interests of improving the opportunity and living standards in every country in the world.

The International Chamber of Commerce has consultative status to the economic agencies of the United Nations. Through a number of the ICC Commissions which deal with specific subjects such as trade, banking, commodities, insurance et cetera, the international chamber seeks to participate in the development of the international economic policies not only at the governmental level in the countries of the individual members but in such international organizations as the OECD and in U.N. agencies such as ECOSOC, UNCTAD, and the U.N. Commission on Transnational Enterprises and its newly established Information and Research Center on the Transnational Enterprise. In its ongoing participation and relationships with these agencies, the ICC endeavors to be an influence favoring freer markets, free enterprise, and freer movements of trade and capital.

Recognizing that the recent disclosures of irregular payments made by U.S. companies in competing in the world marketplace to influence both private individuals and Government officials was becoming an issue of concern to U.S. legislators, the U.S. Council participated in several actions.

First of all, with other business groups, the U.S. Council sought to identify the fact that many corporations doing business both in the United States and abroad have explicit policies which forbid their employees to engage in such practices. We identified, also, some areas of difficulty where the actions of agents or dealers or other associated organizations were involved in marketing but where it has not always been possible for U.S. corporations to extend their authority over the actions of such designated but uncontrolled representatives. Part of the reason for this may be due to the fact that customs and practices vary from country to country and the ethics which are desirable in the United States may not fit exactly in the context of other societies. We perceived that in some countries the appreciation of the importance of completely ethical standards in business does not enjoy the universal acceptance which it has been assigned in our society currently.

To pursue the objective that ethical business practices between business and government not only in the United States, but overseas, should have a universal standard, the U.S. Council decided to bring this issue to the attention of the ICC.

Apart from the questions of ethics, there also arose the problem of diversity of practice as between American business and businesses which are domiciled elsewhere. When one examines this diversity of origin and social context for different business, there immediately appears yet another area in which, if U.S. companies are to adhere to the policies which are under discussion in the committee today and which would be governed by legislation of the kind outlined in S. 3133, we would have yet another example of trade and business distortion. We must try to avoid being counterproductive. By seek-

ing to impose totally mandatory arrangements on U.S. companies, whether they are operating at home or abroad, without having any mechanism for insuring that the competitors of these American businesses accord to similar rules.

The U.S. Council concluded that unless this philosophy is internationalized it could, and in some cases would, mitigate severely against U.S. business and prevent it from being able to compete effectively in quite substantial markets of the world.

Accordingly, the U.S. Council urged the International Chamber of Commerce to take a timely initiative to deal with these problems. Last November, agreement was reached with the executive board of that organization to set up a mechanism for examining the problems which have caused the growth of this phenomenon with a view to attempting to ensure that both government and companies might adopt standards of conduct which would be uniform and which would preclude any one nation having to take any special position in this regard only creating yet another trade distortion and working to the disadvantage of that particular nation and its citizens.

The findings of the executive board of the ICC and their proposals resulted in the International Chamber of Commerce forming a new commission on unethical practices last month. This commission is charged with the responsibility of coming up with recommendations dealing with bribery and corruption in world trade.

Let me quote from the ICC press release of March 2 announcing the new commission:

One of the major concerns of the ICC is to foster fair trade and competition, domestically and internationally, within the framework set by national entities.

For this reason, the ICC *taking note* of cases in which individuals, officers of corporations or political parties claiming to have influence of a commercial or political nature have accepted payments or other inducements from corporations or individuals engaged in commerce made with a view to securing the exercise of such influence in their favour *and desiring* to protect and promote fair competition and integrity in such matters within the lawful framework established by individual states and internationally *has established a commission* of eminent persons to study the problems arising from such improper practices and without publishing findings on any particular case, to report generally, to suggest relevant guidelines for promoting correct conduct in such matters, and to indicate the respective responsibilities therein of executives and non-executive directors, of officers and auditors of corporations and of others concerned, including the relevant tax and law enforcement agencies.

The ICC has been most fortunate in obtaining the services of Lord Shawcross, G.B.E., Q.C., to chair the commission. You will recall that he has had a distinguished career as an international lawyer, businessman and former member of the British Government. He served as president of the Board of Trade at one time and also attorney general for the United Kingdom as well as acting in many important advisory capacities to the British Government and to business. Other eminent personalities who have already accepted to serve on the commission are:

Arthur Von Bulow of West Germany, a former Secretary-General of the Federal Ministry of Justice; Jean Ray of Belgium, former Chairman of the Commission of the European Communities and Minister of State; Erland Waldenstrom, chairman of the board of Granges AB, a large Swedish concern; and Mr. Subramanya Bhoothalingam from India, who is former Secretary of the Indian

Ministries of Commerce, Industry, Steel and Finance, and former Director General of the Indian National Council of Applied Economic Research.

From our own country we are delighted that two gentlemen of international reputation who are uniquely qualified for this work have agreed to serve on the Commission. One is William H. Franklin, retired chairman of the board of Caterpillar Tractor Co. and currently chairman of the board of trustees of the Committee for Economic Development. The Caterpillar Tractor Co. has a worldwide reputation for its standards of business and it is notable that its policies which have been so well received were promulgated by Mr. Franklin. The other U.S. member is Rudolph A. Peterson, retired president of the Bank of America and until recently Administrator of the United Nations Development Program. Further members of the Commission will be appointed and it is hoped that suitable representatives will be found from France, the Middle East, and Latin America. There will be a small Secretariat and the advice of counsel and financial consultants will also be sought.

Recently, following his appointment, a press interview was held by Lord Shawcross and I would like to quote from an article which recently appeared—March 26th—in the London Financial Times on the subject because I think it gives you some idea of the flavor of his intentions and I quote from the Financial Times:

The recent announcement by the International Chamber of Commerce (ICC), whose general aim is to foster fair trade and competition, of the Commission has brought only a low-key response in the U.K. It seems likely the situation will remain that way despite the sharper interest in the U.S. current investigations into the same issue. Unless some instance of corruption emerges in the U.K. the Commission will carry out its investigations well away from the public gaze and any report of its findings is unlikely to emerge before the end of the year.

The subject of the inquiry is one in which governments are likely to take a keen interest and in the U.K. Mr. Peter Shore, Secretary of Trade, is also watching the extent to which British companies operating overseas are affected. However, for any of them to undertake a similar international task themselves would be impossible for fear of accusations of interference in another country's internal affairs. The ICC, as an organisation made up of representatives from different countries willing to pool their knowledge, considers itself equipped to avoid such problems.

Explaining how the Commission had come to be set up, Lord Shawcross said that the ICC believed that some international companies were being embarrassed by the need to resort to bribery to get business. It was therefore hoped that this initiative would help resolve the problems while avoiding a proliferation of inquiries and that the Commission's findings would be recognised as authoritative.

But the Commission's intentions are likely to meet with some scepticism from the people it will be talking to. As one senior executive of an international company comments, "How can you expect to change methods of trading which have existed as a way of life for more than a thousand years?"

Giving a personal view, Lord Shawcross said there were perhaps twelve countries where corruption was "quite exceptional and is regarded with grave legal and social disapproval."

Continuing, the Financial Times article quotes Lord Shawcross as stating that in a number of other countries he believed that corruption was sometimes considered "almost as a way of life" and that there were no adequate measures to prevent it. The article went on to report that the Commission will not be looking at specific places but rather at what law exists in different countries and to what extent efforts are made to enforce laws, as well as the degree

to which companies can operate without having to submit to corruption. Commenting during the press conference on the current American experience, Lord Shawcross said that great play has been made of the fact that corruption appears to be the fault of the large multi-nationals, but there were some countries where, whatever the company, "you could not do business without greasing someone's palm"; and therefore, he said, you had "got to make sure that those accepting money were punished."

The Financial Times interviewer then reported that Lord Shawcross recognized difficulties for honest companies which found they could not get work without resorting to bribery, but he maintained that "if these payments are made there should be full disclosure in the accounts of the company concerned." The article states that the problem which is being investigated is probably no stranger to the majority of companies which operate on an international scale, and particularly in certain regions of the world. In most of the emerging areas an international company's only hope of gaining a foothold is to appoint a local agent and it is this system which is readily open to abuse. To gain business, a percentage of the total order value might be paid to the agent. In turn, when charging for his own outgoings, the agent might include the cost of the bribes over which the company might have no control.

Finally, the article points out that an international agreement on the legal definition for bribery and corruption might be needed before any general law and penalties could be drawn up to stop the practices. Then there would remain the problem of enforcement.

This interview of course took place in the United Kingdom, so the journalist concluded as follows:

One of the things which clearly worries companies is that if, for example, a high moral stance were taken in the United Kingdom without allowing for different trading ethics elsewhere, a lot of business might be lost.

I have given considerable time to this recent Financial Times article because it provides a succinct description of the problem together with an authoritative indication of Lord Shawcross' thinking on the task on which he and his team of colleagues have embarked.

To the extent that these payments are widespread and general in nature, they must obviously affect more than just U.K. companies—and more than just American companies. It will be readily apparent why the U.S. Council, as spokesman for U.S. International business, had a very special interest in trying to internationalize the consideration of the problem. That is what the International Chamber has set out to accomplish by establishing its new Commission on Unethical Practices under the chairmanship of Lord Shawcross.

We in the U.S. Council trust that the work of this Commission will result in findings which could lead to the adopting of some ground rules for the conduct of international business which would eliminate not only the problems which have been exposed in business transactions but insure that governments themselves adopt the corresponding rules and practices which would prevent the counterpart phenomenon which in many parts of the world can clearly be identified as extortion.

Against this background, it is obvious that great care must be taken, as Mr. McCloy said in his testimony on Monday, that in

drafting legislation to deal with problems being dramatized for U.S. eyes today, we do not seriously impair other interests of U.S. citizens tomorrow.

This brings me again to the point that international agreement to correct these problems would be an important step forward.

In conclusion, the U.S. Council of the International Chamber of Commerce respectfully urges this committee to await the outcome of the highly relevant work of the ICC Commission on Unethical Practices, and of other similar studies of this complex problem, before pushing ahead with inadequate unilateral legislation such as that proposed in S. 3133.

Thank you, Mr. Chairman.

[Complete statement and additional material follows:]

STATEMENT OF IAN MACGREGOR, CHAIRMAN OF THE UNITED STATES COUNCIL OF
THE INTERNATIONAL CHAMBER OF COMMERCE

My name is Ian MacGregor. I am Chairman and Chief Executive Officer of AMAX Inc., a company engaged in development of mineral resources in the United States and in a number of foreign countries. I am testifying today as Chairman of the United States Council of the International Chamber of Commerce (ICC). The Council is the United States division of the International Chamber of Commerce and consists of some 250 major American companies with international business interests.

The International Chamber of Commerce is a world organization of businessmen which has been in existence since the First World War. Its headquarters are in Paris and it is represented today in most developed and many developing countries by about 50 councils similar to that which I represent in the United States. The International Chamber is dedicated to the furtherance of the principles of individual enterprise throughout the world. From its earliest days, the International Chamber has championed the freedom of trade and capital movements throughout the world in the interests of improving the opportunity and living standards in every country in the world.

The International Chamber of Commerce has consultative status to the economic agencies of the United Nations. Through a number of the ICC Commissions which deal with specific subjects such as trade, banking, commodities, insurance, etc., the International Chamber seeks to participate in the development of international economic policies not only at the governmental level in the countries of the individual members but in such international organizations as the OECD and in U.N. agencies such as ECOSOC, UNCTAD, and the U.N. Commission on Transnational Enterprises and its newly established Information and Research Center. In its ongoing participation and relationships with these agencies, the ICC endeavors to be an influence favoring freer markets, free enterprise and freer movements of trade and capital.

Recognizing that the recent disclosures of irregular payments made by U.S. companies in competing in the world marketplace to influence both private individuals and government officials was becoming an issue of concern to U.S. legislators, the U.S. Council participated in several actions.

First of all, with other business groups, the U.S. Council sought to identify the fact that many corporations doing business both in the United States and abroad have explicit policies which forbid their employees to engage in such practices. We identified, also, some areas of difficulty where the actions of agents or dealers or other associated organizations were involved in marketing but where it has not always been possible for U.S. corporations to extend their authority over the actions of such designated but uncontrolled representatives. Part of the reason for this may be due to the fact that customs and practices vary from country to country and the ethics which are mandatory in the United States may not fit exactly in the context of other societies. We perceived that in some countries the appreciation of the importance of completely ethical standards in business does not enjoy the universal priority which it has been assigned in our society currently.

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The U.S. Council concluded that unless this philosophy is internationalized it could and in some cases would mitigate severely against U.S. business and prevent it from being able to compete effectively in quite substantial markets of the world.

Accordingly, the United States Council urged the International Chamber of Commerce to take a timely initiative to deal with these problems. Last November, agreement was reached within the Executive Committee of that organization to set up a mechanism for examining the problems which have caused the growth of this phenomenon with a view to attempting to ensure that both government and companies might adopt standards of conduct which would be uniform and which would preclude any one nation having to take any special position in this regard only creating yet another trade distortion and working to the disadvantage of that particular nation and its citizens.

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"The subject of the inquiry is one in which governments are likely to take a keen interest and in the U.S. Mr. Peter Shore, Secretary of Trade, is also watching the extent to which British companies operating overseas are affected. However, for any of them to undertake a similar international task themselves would be impossible for fear of accusations of interference in another country's internal affairs. The ICC, as an organisation made up of representatives from different countries willing to pool their knowledge, considers itself equipped to avoid such problems.

"Explaining how the Commission had come to be set up, Lord Shawcross said that the ICC believed that some international companies were being embarrassed by the need to resort to bribery to get business. It was therefore hoped that this initiative would help resolve the problems while avoiding a proliferation of inquiries and that the Commission's findings would be recognised as authoritative.

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"Giving a personal view, Lord Shawcross said there were perhaps twelve countries where corruption was 'quite exceptional and is regarded with grave legal and social disapproval.'

Continuing, the Financial Times article quotes Lord Shawcross as stating that in a number of other countries he believed that corruption was sometimes considered "almost as a way of life" and that there were no adequate measures to prevent it. The article went on to report that the Commission will not be looking at specific places but rather at what law exists in different countries and to what extent efforts are made to enforce laws, as well as the degree to which companies can operate without having to submit to corruption. Commenting during the press conference on the current American experience, Lord Shawcross said that great play has been made of the fact that corruption appears to be the fault of the large multinationals, but there were some countries where, whatever the company, "you could not do business without greasing someone's palm"; therefore, he said, you had "got to make sure that those accepting money were punished."

The article continues by pointing out that the Commission would probably get its information through the national committees of the International Chamber of Commerce using questionnaires and by talking to individuals, but not necessarily on the basis that what they said would be published. Companies might be asked if they had given any money and whether they had got work through doing this. Where there are no (ICC) national committees "we shall have to see what information we can get", said Lord Shawcross. The Financial Times interviewer then reported that Lord Shawcross recognized the difficulties for honest companies which found they could not get work without resorting to bribery, but he maintained that "if these payments are made there should be full disclosure in the accounts of the company concerned." The article states that the problem which is being investigated is probably no stranger to the

majority of companies which operate on an international scale, and particularly in certain regions of the world. In most of the emerging areas an international company's only hope of gaining a foothold is to appoint a local agent and it is this system which is readily open to abuse. To gain business, a percentage of the total order value might be paid to the agent. In turn, when charging for his own outgoings, the agent might include the cost of the bribes over which the company might have no control.

Finally, the article points out that an international agreement on the legal definition for bribery and corruption might be needed before any general law and penalties could be drawn up to stop the practices. Then there would remain the problem of enforcement.

This interview of course took place in the United Kingdom, so the journalist concluded as follows:

"One of the things which clearly worries companies is that if, for example, a high moral stance were taken in the United Kingdom without allowing for different trading ethics elsewhere, a lot of business might be lost."

I have given considerable time to this recent Financial Times article because it provides a succinct description of the problem together with an authoritative indication of Lord Shawcross' thinking on the task on which he and his stellar team of colleagues have embarked.

To the extent that these payments are widespread and general in nature, they must obviously affect more than just U.K. companies—and more than just American companies. It will be readily apparent why the U.S. Council, as spokesman for U.S. international business, had a very special interest in internationalizing consideration of the problem. That is what the International Chamber has set out to try to accomplish by establishing its new Commission on Unethical Practices under the Chairmanship of Lord Shawcross.

We in the U.S. Council trust that the work of this Commission will result in findings which could lead to the adopting of some ground rules for the conduct of international business which would eliminate not only the problems which have been exposed in business transactions but ensure that governments themselves adopt the corresponding rules and practices which would prevent the counterpart phenomenon which in many parts of the world can clearly be identified as extortion. It is obvious that the problem you and we are trying to deal with is an unusually complicated one and has a direct bearing on our international position in world commerce. Our exports are now at nearly \$110 billion and are increasingly important to our domestic economy. The need for an improved U.S. position in its international trade balance was dramatized during the 1960s by trade deficits we incurred over many years, culminating in the devaluation of the dollar in 1971. Fortunately, our strength and agriculture system, coupled with the relative success in abating U.S. inflation rates, and the improved value of the U.S. dollar resulted in a greatly improved trade balance. Against this our steadily increasing addiction to imported oil. For two years we have spent over \$25 billion a year on oil imports alone and far from reducing our dependence on imported oil, the U.S. is now importing a larger share than ever before of its total oil requirements. Imports are already over 40% and rapidly approaching, it is to be feared, 50% of our needs. Some current predictions are that within ten years, without a radical change in our national energy policy posture, we may be dependent on imports for perhaps twice as many barrels of oil per day as our already unprecedented level of over seven million, assuming our economy returns to a reasonable rate of growth. At current prices, we would need \$50 billion a year of exports just to pay for our petroleum imports.

Against this background, it is obvious that great care must be taken as Mr. McCloy said in his testimony on Monday, that in drafting legislation to deal with problems being dramatized for U.S. eyes today, we do not seriously impair interests of citizens tomorrow. Unilateral action by our government could isolate the United States from some of the markets we may very well need in the not too distant future.

This brings me again to the point that international agreement is essential to correct these problems.

In conclusion, the U.S. Council of the International Chamber of Commerce respectfully urges this Committee to await the outcome of the highly relevant work of the ICC Commission on Unethical Practices, and of other similar studies of this complex problem, before pushing ahead with inadequate unilateral legislation such as that proposed in S. 3133.

INTERNATIONAL CHAMBER OF COMMERCE FORMS COMMISSION ON UNETHICAL PRACTICES

New York, N.Y. March 5, 1976—The United States Council of the International Chamber of Commerce announced here today that the Paris-based business organization has formed a blue ribbon commission to come up with recommendations dealing with bribery and corruption in world trade. Lord Shawcross (United Kingdom), G.B.E., Q.C., Chairman of the City of London Board on Takeovers and Mergers, Chairman of the British Press Council, a Director of public companies, and formerly Attorney General and President of the Board of Trade, will chair the new ICC Commission on Unethical Practices.

The other eminent persons already named to serve on the Commission are: Arthur von Bulow (Federal Republic of Germany), former Secretary General of the Federal Ministry of Justice; Jean Rey (Belgium), former Chairman of the Commission of the European Communities and Minister of State; Erland Waldenstrom (Sweden), Chairman of the Board of Granges AG; Subramanya Bhoothaligam (India), former Secretary of the Indian Ministries of Commerce, Industry, Steel, and Finance, and former Director General of the Indian National Council of Applied Economic Research; William H. Franklin (United States), Chairman of the Board of Trustees of the Committee for Economic Development and Retired Chairman of the Board of Caterpillar Tractor Co.; Rudolf A. Peterson (United States), President Retired, Bank of America, and former Administrator of the United Nation Development Program.

Others will be joining the Commission shortly and the ICC will announce their names in the coming weeks.

One of the major concerns of the ICC is to foster fair trade and competition, domestically and internationally, within the framework set by national entities.

For this reason, the ICC, taking note of cases in which individuals, officers of corporations or political parties claiming to have influence of a commercial or political nature have accepted payments or other inducements from corporations or individuals engaged in commerce made with a view to securing the exercise of influence in their favor, and desiring to protect and promote fair trading competition in such matters within the lawful framework established by individual states and internationally, has established a commission of eminent persons to study the problems arising from such improper practices and with publishing findings on any particular case. The new Commission's responsibilities will be to report generally, to suggest relevant guidelines for promoting correct conduct in such matters and to indicate the respective responsibilities therein of executives and non-executive directors, of officers and auditors of corporations and of others concerned, including the relevant tax and law enforcement agencies.

[From the London Financial Times, Mar. 26, 1976]

INQUIRY ON CORRUPTION ABROAD

(By Nicholas Leslie)

A group of influential public figures drawn from different parts of the world will meet in London next month to embark on a study of corruption in business. They form a Commission set up by International Chamber of Commerce to look at "unethical practices" at a time when the way some companies obtain business is coming under close scrutiny, particularly in the U.S.

Lord Shawcross has been appointed chairman of the Commission. From his background as an international lawyer, businessman and former politician, he intends to elicit evidence from various countries, companies and individuals and may call on the UN for support. A code of conduct might then be drawn up.

Seven people have so far been appointed to the Commission, embracing countries such as Belgium, Sweden, India, the U.S. and the U.K. This still leaves three places vacant, which it is hoped will be filled by representatives from France, the Middle East and Latin America. There is also a small secretariat and the advice of a firm of accountants and solicitors will also be sought.

The recent announcement by the International Chamber of Commerce (ICC), whose general aim is to foster fair trade and competition, of the Commission has brought only a low-key response in the U.K. It seems likely the situation will remain that way despite the sharper interest in the U.S. current investiga-

tions into the same issue. Unless some instance of corruption emerges in the U.K., the Commission will carry out its investigations well away from the public gaze and any report of its findings is unlikely to emerge before the end of the year.

The subject of the inquiry is one in which governments are likely to take a keen interest and in the U.K. Mr. Peter Shore, Secretary for Trade, is also watching the extent to which British companies operating overseas are affected. However, for any of them to undertake a similar international task themselves would be impossible for fear of accusations of interference in another country's internal affairs. The ICC, as an organisation made up of representatives from different countries willing to pool their knowledge, considers itself equipped to avoid such problems.

Explaining how the Commission had come to be set up, Lord Shawcross said that the ICC believed that some international companies were being embarrassed by the need to resort to bribery to get business. It was therefore hoped that this initiative would help resolve the problems while avoiding a proliferation of inquiries and that the Commission's findings would be recognised as authoritative.

But the Commission's intentions are likely to meet with some scepticism from the people it will be talking to. As one senior executive of an international company commented to me: "How can you expect to change methods of trading which have existed as a way of life for more than a thousand years?"

Giving a personal view, Lord Shawcross said there were perhaps 12 countries where corruption was "quite exceptional and is regarded with grave legal and social disapproval." He includes the U.K. in this list. But in a number of other countries he considered corruption was "almost as a way of life" with no adequate measures to prevent it.

It is these countries in particular, mostly developing nations, which will be studied closely. The commission will not be looking at specific cases, but rather at what law exists in different countries and to what extent efforts are made to enforce laws as well as the degree to which companies can operate without having to submit to corruption.

Commenting on the current American experience, Lord Shawcross said that great play has been made of the fact that corruption appeared to be the fault of the large multi-nationals. But there were some countries where, whatever the company, you could "not do business without greasing someone's palm." Therefore, you had "got to make sure that those accepting money were punished."

The commission would probably get its information through the national committees of the International Chamber of Commerce using questionnaires and by talking to individuals, but not necessarily on the basis that what they said would be published. Companies might be asked if they had given any money and whether they had got work through doing this. Where there were no national committees "we shall have to see what information we can get," said Lord Shawcross.

To produce a subsequent reaction in countries, the Commission might go to the extent of naming them, although this was something which would have to be considered with great care, said Lord Shawcross. Some means of "shaming" countries might be employed and the UN might even be asked to bring pressure to bear for the introduction of legislation. "We might even suggest a code of conduct for companies operating internationally."

Lord Shawcross recognised the difficulty for honest companies which found they could not get work without resorting to bribery, but maintained: "If these payments are made there should be full disclosure in the accounts of the company concerned."

The problem which is being investigated is probably no stranger to the majority of companies which operate on an international scale, and particularly in certain regions of the world. In most of the emerging areas an international company's only hope of gaining a foothold is to appoint a local agent and it is this system which is readily open to abuse. To gain business, a percentage of a total order value might be paid to the agent. In turn when charging for his own outgoings, the agent might include the cost of bribes over which the company might have no control.

An international agreement on a legal definition for bribery and corruption might be needed before any general law and penalties could be drawn up to stop the practices. Then, there would remain the problem of enforcement.

One of the things which clearly worries companies is that if, for example, a high moral stance were taken in the U.K. without allowing for different trading ethics elsewhere, a lot of business might be lost.

The members of the Commission are: Lord Shawcross (chairman), chairman of City Take-over Panel and a former Attorney General, and President of the Board of Trade;

Arthur von Bulow, from West Germany, a former secretary-general of the Federal Ministry of Justice;

Jean Ray, of Belgium, former chairman of the Commission of the European Communities and a Minister of State;

Erland Waldenstrom, from Sweden, chairman of the Board of Granges AB;

Subramanya Bhoothalingam, from India, former secretary of the Indian Ministries of Commerce, Industry, Steel and Finance, and former director-general of the Indian National Council of Applied Economic Research.

William H. Franklin, of the U.S., chairman of the Board of Trustees of the Committee for Economic Development, and retired chairman of Caterpillar Tractor Company;

Rudolph A. Peterson, also from the U.S., retired president of Bank of America, and former Administrator of the UN Development Programme.

[From the New York Times, Apr. 7, 1976]

AN INTERNATIONAL BUSINESS ETHICS CODE

(By C. L. Sulzberger)

The Hague—One result of the Arabian nightmare of scandals flowing from United States business malpractices is increasing thought in some nations about the need to draft an international code of good behavior. Signatory nations would be expected to apply this to governmental and private contracts.

There has been so much discussion of alleged U.S. commercial misbehavior in search of competitive deals that many people abroad are eager to see serious consideration of a regulation. The Netherlands exemplifies such views. It is hugely involved in foreign commerce as a nation existing by trade. It has also been politically tarnished by innuendo emerging from Senator Church's inquiry in Washington.

Some rather dubious witnesses summoned before Senator Church's committee have spoken of a "high Dutch official" said to have accepted large payments from the Lockheed Aircraft Corporation. It was implied that this is probably Prince Bernhard, husband of Dutch Queen Juliana.

Bernhard immediately demanded an official investigation here in order to clear his name. The entire royal family is reportedly determined to ride out the storm, confident of Bernhard's probity. The Queen and her husband even plan to visit the United States this autumn to honor the Bicentennial.

But the smudging of this nation's moral pride and commercial standing by unproved allegations during current inquiries encourages a climate of character assassination unrelated to charges of business misbehavior.

Thus in a quite separate release of a 31-year-old U.S. intelligence report of questionable origin, Bernhard was accused of leaking to Germany secrets concerning the then-impending Arnhem battle although he had a splendid record as commander of all Dutch resistance during World War II.

To avoid publicizing any kind of inferential slander—unless it is proven justified—Europeans are devoting more attention to the overall problem than if it were only a business matter. For it is evident that any damage to the stability of Western nations, tearing down moral reputations, can only benefit their adversaries.

The problems posed by international business competition are immense. It is obviously impossible for a country like the United States to insist that all lands traded with must accept the puritanical standards we now talk of imposing.

A recent visitor to Saudi Arabia, there on a preliminary negotiating trip, was told by a high court official that there would be no point in sending a mission to complete the deal unless it was prepared to pay an extra 10 percent commission to host country officials. "That is the way we do business here," he added.

This is a well-known fact. In many countries between the Mediterranean and the Yellow Sea it has long been customary to grease palms and arrange kickbacks. The Italian Communist Party, for example, receives kickbacks on all East-West trade contracts that Italy signs.

One idea now pondered is that a fair practices code should be prepared by an international forum for later presentation to those governments considered likeliest to give the idea serious consideration. As a start, these might include all members of NATO and the Organization for Economic Cooperation and Development (O.E.C.D.).

Such a code could propose a maximum commission rate with signatory nations would pledge themselves and their private companies to observe. Adherence to such a fixed standard, should limit foolish and immoral competition among firms seeking to outbribe each other in lands where bribery is still an accepted practice.

A good behavior code could be guaranteed internationally and private companies involved might perhaps be insured by participating nations. United States concerns already have their investments in developing regions underwritten by Washington. It is even logical that the World Bank play an active role in such a program and that all governments involved might be asked to make available, as swiftly as possible, any documents they have involving suspected violations.

This is only one approach to a disturbing problem that deeply concerns the trading nations of the West. The latter have seen how present methods of investigating malpractices can get out of hand in a politically dangerous way. They have also discovered to their sorrow that the current global race to peddle arms contains even nastier aspects than hitherto suspected.

One may hope that even before the present series of inquiries has been concluded a start will be made in facing the crux of the matter. This requires creating a self-regulatory system for the great commercial nations, most of which are allied or friendly with the United States.

The CHAIRMAN. Well, thank you, Mr. MacGregor. It's good to get your recommendation. I know you have done a lot of work on this. I'm frankly disappointed with your conclusions, as I'm sure you would expect me to be. I am puzzled by much of what you tell us. Your statement stops just short of saying that in certain parts of the world bribery is essential; it's a way of life; and you have to expect it to be done; and American corporations are doing it and if they don't do it we are going to lose business. Is that right?

Mr. MacGREGOR. That is true in some parts of the world. I think this was brought out by Mr. McCloy, too.

The CHAIRMAN. We have statements from companies like General Dynamics, Du Pont, Pitney Bowes that they do not resort to bribes. They don't suffer from it. It seems to me if you are going to make that kind of assertion you ought to be able to give us some documentation. Where do you have an important market that would be lost if bribery wasn't possible?

Mr. MacGREGOR. Well, I think if you read Mr. Cyrus Sulzberger's article in the New York Times this morning he refers to some such areas.

The CHAIRMAN. Such as?

Mr. MacGREGOR. Well, let me see if I can find the areas. He says that it's a well-known fact that in many countries between the Mediterranean and the Yellow Sea it has long been customary to grease palms and arrange kickbacks. The Italian Communist Party, for example, receives kickbacks in Italy from all East-West contracts signed by Italian firms, he reports.

The CHAIRMAN. That's a pretty vague generalization. You have been in business a long time and your corporation AMAX is a corpo-

ration that operates in a number of countries. Have you found it necessary to pay bribes?

Mr. MACGREGOR. No, sir; but then I was brought up under a strange thing called the Protestant ethic and, unfortunately, that's dying out, and I just also have a Scottish background and I find making any excess payments to anybody is unattractive.

The CHAIRMAN. Well, if your company can prosper and thrive without paying bribes, why should you expect others to follow a non-Protestant ethic?

Mr. MACGREGOR. We have been highly discriminatory in the areas in which we do business. We avoid those areas where such things go on. Mr. Sulzberger writes of a recent visitor to Saudi Arabia on a preliminary negotiating trip who was told by a high court official that there would be no point in sending a mission to complete the deal unless it was prepared to pay an extra 10 percent commission to host country officials. That's the way they do business there. I'm taking Mr. Sulzberger as an authority on this.

The CHAIRMAN. I admire Mr. Sulzberger and the paper for which he writes is probably the greatest paper in the country, but unless he can specify where this is going on and where this kind of conduct is essential it seems to me it's not very convincing testimony.

Mr. MACGREGOR. He has paragraph here which is quite specific. I read it to you about Saudi Arabia, top righthand column.

The CHAIRMAN. Mr. Sulzberger is a journalist and a fine one. You're a businessman. You know this business. Mr. Sulzberger doesn't have the kind of experience you have had or your corporation has had. You operate in these markets. You operate successfully. Other corporations I have pointed out do and the heads of those businesses have indicated that they feel that bribery is a policy they will not follow under any circumstances yet they sell abroad widely. Furthermore, how do you meet the point that Mr. Ball makes, that while an international agreement is highly desirable that a first step must be for us to put our own house in order?

Mr. MACGREGOR. Well, I think that the problem I have with that is that there is quite a spectrum of enthusiasm for internationalizing this problem.

The CHAIRMAN. I'm sure there is because it's going to be years before we get around to it and how do you enforce it? Who does it? The United Nations? Do you do it by the so-called great force of world opinion? And something like this, unless we have a law enforced by our own Justice Department or by the SEC or by some agency that's respected and we know is going to act, it will mean nothing.

Mr. GACGREGOR. Well, I think, Senator, that the OECD is one of the promising areas for the developed countries who, according to Shawcross testimony at least, regard ethical business practices as an essential ingredient in their way of life; I would think that the starting point should be agreement in that area.

The CHAIRMAN. What kind of enforcement power does the OECD have?

Mr. MACGREGOR. Well, it has none. As Mr. Ball pointed out, your local laws will have to follow behind that, but I think that for the

United States to relieve other OECD countries from responsibility by taking the initial steps which may be quite restrictive—

The CHAIRMAN. Wouldn't it take many years for an international treaty to be ratified and become effective?

Mr. MACGREGOR. I wouldn't think so. It depends on the efforts that the United States makes in this regard.

The CHAIRMAN. Well, the testimony we had from the State Department when we had testimony about 2 or 3 weeks ago was that they agreed it would take a considerable amount of time, 3 to 5 years and maybe as much as 10 years.

Mr. MACGREGOR. I think that there are some areas of controversy where it would take some time, but here's one that I would hope many of the subscribing nations to the OECD would agree to. They are people who operate their own economies on highly ethical standards as was pointed out by Mr. Ball; there should be some hope that we can reach some kind of an agreement.

The CHAIRMAN. Wouldn't this legislation help a firm to say no when they were subject to extortion? Wouldn't they be able to say we can't do this; it's against the law in our country; we'll go to jail if we violate this law?

Mr. MACGREGOR. Of course, that's true, but this means you're asking these companies to exclude themselves from certain markets.

The CHAIRMAN. And yet you can't specify except for your mention of Saudi Arabia and the authority for that is Mr. Sulzberger who hasn't had any business in Saudi Arabia of selling anything—you don't give us any hard, clear evidence that this would cost American firms anything.

Mr. MACGREGOR. Well, I think you may be able to find witnesses who have been exposed to that directly. I personally can only quote from my own experience.

The CHAIRMAN. Let me tell you the testimony we had just a couple of days ago. Mr. Spruille Braden, who was the American Ambassador to Argentina and Cuba and was Assistant Secretary of State, testified that when he was Ambassador to Cuba he called all the firms in and he said as long as he was Ambassador he wouldn't tolerate under any circumstances any kind of bribery and if any bribery was engaged in he would act and act promptly. He said that the Cubans said, "You can't do it. This isn't the way things operate here. It doesn't work that way." He said that nevertheless he did it and the result was that within a very short time they agreed it was a good system and that it worked well, that they were sorry they hadn't done it long ago, but it was unilateral action not on the part of the country but on the part of one Ambassador. It seems to me if an ambassador like Spruille Braden can take that kind of action that a country like the United States of America could have a profound influence in cleaning up the international situation. After all, if we have goods that are attractive to foreign countries, if Saudi Arabia wants to buy what we sell and I'm sure they would, I can't imagine that they would feel that it would be necessary for us to engage in bribery and if we didn't they would buy from the French or British.

Mr. MACGREGORY. Well, I don't know the extent to which the British or the French might take advantage of such a market

opportunity, but clearly while the United States today has many advantages in trade that it didn't have before our devaluation and before the runaway inflation which has made many of our competitors less effective, the fact still remains that we don't have an exclusive on nearly all of the products which are marketed, including airplanes.

The CHAIRMAN. We don't have an exclusive on it, but after all, we exported more military weapons than all the other countries in the world combined last year 9 times as much as the French, 15 times as much as the British. We are in a very strong position.

Let me ask you this. You say that prohibiting bribery, passing this legislation, would create a trade distortion. You have got to be kidding. Are you saying that if we don't have bribery that we will have a distorted kind of trade situation? In my view, prohibiting bribery would make it possible for the free market to work.

Mr. MACGREGOR. I agree with that. That's not the point at all.

The CHAIRMAN. What's the point?

Mr. MACGREGOR. Until such time as you have you competitors accepting the same principles, you do have a very real difference in trade practices.

The CHAIRMAN. Then are you saying that you have a more orderly trade system if they all bribe?

Mr. MACGREGOR. No. I'm saying the reverse. They would have a more orderly system if we all refrained from bribery. I'm all in favor of that.

The CHAIRMAN. The first step, as we tried to emphasize, is to have this country prohibit it.

Mr. MACGREGOR. Well, I think that's a good step and I think that should follow a careful analysis of the situation. I'm glad to see that Secretary Elliot Richardson and others are going to try to bring all of the facts out and probably enlist some help from other governments in an effort to get this thing done. I would suggest that we use these opportunities to lay out a series of conditions under which and to which other nations subscribe. I am very much in favor of the objectives of your proposed legislation. I think the only argument I have is the timing.

The CHAIRMAN. Senator Biden?

Senator BIDEN. Sir, I'd like to skip for a moment whether or not there should be bribery to whether or not you see any distinction in the kinds of bribery that take place. By that, I mean, where the bribe is given by an American corporation to encourage the foreign country, the foreign officials, not only to buy the product but to act in a manner which is inconsistent with our stated foreign policy. Do you think there should be any different treatment given to that company? Is that beyond the realm of just competing with foreign corporations? Aren't there instances where there's been competition with our own national interests and don't you think those people should maybe go to jail for that kind of activity?

Mr. MACGREGOR. I wouldn't want to comment on that because I don't know enough about the cases you have in mind, but let me just comment in response to what you're questioning here. I think you are correct in outlining that there are cases where national interests

are clearly at issue, not only in our own country but in foreign countries. May I touch on what Mr. Ball said, that one of our problems is in the relations between business and government. I would like to observe that to the best of my knowledge in the purely international business sphere bribery and corruption is at a minimum. Certainly my own company has no instances of this that we could ever find. Our big problem is in the interface with something that is a phenomenon outside of the United States, increasingly Government-controlled businesses run in many cases by officials whose compensation is generally regarded as inadequate by the people in other parts of the world, and it does offer a temptation.

The biggest area of problem is in the interface between our business organizations and these Government and quasi-Government industrial establishments.

Senator BIDEN. What do we do about that? What are you suggesting?

Mr. MACGREGOR. Well, we are looking for some help from you on that, sir.

Senator BIDEN. Some help in terms of advice or some help in terms of cooperation?

Mr. MACGREGOR. I think, as I said earlier, probably some form of recognized international practices hopefully backed by legislation in the major countries of the world will be a good solution.

Now the question that Senator Proxmire raised is whether we were for or against S. 3133. We are for the principles which it outlines. We just don't want to get our business community isolated from the world situation. We do hope that you would use your influence prior to passing the legislation to get uniformity of legislation and practices rather than relieving our trading partners of any responsibility in the matter if they are not as concerned about this as we are as a nation, and I see some evidence that not all of them are as concerned.

Senator BIDEN. Well, I have no further questions. Thank you.

The CHAIRMAN. I think the advantage the United States of America, if it's recognized and if it's a fact that we do effectively prevent and prohibit bribery—there's no country in which the sovereign of that country, whether it's the Shah or the people, benefit from the bribery. They lose. They lose because what it means is that they are getting inferior products at a higher cost because of the bribery. So it's to the great interest of every country that the people who sell to them don't bribe. Now if we have a reputation of being the one country that enforces the law and everything that we sell is sold on the basis of merit and competition and not on the basis of bribery, it seems to me that's an enormous advantage that shouldn't be overlooked. I would think unilateral action wouldn't isolate us. It would give us a great advantage and other countries would per force be constrained to follow.

Mr. MACGREGOR. Well, I think that's a very laudible ambition and I certainly subscribe to your hopes in this regard. I'm afraid that we may not have quite as quick cooperation from other nations as one would expect unless this is made a major issue at the governmental level first. I think that the administration's commission

which will investigate the mechanisms of trying to avoid this, shall we say, blot on the international trading community's reputation, I think that commission will be very helpful in trying to get international cooperation.

The CHAIRMAN. And that commission would be helped, it would seem to me, by action by this country requiring disclosure and requiring prohibition of bribes. Don't you think that would be the strongest kind of action this country could take to make this really effective?

Mr. MACGREGOR. Well, I think that's an opinion which I don't wholly share personally.

The CHAIRMAN. Would you tell us the countries in which your firm operates?

Mr. MACGREGOR. Yes. We operate in the United States, in Canada, in Britain, France, Italy, Holland, Germany. In Zambia, we have an investment. In Botswana, we have an investment. In New Caledonia, we have an investment. We operate also in Australia.

The CHAIRMAN. Have the government officials in any of these countries ever tried to extort a bribe from you as far as you know, from your firm?

Mr. MACGREGOR. During my occupation of the office of chief executive, I have not experienced such a thing, but I would suspect and I did mention a country in which we at one time had a quite important investment but we have backed out, and that is Mexico. I have heard rumors that the system in Mexico was quite involved, but this was prior to my time. I have reduced or minimized our investments in that country.

The CHAIRMAN. Did you have to pay a bribe in Mexico?

Mr. MACGREGOR. Never.

The CHAIRMAN. Well, I want to thank you very much, Mr. MacGregor.

Our final witness this morning is Mr. Leonard Meeker, Center for Law and Social Policy.

STATEMENT OF LEONARD C. MEEKER, CENTER FOR LAW AND SOCIAL POLICY

Mr. MEEKER. Thank you, Mr. Chairman.

I filed with the committee a statement. Rather than read it, I'd like to concentrate on just a few points which seem to me important in connection with the subject the committee is now addressing.

First, of all, I'd like to say why I think bribes and payoffs by American corporations in foreign countries are evil and should stop. Corrupt practices abroad by some companies certainly impair the foreign trade opportunities of U.S. industry generally and they make it harder for innocent American firms to compete successfully. Corrupt practices by U.S. enterprises abroad also reflect on the United States as a Nation. They impair our capacity for effective action in the world of business and in international affairs.

American industry ought not to rely for markets on bribes and payoffs, but on the quality of its products and the competence of business organization and management.

Finally I think the United States and Americans generally do not want a society and should not have a society in which corruption is the law of life and in which the Government accepts and acquiesces in a Watergate-style morality whether it's in business or in any other department of living.

There are some myths and misconceptions about foreign bribes and payoffs which ought to be dispelled. Contrary to what some people have said and continue to say, bribery is not legal in any country so far as I know, even though it may be practiced in some places.

As Mr. Ball said earlier, by no means do all U.S. firms operating abroad engage in bribery. Quite the contrary, there has been a concentration of these corrupt practices in a few industries, notably defense and aerospace and oil and gas. Successful competition with American or foreign rivals on the part of a U.S. firm simply does not depend on bribery. Many U.S. executives would like to see bribery and payoffs outlawed. They would welcome such a development. If such a rule were adopted there would no longer be the practical possibility of bribes and payoffs by U.S. firms which as has already been pointed out represents by far the greatest segment of the multinational corporations of size and importance in the world.

Now what can be done to change the situation and to eliminate these corrupt practices where they have existed?

First of all, I think a mandatory program of disclosure ought to come at the top of the list. The U.S. Securities and Exchange Commission today has statutory authority to require that kind of disclosure. I think it ought to require disclosure by corporations of all payments made to foreign public officials, government entities, or their agents, when the payments are illegal or when they are made in furtherance of securing contracts or promoting corporate business.

The Commission ought to require disclosure of contributions to foreign political parties and candidates. The Commission ought to require disclosure of foreign financial transactions by U.S. corporations which result in corporate funds being transferred to the United States and then distributed in this country for illegal purposes such as electoral campaign contributions.

In addition, the Commission ought to require corporations subject to its jurisdiction to provide a complete listing and breakdown of commissions and consultant and agent fees which are paid by the corporation to secure contracts or to promote corporate business, including a specification of commission and fee rates, amounts of sales, deviation from normal commission and fee rates as determined by industry practice.

As a second step, I think the United States would properly discuss with other countries the measures that those other countries would be willing to take to put an end to commercial bribes and payoffs in international sales. I think that as a practical matter it would take at least several years to get ahead with the negotiation and conclusion of such agreements and that we should not wait upon the finishing of that process to take the steps which are open to us right now.

Some people have talked about guidelines as being valuable in this area. I would just like to suggest this caution. I don't think that guidelines from the SEC or from any other source to indicate what kinds or what sizes of bribes are permissible or in what circumstances political payoffs are acceptable are guidelines that have any validity or should be given any consideration, and the same, it seems to me, is true of any series of guidelines which would state disclosure is going to be required in some cases but not in all.

S. 3133 seems to me a very constructive legislative measure. I would not see any reason for delaying its consideration and passage. There is already on the record a remarkable and impressive amount of information about the subject covered in the bill. That is true because of the investigations conducted and stimulated by the Securities and Exchange Commission which have produced a large volume of information. The same is true of the hearings held by congressional committees. We have plenty of facts. What we need now is action. I think it's fine that there's a cabinet committee appointed to deal with this subject. Its schedule is somewhat leisurely since it has been instructed to report only by the end of the year. I think it's fine that the International Chamber of Commerce has decided to give its attention to this problem. Hopefully, both of those groups will produce some ideas and some suggestions which can be used, but I would not wait upon the outcome of either to move ahead with the steps that lie within the capacity of the U.S. Government right now.

I think that S. 3133 is correct in proposing first a program of disclosure and I would wholeheartedly support that aspect of the bill. I would raise one or two small questions: Whether the requirements of disclosure should not also be imposed in connection with registration statements of securities and in connection with proxy solicitations by corporations. To require disclosure there would seem quite consistent with what the bill would provide and that is disclosure in periodic reports to the Securities and Exchange Commission itself.

I would also raise the question as to whether a de minimis rule of \$1,000 is appropriate. Both of these are relatively small points.

The other sections of the bill impose criminal penalties. I think those, too, are constructive legislative measures. I would not be concerned about any problem of discrimination against U.S. corporations on the ground that other countries might not at the very same time have adopted similar legislation. It seems to me that disclosure is an imperative. If we have disclosure, I believe the corrupt practices are going to stop because corporate officers will not consider that they can stand the light of public scrutiny. That being the case, the imposition of criminal penalties in addition is not going to impose any discriminatory disability on U.S. firms. What the action will do is to make clear to the American business community and to other countries and to their business communities that we are serious in wanting to end corrupt practices in international trade and this will serve as our challenge to them to take comparable action which I hope in the course of time they will be willing to do. But I think we should be the first and not wait a long time and perhaps be the last.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Meeker.
[Complete statement follows.]

STATEMENT OF LEONARD C. MEEKER

Mr. Chairman, Members of the Committee: I am Leonard Meeker, an attorney with the Center for Law and Social Policy, a public-interest law firm in Washington. In 1975, I represented the Project on Corporate Responsibility and a number of religious groups in filing with the Securities and Exchange Commission a petition asking the Commission to hold a rulemaking proceeding on requirements for disclosure in the case of foreign bribes and political payments by corporations subject to the SEC's jurisdiction.

The United States has traditionally been a country of can-do people. Long ago, we became accustomed to the idea that it was quality of manufactures and efficiency in organization that brought prosperity and expansion to the American economy. These were also the accepted principles of our foreign trade, which expanded rapidly in the twentieth century, particularly in the years after World War II.

So it has come as an unpleasant jolt in the last twelve months to learn that companies in some sectors of American industry have for several years been giving bribes and making other pay-offs in connection with foreign sales of their products. A whole series of questions is raised by the revelations of the last year:

How widespread are the practices disclosed?

To what extent has the foreign business of American companies become dependent upon bribes and pay-offs?

Have the top managements of the corporations concerned been aware of what was going on? In how many instances have they directed bribes and pay-offs?

How much do shareholders and the investing public know about these shady transactions?

How have the bribes and pay-offs affected American business abroad in general? The standing and reputation of the United States as a nation?

WHAT THE INVESTIGATIONS HAVE SHOWN

Among government agencies, the Securities and Exchange Commission took the lead in ferreting out the facts. The Commission commenced court proceedings against a series of major corporations to challenge their accounting practices which had failed to disclose and frequently were designed to conceal foreign bribes and pay-offs. In a number of instances, these lawsuits brought about thorough investigations of corporate affairs under the mandate of outside directors. In addition, the Commission invited companies subject to its supervision to come forward with information on bribes and pay-offs. A number have done so, rather than await SEC scrutiny and litigation in court.

Additionally, the facts regarding questionable corporate transactions abroad have been investigated by congressional committees and have been sought in a series of stockholder suits against companies and their top management officers.

The facts brought out in the totality of these different types of proceedings show that there has been a concentration of foreign bribes and pay-offs in particular industry groups. These are: first, aerospace and defense companies, where foreign contracts have been very large and where acknowledged bribes and pay-offs have run into the millions of dollars; second, the oil and gas industry, in which some companies and their subsidiaries have paid out very large sums abroad; next, the drug industry in which about a dozen leading American manufacturers have acknowledged foreign bribes and pay-offs; another industrial sector involved in these practices is computers and communications equipment. Beyond these four major groups a number of companies in diverse fields have been identified as giving bribes and making pay-offs abroad; they have included shipbuilding, trucks, farm machinery, tires, chemicals, and mass-produced clothing. Thus, there is a broad spectrum of U.S. industry that has engaged in questionable financial transactions abroad. But this is not to say that all firms engaged in foreign trade, or that all major

corporations in the field, have resorted to bribery and pay-offs in connection with their international business.

The practices in question have included the following:

(a) Corporate funds have been approved directly by corporate managements for foreign bribes and political contributions (for example, Northrop executives approved disbursements of funds to pay foreign government officials and disguised the transactions on corporate records);

(b) Corporate funds have been used indirectly for payments to foreign government officials or agents (for example, Northrop Corporation transferred large amounts to a fund, purportedly to pay consultants' fees, which were actually used for foreign bribes and kick-backs);

(c) Corporate funds have been transferred to foreign bank accounts or foreign subsidiaries, and a foreign employee or agent has drawn cash to pay bribes or kick-backs or to contribute to foreign political campaigns (for example, EXXON'S Italian affiliate secretly contributed substantial amounts to Italian political parties);

(d) Corporate funds have been transferred to foreign bank accounts, subsidiaries, or agents and secretly returned to the United States for illegal purposes (for example, Ashland Oil Company made substantial payments overseas to consultants and legal representatives which were later funnelled back into the United States to be used for illegal political contributions in this country).

EVILS FLOWING FROM BRIBES AND PAY-OFFS

Payments to government officials or agents and contributions to political parties in order to obtain sales abroad are not a legitimate activity in the free enterprise system. These are unhealthy practices, and they should stop.

Such practices impair trade opportunities abroad for American industry. Although only some and not all American firms have engaged in them, the practices give American business generally a bad name. A foreign government's distrust of an American company that has been caught in bribery can spill over all too easily into suspicion of another American firm that may be quite innocent.

One year ago the Under Secretary of State for Economic Affairs told the Senate Subcommittee on Multinational Corporations that questionable foreign political payments by U.S. corporations "complicate our relations with friendly foreign governments and make it more difficult for the U.S. to assist other U.S. firms in the lawful pursuit of their legitimate business interests abroad."

The damage caused by foreign bribes and pay-offs does not stop with reduced foreign-trade opportunities for American firms. These corrupt practices reflect on the United States as a nation. They diminish our standing before the world. The American reputation for quality, competence, and honesty is tarnished and eroded by them. In ways that are intangible and cannot be exactly measured, such practices make us a less influential and significant nation.

Most of all, however, we have to be concerned about the corrupting effects on our society of large business organizations engaging in practices that are against law, and the effects of government acquiescence in such practices if such should be the official treatment of them. I do not think the Government's attitude ought to be or will be one of acquiescence. The ordeal of Watergate teaches us to follow a very different course.

The argument has sometimes been made that bribes and payoffs in a foreign country are not only customary there but also are not in violation of the country's laws. While the laws of some countries—unlike those of the United States—permit corporate contributions to political parties and candidates, I know of no country where bribery of a public official in order to gain favorable government action on a contract is anything but illegal.

THE NEED FOR STANDARDS

The United States Government, for its part, should take action to prevent bribery by American-chartered corporations in the conduct of their foreign business. If the Federal Government sets a uniform standard for American companies to follow and takes appropriate steps to see that the standard is enforced, a company doing business abroad will not have to fear that its American competitor may obtain unfair advantage through bribes and pay-offs.

Executives of a number of firms have made it quite clear that they felt pressured into going along with questionable payments by the knowledge that competitors were making them. They have said they would welcome the setting of a standard that would outlaw such payments for all. The existence of such a standard would give an American firm a solid basis for refusing bribes and pay-offs in situations where they might previously have been solicited or at least expected.

Plainly, the promulgation of an American standard does not solve the problem of the third-country competitor that may hope to clinch a foreign contract through money under the table. But an American standard can, nevertheless, exert a considerable influence on the practices of firms based in other countries. Those firms may well decide that, if their American counterparts are going to refuse payment of bribes, they might as well do so too.

Moreover, foreign firms may be deterred by the prospect of disclosure, in an atmosphere where attention has become focussed on bribes in connection with international sales and where competitors will be alert to find them out and publicize them. Still another factor may be the deterrent effect of disclosure on the readiness of foreign officials to accept or solicit bribes. In Japan, Iran, and elsewhere, revelations of bribery have produced strong public and governmental reactions. Heavy consequences may be visited upon bribe seekers and takers. Criminal and other sanctions are bound to operate as a deterrent.

Intergovernmental cooperation to suppress bribes and pay-offs in international sales can create an effective common front. The United States has been discussing in the OECD, and will be considering in other international fora, the drafting of international standards and guidelines for all enterprises, doing business at home and abroad. The disclosures of the past year have led to more specific and detailed proposals for inclusion in the OECD code of conduct. This document may be ready for approval by governments in the relatively near future.

A PROPOSAL FOR SEC REGULATIONS REQUIRING DISCLOSURE

Various choices are available to the Federal Government in deciding on measures to take in order to end the practice of foreign bribes and pay-offs by U.S. corporations. One avenue that is open to the Government in the absence of any new legislation is the exercise of rulemaking power by the Securities and Exchange Commission to require disclosures. Under the Securities Act of 1933 and the Securities Exchange Act of 1934, the Commission may require a corporation to disclose in its registration statement and proxy solicitation such information as is "necessary or appropriate in the public interest or for the protection of investors" and in its periodic reports such information as is "necessary or appropriate for the proper protection of investors and to ensure fair dealing in the security." Under these statutory provisions, the Commission has adopted regulations requiring corporations to furnish such information in registration statements, annual or quarterly reports, and reports included with proxy statements as is "material" and "necessary" to make the reports or statements fair representations and not misleading.

Until now, as shown by recent revelations, a large number of corporations have not treated as "material" or "necessary" information on questionable foreign political payments, contributions, and financial transactions. This kind of information has not only been omitted from statements and reports, but corporations have engaged in active concealment of expenditures for these purposes. The lawsuits filed by the SEC have not been based on the proposition that such information is "material". The theory of the Commission's cases is that the methods by which such payments have been made constitute a material deviation from sound accounting practices, and that proper accounting requires accurate reflection in the books of the corporation of what has taken place.

In order to stimulate forward movement by the SEC in this area, a number of organizations filed with the Commission in December 1975 a Petition asking that the SEC adopt new regulations requiring disclosure of (a) payments in cash or in kind to foreign public officials, governmental entities, or their agents when such payments are illegal or when they are made in furtherance of securing contracts or promoting corporate business; (b) contributions to foreign political parties or candidates; (c) foreign financial transactions resulting in funds being transferred to the United States which are then dis-

tributed in this country for illegal purposes, such as campaign contributions. The petitioning organizations proposed that, if a corporation engages in such questionable foreign political payments, contributions, or financial transactions, it should be required to disclose the specific purpose of the payment or transaction, the dollar amount, and the recipient, including any intermediaries such as foreign subsidiaries, foreign agents, or employees.

The Petitioners also proposed that the Commission, to facilitate the discovery of questionable foreign political payments contributions and financial transactions, should require corporations subject to its jurisdiction to provide a complete listing and breakdown of all commissions and consultant's and agent's fees paid by the corporation to secure contracts or to promote corporate business, including specification of the commission and fee rates, amounts of sales, and deviations from normal commission and fee rates as determined by industry practice.

In addition to such new requirements on disclosure, the Petitioners asked the SEC to require—in connection with registration statements, annual reports, and proxy statements—a certification by corporate officers and a majority of the directors that they have no knowledge of any questionable political payments, contributions or financial transactions—foreign or domestic—that are not disclosed in the statement or report. Finally, the Petitioners requested that the Commission adopt stricter standards of auditor responsibility with respect to the compilation and certification of financial reports and statements intended for distribution by corporations to the Commission or to investors. In order to ensure that auditors are truly independent, it was proposed that the Commission should also amend its regulations to require a periodic change of auditors.

The Petitioners, in proposing to the SEC a rulemaking proceeding, offered precise texts for new regulations to be adopted by the SEC.

It is now almost four months since the Petition was filed. Yet the Commission has still not indicated whether it will hold a rule-making proceeding on disclosure requirements. From a number of statements made by Commission members and staff during the last few months it is evident that they have been addressing the substantive problem. Before reaching conclusions on it, the Commission ought to have the benefit of input from public hearings.

The fact that the President has appointed a Cabinet-level committee headed by Secretary of Commerce Elliot Richardson to study questionable foreign corporate payments during the rest of the current calendar year in no way relieves a federal agency such as the SEC from discharging its normal responsibilities in the interim. No Commission member has been given a place on the Cabinet-level committee. However, the White House has announced that the Commission will be invited to participate in the committee's work. Again, before the SEC formulates and transmits views to the Richardson committee, it ought to receive input from the public.

I believe that the adoption of new regulations on disclosure, as proposed in the Petition to the Securities and Exchange Commission, would have substantial and perhaps decisive impact in dealing with the problem of questionable foreign political payments, contributions and financial transactions. A disclosure requirement would cause corporate management to scrutinize and ponder very carefully any proposal for unusual payments in connection with the promotion and transaction of business in foreign countries. Sunshine laws and regulations have a powerful antiseptic effect on business practices. If an action must be disclosed, it will be designed to meet the test to which public exposure will subject it.

NEW LEGISLATION ; INTERNATIONAL NEGOTIATIONS

Disclosure requirements are by no means the only way of dealing with the foreign bribery and pay-off problem. Moreover, disclosure by itself may not be enough to protect all of the interests that the United States has in regard to this problem.

Congress could enact, in the exercise of its powers under the commerce clause, a prohibition on questionable foreign political payments, contributions, and financial transactions by American corporations, and it could attach appropriate penalties.

Since the area we are discussing is one of international concern, in which many countries are involved, it would be relevant and advisable in framing domestic measures to take into account the steps that other members of the

international community may be willing to take toward controlling the problem of bribes and pay-offs.

It may be asked at the outset why the United States should consider new criminal legislation in this country to deal with corporate activity abroad. One answer is that a foreign government, with its existing enforcement machinery, may not be able to deal effectively with bribery taking place within its jurisdiction when corporations engaging in the offense are headquartered elsewhere. This is not to suggest that the United States should enter the business of enforcing the laws of other countries. But it may well be appropriate for the United States to join with other members of the international community to take common action in meeting a common problem. Such action may properly include criminal sanctions for actions done by U.S.-chartered companies, even when the actions may be done abroad.

The discussions that have been taking place in international bodies such as the OECD show that a considerable momentum for action has been created by the 1975-76 revelations of corrupt international sales practices. Advantage should be taken of this momentum to secure agreement on effective international action. This must include measures to be taken by individual countries. After a trial period of a few years, the effectiveness of the program should be evaluated. Then it will be possible to see if the program has been working or needs change. The mere fact that not all countries may join in common action, or that some industrialized countries might stay outside the program, would not condemn the effort to failure. For example, various governments making large contract purchases could well choose to restrict their dealings to firms headquartered in countries that are participants in the program.

The United States ought to be moving along both the national and the international tracks at this time. We should see what can be constructively agreed with our international trading partners. And we should, in any event and without delay, proceed through the Securities and Exchange Commission to adopt regulations requiring full disclosure of questionable foreign political payments, contributions, and financial transactions.

The CHAIRMAN. From your testimony, you seem to feel that although the SEC's ad hoc court actions and voluntary efforts directed at particular corporations has been productive, you think a more systematic approach is necessary.

Mr. MEEKER. I think the SEC ought to adopt regulations which it has the statutory authority to adopt, regulations requiring disclosure of all bribes, payoffs, questionable foreign payments, and, in addition, the disclosure of all commissions to agents and consultants and fees.

The CHAIRMAN. Now as you may know, there's a split in the SEC on this and what they rely on is the materiality rule.

Mr. MEEKER. That is correct.

The CHAIRMAN. Whether or not this disclosure is material to an investor. There might be a very substantial bribe involved which could be construed as not material and some of the Commissioners have indicated very strong feeling that the SEC may have exceeded its authority. That's one of the reasons why we think this legislation is essential. We can't simply rely on the SEC to enact regulations.

Do you agree that this legislation would be desirable for that reason?

Mr. MEEKER. Yes, I do. A petition was filed with the SEC in December 1975 proposing new regulations and up to the present time there's been no action whatever, even the holding of hearings, on the regulations requested in the petition.

The CHAIRMAN. Your statement talks about the need for stricter standards for auditor responsibility. What have you proposed in that area?

Mr. MEEKER. There, I would propose that auditors would be required in their review of corporate books to certify as part of their review that they have searched diligently and found no evidence of corporate bribes, foreign payoffs or other questionable financial transactions.

The CHAIRMAN. Does the SEC require that now?

Mr. MEEKER. No, it does not. This is one of the requirements which is covered—

The CHAIRMAN. Could they?

Mr. MEEKER. Yes, they could, under existing statutes.

The CHAIRMAN. But you say to date they have not done so?

Mr. MEEKER. To date they have not taken action to adopt new regulations and indeed no hearings have even been held on the subject.

The CHAIRMAN. You mentioned the need for international cooperation. Do you think a treaty or a set of guidelines under the aegis of the OECD would be any substitute for legislation or regulations enacted domestically?

Mr. MEEKER. No, I don't. I think it would be helpful to have guidelines from the OECD as a catalyst which would perhaps assist in moving other countries along the right road, but I think affirmative and positive action by each is going to be essential and I think the United States had better lead the way.

The CHAIRMAN. I like your proposal to require corporate chief executives and board members to certify to the SEC that no improper payments have been made by their company. Would they be liable to any penalties for false certifications?

Mr. MEEKER. Indeed they would.

The CHAIRMAN. You say they should certify that they have no knowledge of questionable payments. Of course, an executive could simply tell subordinates to do whatever is necessary to close a deal without telling the boss the details. Shouldn't the certificate also include what compliance procedures the company uses to search out possible improper payments?

Mr. MEEKER. I think that would be a very constructive element.

The CHAIRMAN. Along the same lines, Mr. Nader suggested Monday that a corporation be required to appoint a compliance officer who would be legally responsible for making sure his company was not engaged in any improper payments and reporting any such payments he found. He argued that when you go to the corporation, especially a large corporation, the man at the top says he doesn't know what's going out at the bottom and the man at the bottom says they are following orders and it goes out at a tangent and it's very hard to fix it, and he suggests that some official of the corporation be designated as the compliance officer so we can fix responsibility. Do you approve of that?

Mr. MEEKER. I think that would be a good plan provided that this individual who would operate as a kind of inspector general should have the necessary independence, would have perhaps a particular responsibility to the outside directors of the corporation and would have also a very close working relationship with the auditors. He must, however, be independent of the management of the company.

The CHAIRMAN. Now it's also been proposed that the SEC be empowered to suspend the corporate officers and directors found guilty of improprieties or to remove them from office similar to the SEC's power to suspend or remove broker-dealers. Do you think that would be useful?

Mr. MEEKER. I suspect that that may be less important by a good deal than other measures. One finds that when disclosure takes place, boards of directors have been quite ready to make changes in the management. We have seen that recently with both Lockheed and Gulf. My guess is that far more important than giving the SEC that power would be some of the other steps that are contemplated such as those in S. 3133.

The CHAIRMAN. You're a former ambassador?

Mr. MEEKER. Yes. I was ambassador to Rumania.

The CHAIRMAN. What's your view on the responsibility of our embassies and the State Department in regard to bribes? First, should an embassy know and does it know if a bribery system exists and what should it do if it does know?

Mr. MEEKER. I think most often an embassy will have at least general knowledge of what the business practices are in that country, will know what American business firms are doing and what the government of the country is doing. It seems to me the embassy's attitude ought to be unequivocal, that it would countenance no bribery, no payoffs whatsoever, that it would surely report to the State Department and protest to the foreign government any instances in which bribery was sought.

The CHAIRMAN. So if a U.S. firm reports to the embassy that they have been solicited for a bribe, shaking down, be subject to extortion, you say the embassy should report it to the State Department, No. 1; and No. 2, The embassy should protest to the government and call for an investigation?

Mr. MEEKER. Yes, with very considerable energy. This is not a light matter to be handled as a formality. It's a matter of importance and substance and it ought to be pressed vigorously.

The CHAIRMAN. Mr. Meeker, thank you very, very much for most helpful testimony. I want to thank you. You come before us with considerable experience and I think your recommendations are useful to the committee.

The committee will stand in recess until 10 o'clock tomorrow when we hear from Secretary Richardson and Secretary Simon and other witnesses on this issue.

[Whereupon, at 11:45 a.m., the hearing was recessed.]

FOREIGN AND CORPORATE BRIBES

THURSDAY, APRIL 8, 1976

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 5302, Dirksen Senate Office Building, Senator William Proxmire, chairman of the committee, presiding.

Present: Senators Proxmire and Garn.

The CHAIRMAN. This morning the Banking Committee resumes hearings on S. 3133, a bill to prohibit foreign corporate bribery by U.S. corporations and to require disclosure of certain other sales consultant payments.

The committee has heard from several public witnesses earlier this week, including a former Under Secretary of State and two former Ambassadors. George Ball was particularly eloquent on the need for both a prohibition on bribery and a mandatory disclosure, as provided by S. 3133. "We cannot have it both ways," Mr. Ball told us. "We cannot proclaim that competition is the lifeblood of our economic system, while slipping money under the table to foreign purchasers. That is asking too much of human credulity."

Now, Mr. Ball was not the only witness who condemned bribery. Virtually every witness we have heard from thinks bribery is a dreadful thing. There is no dispute about that. The question before the committee is the remedy. Mr. Ball supports legislation. He testified that international treaties or guidelines in the absence of strong domestic legislation would be meaningless.

Another witness, Mr. Ian MacGregor of the International Chamber of Commerce, counseled further delay. He said we should wait until the SEC's investigation, the Cabinet Committee's study, the OECD's guidelines, and the International Chamber of Commerce's special study have all been completed.

For more than a year now the Securities and Exchange Commission and the Senate Multinationals Subcommittee have been generating reams of evidence on foreign bribery. I have some of that evidence right here. The staff member who carried this up from downstairs is lucky if he doesn't have to report to the hospital with a hernia because there's so much of it.

Nearly 100 corporations have been the subject of investigations. The McCloy report on Gulf Oil alone runs 300 pages. The Lockheed documents fill a filing cabinet. Yet it seems as if some, who rhetorically condemn bribery as roundly as the rest, want Congress to delay a remedy until the entire Fortune 500 have been investigated.

I recall the story of an agency in the bureaucracy that was short on bureaucrats. They hired a talking parrot. And they made him a GS-15. They taught him to say only one phrase: "Very complex, very complex." Sometimes I get the feeling that that parrot, that very complex parrot, is in charge of the Federal Government's groping, grasping, policy on bribery.

Certainly, there are subtleties and complexities in the foreign bribery issue, but we should be able to agree after more than a year of investigation the time has come to provide a remedy for an act as simple and outrageous as bribery.

Our witnesses this morning are Elliot Richardson, Secretary of Commerce and Chairman of the new Cabinet Committee on Questionable Foreign Payments, Secretary of the Treasury William Simon, who is also Chairman of the Emergency Guarantee Board, and Under Secretary of State for Economic Affairs, Charles Robinson.

Gentlemen, we are honored and pleased to have you before us this morning. I think that your experience in business, your remarkable experience in government, in international relations, undoubtedly can give us the most expert advice on proceeding.

I understand that Mr. Simon has to leave early and I suggest we start off, in view of the fact that Secretary Richardson is chairman of the newly appointed committee, with Secretary Richardson's statements and then we will hear from Mr. Simon and Mr. Robinson and then we will have some questions.

STATEMENT OF ELLIOT L. RICHARDSON, SECRETARY OF COMMERCE

Secretary RICHARDSON. Thank you very much, Mr. Chairman.

I know I speak for my colleagues, the Secretary of the Treasury and the Under Secretary of State, in saying that we very much appreciate this opportunity to present this administration's views of the issue of improper payments by American firms abroad and to describe in some detail our current and prospective efforts to bring such practices to an end. In this connection, I would like to commend the committee and you, Mr. Chairman, for the timeliness of this opportunity for us to participate in these important hearings.

Let me begin by stating without equivocation that this administration deplores and condemns bribery at any time and in any place. Whatever the promise of immediate returns, the longer term costs—to the firm, to our society and to this Nation—are immeasurably greater. Bribery corrodes the confidence that must exist between buyer and seller if domestic and international commerce is to flourish. It threatens to poison relationships between the United States and nations with which we have long had mutually beneficial political and commercial ties. Unchecked, it could seriously abrade the moral fabric of our society and undermine the political and economic institutions that have sustained us as a nation during our 200-year history. Bribery is, therefore, a serious national problem, and we intend to deal with it in seriously commensurate measure.

Investigatory work by the Congress, by the Securities and Exchange Commission, and by other executive branch agencies has

already brought into relief the scope and significance of past bribery practices. The full dimensions of this problem will become more evident as further data are developed by the SEC and other agencies of government.

In conjunction with and supported by the investigatory work now underway, this administration has undertaken a number of specific initiatives designed to deal with bribery on both a domestic and a multilateral plane. I would be pleased to summarize some of these initiatives for this committee.

Executive branch and regulatory agency actions: The most recent of these actions was announced by the President just 1 week ago, on March 31. It is the establishment of a Cabinet-level task force, to examine the policy aspects arising from disclosures of questionable payments to foreign agents and officials by U.S. companies in connection with their overseas business operations. The members of the task force, in addition to myself as chairman, include the Secretaries of State, Treasury, and Defense; the Attorney General; the Special Representative for Trade Negotiations; the Director of the Office of Management and Budget; the assistant to the president for National Security Affairs; and the Executive Director of the Council on International Economic Policy. The president has directed that the SEC be invited to participate in the efforts of the task force.

The task force has been directed by the president to conduct a sweeping policy review of the subject of improper or questionable corporate payments and to formulate a coherent national policy to deal with the problems posed by such payments. The task force has been directed to obtain the views of the broadest base of interest groups and individuals to aid in formulation of a clear and effective policy. Such a policy should enable American business to continue to play a vital and respected role in international markets.

The task force will hold its first meeting next week. As a first step, the task force will make a thorough assessment of the adequacy of present policies, programs, legislation and proposed legislation dealing with this subject.

The work of the task force will be both informed and complemented by ongoing efforts of the SEC and other Federal agencies which have already begun investigations to expose improper corporate payments and to deal with offenders. I would like to outline, briefly, the work of these agencies.

As you are aware, the SEC has undertaken a broad program of so-called "voluntary" disclosure of questionable foreign payments. In addition, the commission has undertaken certain enforcement actions such as that involving Lockheed. To date, the commission has examined and is examining the activities of more than 85 corporations pursuant to its enforcement and disclosure authorities. Through this program of disclosure, the SEC will generate an empirical basis which will both enlighten the work of the task force and will aid the SEC in reaching a judgment as to whether its current authorities to compel disclosure are sufficient to meet the challenges posed by the questionable foreign payments problem. The work of the SEC to date indicates that many corporations have adopted or modified corporate codes or ethics to deal with foreign

payments and that attention is being given to auditing against the standards laid down in these codes.

The Internal Revenue Service has broadened and intensified investigation of practices by some U.S. corporations regarding payments made abroad, and has developed questions to be addressed to the 1200 largest corporations. The IRS's auditing and intelligence divisions have arranged to review all SEC reports and issues having tax significance. Special audit teams will follow-up the information disclosed to the SEC. Such follow-up will include the interviewing of top corporate officers and employees, examination of corporate officers; individual tax returns at the same time the corporate return is being audited; requiring top corporate officials to furnish the IRS with affidavits regarding their knowledge of any corporate "slush funds;" the examination of books and records of American companies abroad including an examination of international transactions of multinational corporations; and the strengthening of our cooperative efforts with other nations which whom we have tax treaties.

The State and Justice Departments have developed procedures to facilitate the exchange of information with foreign governments regarding allegations of improper payments. The Department of Justice is entering cooperative agreements with responsible law enforcement agencies of other interested governments. By such arrangements, information is exchanged in accordance with procedures established to protect the integrity of criminal investigations and the rights of individuals affected. Foreign law enforcement officials are expected to assure that information secured from U.S. sources is treated on a confidential basis until such time as the law enforcement agency decides to proceed with a criminal prosecution of a particular individual.

In the area of military sales and assistance programs, the Department of State has a policymaking role and the Department of Defense is responsible for implementing the military assistance program and the foreign military sales program. The Department of Defense has issued new regulations to cover sales under the Foreign Military Sales Act which in effect require disclosure to purchasing governments of any agent's fees included in the contract. While reasonable agent's fees may be a legitimate cost since sales agents are sometimes essential in conducting business overseas, these changes in procedures have been developed to discourage the inclusion on exorbitant contingent fees and commissions in foreign military sales.

Fees which the Department of Defense determines are unreasonable or not bona fide and any fee that is unacceptable to the foreign government will not be considered allowable costs under a foreign military sales contract. Moreover, the new Security Assistance Act will give the executive branch new authority to improve reporting on commercial sales of military items and to control payments made in connection with military sales even where not included in the contract price.

U.S. International Activities: The actions I have just outlined should make it clear that the United States is prepared to deal with bribery as a national matter and on a unilateral basis. It is equally

clear, however, that the bribery problem is international in scope, that it afflicts many nations, and that it demands a multilateral solution. Concurrent with our domestic actions, we have therefore sought to develop an international approach to this problem, principally through the instrumentalities of the Organization for Economic Cooperation and Development (OECD) and the United Nations.

With that objective in view, the U.S. has introduced language in the OECD draft of multinational corporation guidelines to deal on a multilateral basis with unethical business practices. The provision in question recommends that: "enterprises should, within the framework of the laws and regulations of their host country, (1) not render, or not be solicited or expected to render, any bribe or other improper consideration, directly or indirectly, for the benefit of any public servant; (2) not make contributions to candidates for public office or to political parties or other political organizations, except as authorized by law; and (3) abstain from any improper involvement in local political activities." According to present timetables, the OECD guidelines for multinational enterprises should be ready for adoption by governments this summer.

A necessary companion piece to the OECD guidelines applicable to business firms is an agreement among governments to prohibit international bribery. In pursuing this approach, the U.C. delegation to the March 1-12 Lima, Peru meetings of the U.N. Commission on Transnational Enterprises outlined the principles of a multilateral agreement among governments to ban bribery and other forms of illicit payments.

The principles underlying such an agreement would include the following:

It would apply to international trade and investment transactions with governments, i.e., government procurement and such other governmental actions affecting international trade and investment as may be agreed;

Host-importing—governments would agree: (1) To establish clear guidelines covering the use of agents in connection with Government procurement and other covered transaction; and (2) To establish appropriate criminal penalties for bribery and extortion by enterprises and officials;

Governments would cooperate and exchange information to help eradicate such corrupt practices; and

Uniform provisions would be agreed for disclosure by enterprises, agents, and officials of political contributions, gifts, and payments made in connection with covered transactions.

Should this proposal fail to gain acceptance and support in the U.N., I would want to consider whether and how, as an alternative we might seek, either bilaterally or multilaterally, to provide the basis for agreement among a more limited group of nations which share our concern with the bribery question.

Finally, in the international arena, the Senate, in adopting Senate Resolution 265 by a vote of 93-0 last November 12, recognized the necessity for dealing with the question of bribery on a multilateral basis. In response to that resolution, the U.S. Special Trade Representative proposed "a code of conduct to eliminate unethical prac-

tices that threaten distortion of trade; as part of the GATT multilateral trade negotiations—MTN—now going forward in Geneva. The United States intends to pursue this question within the MTN framework.

I recognize, as does the chairman of this committee, that international organizations are not noted for their speed in moving ahead with international agreements, and I must admit to a certain amount of concern on that score. But I am reminded that where a mutuality of interests exists, nations can and do make lasting and useful multilateral arrangements for dealing with issues and problems. Certainly the world is better off for having had the informal arrangements of the GATT for the past quarter century than had traditional trade practices prevailed.

This lengthy review of actions we have taken so far should make it clear that the Department of Commerce favors the thrust of the disclosure provisions contained in S. 3133. In taking this position, however, we must be mindful of the complexities of the issues with which such disclosure provisions are intended to deal.

Even a parrot must occasionally be right. Proposed legislation must carefully balance several key variables, among them the types of data and information to be collected, the use to which these data will be put, the added reporting burdens on the business sector, the problems of insuring confidentiality necessary for competitive and proprietary reasons, the need to protect individuals whose reputations and earnings might be adversely affected by unsubstantiated bribery allegations, and the relationship of any new reporting requirements to those which are or will be in effect for transactions covered by the military sales programs.

There are similar questions that must be answered with respect to the penalties provided in the bill. If criminal sanctions were to be prescribed, could they be enforced without authority to carry out investigations abroad? Would such authority, in turn, raise questions of extraterritorial application of U.S. statutes; and what would be the issues concerning possible infringements on national sovereignty associated with such authority?

What I am saying, Mr. Chairman, is that in the bribery area we are moving into uncharted national and international waters in which legislative remedies may be capable of achieving only part of the objectives we seek. As part of the process of considering specific legislative remedies, we should be certain that we have a clear understanding of the scope and magnitude of the problems to be addressed, a thorough assessment of the costs and benefits of the legislative remedies being advanced, and a reasonably precise plan for moving from where we are now to where we wish to be.

Let me end my statement essentially where I began. If I sense the mood of our country correctly, as a people and a Nation, we find bribery abhorrent, and we intend to do something about it.

The Government has already made a good start, both domestically and within the international community, toward dealing with the major elements of the bribery problem. The Presidential Cabinet-level task force will most certainly confront its policy aspects. The responsible regulatory and executive branch agencies have already

begun to expose the size and scope of the problem and to deal with its domestic dimensions. We may find that new authority is needed for that purpose, but we are not yet at that stage. We must also insure that this problem is dealt with on an international plane, and we are moving in that direction as well.

As regards the new Cabinet-level policy task force, as Chairman I can assure you, Mr. Chairman, that you and the members of this committee will be kept full abreast of executive branch work and progress in dealing with all aspects of the problem of improper payments.

The CHAIRMAN. Thank you very much.

[Full statement follows:]

STATEMENT OF ELLIOT L. RICHARDSON, SECRETARY OF COMMERCE

I appreciate this opportunity to present, along with the Secretary of the Treasury and the Deputy Secretary of State Designate, this Administration's views of the issue of improper payments by American firms abroad and to describe in some detail our current and prospective efforts to bring such practices to an end. In this connection, I would like to commend the Chairman and this Committee for the timeliness of these important hearings.

Let me begin by stating without equivocation that this Administration deplores and condemns bribery at any time and in any place. Whatever the promise of immediate returns, the longer-term costs—to the firm, to our society and to this nation—are immeasurably greater. Bribery corrodes the confidence that must exist between buyer and seller if domestic and international commerce is to flourish. It threatens to poison relationships between the United States and nations with which we have long had mutually-beneficial political and commercial ties. Unchecked, it could seriously abrade the moral fabric of our society and undermine the political and economic institutions that have sustained us as a nation during our two-hundred year history. Bribery is, therefore, a serious national problem, and we intend to deal with it in seriously commensurate measure.

Investigatory work by the Congress, by the Securities and Exchange Commission, and by other Executive Branch Agencies has already brought into relief the scope and significance of past bribery practices. The full dimensions of this problem will become more evident as further data are developed by the SEC and other agencies of government.

In conjunction with and supported by the investigatory work now underway, this Administration has undertaken a number of specific initiatives designed to deal with bribery on both a domestic and a multilateral plane. I would be pleased to summarize some of these initiatives for this Committee.

EXECUTIVE BRANCH AND REGULATORY AGENCY ACTIONS

The most recent of these actions was announced by the President just one week ago, on March 31. It is the establishment of a Cabinet-level Task Force to examine the policy aspects arising from disclosures of questionable payments to foreign agents and officials by U.S. companies in connection with their overseas business operations. The members of the Task Force, in addition to myself as Chairman, include the Secretaries of State, Treasury and Defense; the Attorney General; the Special Representative for Trade Negotiations; the Director of the Office of Management and Budget; the Assistant to the President for Economic Affairs; the Assistant to the President for National Security Affairs; and the Executive Director of the Council on International Economic Policy. The President has directed that the SEC be invited to participate in the efforts of the Task Force.

The Task Force has been directed by the President to conduct a sweeping policy review of the subject of improper or questionable corporate payments and to formulate a coherent national policy to deal with the problems posed by such payments. The Task Force has been directed to obtain the views of the broadest base of interest groups and individuals to aid in formulation of a clear and effective policy. Such a policy should enable American business to continue to play a vital and respected role in international markets.

The Task Force will hold its first meeting on Monday. As a first step, the Task Force will make a thorough assessment of the adequacy of present policies, programs, legislation and proposed legislation dealing with this subject.

The work of the Task Force will be both informed and complemented by ongoing efforts of the SEC and other federal agencies which have already begun investigations to expose improper corporate payments and to deal with offenders. I would like to outline, briefly, the work of these agencies.

As you are aware, the SEC has undertaken a broad program of so-called "voluntary" disclosure of questionable foreign payments. In addition, the Commission has undertaken certain enforcement actions such as that involving Lockheed. To date, the Commission has examined and is examining the activities of more than 85 corporations pursuant to its enforcement and disclosure authorities. Through this program of disclosure, the SEC will generate an empirical basis which will both enlighten the work of the Task Force and will aid the SEC in reaching a judgment as to whether its current authorities to compel disclosure are sufficient to meet the challenges posed by the questionable foreign payments problem. The work of the SEC to date indicates that many corporations have adopted or modified corporate codes of ethics to deal with foreign payments and that attention is being given to auditing against the standards laid down in these codes.

The Internal Revenue Service has broadened and intensified investigation of practices by some U.S. corporations regarding payments made abroad. The IRS's auditing and intelligence divisions have arranged to review all SEC reports and issues having tax significance. Special audit teams will follow-up the information disclosed to the SEC. Such follow-up will include the interviewing of top corporate officers and employees; examination of corporate officers' individual tax returns at the same time the corporate return is being audited; requiring top corporate officials to furnish the IRS with affidavits regarding their knowledge of any corporate "slush funds;" the examination of books and records of American companies abroad including an examination of international transactions of multinational corporations; and the strengthening of our cooperative efforts with other nations with whom we have tax treaties.

The State and Justice Departments have developed procedures to facilitate the exchange of information with foreign governments regarding allegations of improper payments. The Department of Justice is entering cooperative agreements with responsible law enforcement agencies of other interested governments. By such arrangements, information is exchanged in accordance with procedures established to protect the integrity of criminal investigations and the rights of individuals affected. Foreign law enforcement officials are expected to assure that information secured from U.S. sources is treated on a confidential basis until such time as the law enforcement agency decides to proceed with a criminal prosecution of a particular individual.

In the area of military sales and assistance programs, the Department of State has a policymaking role and the Department of Defense is responsible for implementing the Military Assistance Program and the Foreign Military Sales Program. The Department of Defense has issued new regulations to cover sales under the Foreign Military Sales Act which in effect require disclosure to purchasing governments of any agent's fees included in the contract. While reasonable agent's fees may be a legitimate cost since sales agents are sometimes essential in conducting business overseas, these changes in procedures have been developed to discourage the inclusion of exorbitant contingent fees and commissions in foreign military sales.

Fees which the Department of Defense determines are unreasonable or not bona fide and any fee that is unacceptable to the foreign government will not be considered allowable costs under a foreign military sales contract. Moreover, the new Security Assistance Act will give the Executive Branch new authority to improve reporting on commercial sales of military items and to control payments made in connection with military sales even where not included in the contract price.

U.S. INTERNATIONAL ACTIVITIES

The actions I have just outlined should make it clear that the United States is prepared to deal with bribery as a national matter and on a unilateral basis. It is equally clear, however, that the bribery problem is international in

scope, that it afflicts many nations, and that it demands a multilateral solution. Concurrent with our domestic actions, we have therefore sought to develop an international approach to this problem, principally through the instrumentalities of the Organization for Economic Cooperation and Development (OECD) and the United Nations.

With that objective in view, the U.S. has introduced language in the OECD draft of multinational corporation guidelines to deal on a multilateral basis with unethical business practices. The provision in question recommends that "enterprises should, within the framework of the laws and regulations of their host country, (1) not render, or not be solicited or expected to render, any bribe or other improper consideration, directly or indirectly, for the benefit of any public servant; (2) not make contributions to candidates for public office or to political parties or other political organizations, except as authorized by law; and (3) abstain from any improper involvement in local political activities." According to present timetables, the OECD guidelines for multinational enterprises should be ready for adoption by governments this summer.

A necessary companion piece to the OECD guidelines applicable to business firms is an agreement among governments to prohibit international bribery. In pursuing this approach, the U.S. Delegation to the March 1-12 Lima, Peru meetings of the U.N. Commission on Transnational Enterprises outlined the principles of a multilateral agreement among governments to ban bribery and other forms of illicit payments.

The principles underlying such an agreement would include the following: It would apply to international trade and investment transactions with governments, i.e., government procurement and such other governmental actions affecting international trade and investment as may be agreed;

Host (importing) governments would agree: (1) to establish clear guidelines covering the use of agents in connection with government procurement and other covered transactions, and (2) to establish appropriate criminal penalties for bribery and extortion by enterprises and officials;

Governments would cooperate and exchange information to help eradicate such corrupt practices;

Uniform provisions would be agreed for disclosure by enterprises, agents, and officials of political contributions, gifts, and payments made in connection with covered transactions.

Should this proposal fail to gain acceptance and support in the U.N., I would want to consider whether and how, as an alternative, we might seek, either bilaterally or multilaterally, to provide the basis for agreement among a more limited group of nations which share our concern with the bribery question.

Finally, in the international arena, the Senate, in adopting Senate Resolution 265 by a vote of 93-0 last November 12, recognized the necessity for dealing with the question of bribery on a multilateral basis. In response to that resolution, the United States Special Trade Representative proposed "a code of conduct to eliminate unethical practices that threaten distortion of trade" as part of the GATT multilateral trade negotiations (MTN) now going forward in Geneva. The United States intends to pursue this question within the MTN framework.

I recognize, as does the Chairman of this Committee, that international organizations are not noted for their speed in moving ahead with international agreements, and I must admit to a certain amount of concern on that score. But I am reminded that where a mutuality of interests exists, nations can and do make lasting and useful multilateral arrangements for dealing with issues and problems. Certainly the world is better off for having had the informal arrangements of the GATT for the past quarter century than had traditional trade practices prevailed.

S. 3133

This lengthy review of actions we have taken so far should make it clear that the Department of Commerce favors the thrust of the disclosure provisions contained in S. 3133. In taking this position, however, we must be mindful of the complexities of the issues with which such disclosure provisions are intended to deal. Proposed legislation must carefully balance several key variables, among them the types of data and information to be collected, the use to which these data will be put, the added reporting burdens on the business

sector, the problems of ensuring confidentiality necessary for competitive and proprietary reasons, the need to protect individuals whose reputations and earnings might be adversely affected by unsubstantiated bribery allegations, and the relationship of any new reporting requirements to those which are or will be in effect for transactions covered by the military sales programs.

There are similar questions that must be answered with respect to the penalties provided in the bill. If criminal sanctions were to be prescribed, could they be enforced without authority to carry out investigations abroad? Would such authority, in turn, raise questions of extraterritorial application of U.S. statutes; and what would be the issues concerning possible infringements on national sovereignty associated with such authority?

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The Government has already made a good start, both domestically and within the international community, toward dealing with the major elements of the bribery problem. The Presidential Cabinet-level Task Force will most certainly confront its policy aspects. The responsible Regulatory and Executive Branch agencies have already begun to expose the size and scope of the problem and to deal with its domestic dimensions. We may find that new authority is needed for that purpose, but we are not yet at that stage. We must also ensure that this problem is dealt with on an international plane, and we are moving in that direction as well.

As regards the new Cabinet-level Policy Task Force, as Chairman I can assure you, Mr. Chairman, that you and the members of this Committee will be kept fully abreast of Executive Branch work and progress in dealing with all aspects of the problem of improper payments.

The CHAIRMAN. Thank you, Mr. Secretary.

Secretary Simon, I might say if you abbreviate your statement it will be printed in full in the record.

STATEMENT OF WILLIAM E. SIMON, SECRETARY OF THE TREASURY

Secretary SIMON. Yes, sir; I most certainly will, Mr. Chairman.

The Treasury Department actually hired a second parrot, Mr. Chairman and he says, "I agree, let's study it."

I am delighted to be here today to deal with this very complex problem, and I share everyone's concern about the problem of bribery and other illicit payments.

Both Government and business should unite in unequivocally condemning illegal or unethical activities by American business, whether at home or abroad. Corruption, whether it involves bribes to secure overseas government contracts, illegal contributions to political candidates here at home, or any other form of graft, is abhorrent on ethical grounds and undermines the functioning of a competitive free enterprise system. It results in higher prices and lower quality of goods and services to the consumer. Bribes and kickbacks are based on the power of an individual to allocate business in an arbitrary manner and, thereby, to interfere with the normal competitive reasons for making trade and investment decisions. No only does this distort trade and investment flows but it

also erodes the general reputation of the American business community, may adversely affect our relations with foreign governments and can contribute to a general deterioration in the climate for fair and open international trade and investment. Bribery is, therefore, not only morally wrong but is destructive of the basic economic principles on which our country was built. Accordingly, the administration has attached the highest priority to finding solutions to the problem of corrupt practices in international economic affairs and has initiated a number of efforts toward this end.

I'd just like to very briefly review these initiatives underway within the Executive Branch. Let me outline for you first some of the steps which the Internal Revenue Service can, and is, taking in this area as part of its continuing program to combat corporate tax evasion and avoidance. At my direction, the Internal Revenue Service has intensified its investigations of tax evasion and avoidance by U.S. corporations through improper deductions of bribes, kickbacks, and similar illicit payments made abroad and in the United States.

As part of the Service's efforts to uncover corporate tax evasion and avoidance wherever it exists, it has issued instructions to its revenue agents to:

- Make it mandatory to interview selected corporate officers and key employees regarding the use of slush funds, and to secure written affidavits in appropriate situations;

- Refer to the intelligence division any false statements made in connection with these affidavits for appropriate criminal action;

- Examine corporate officers' individual tax returns at the same time as the corporation return is being audited;

- Use summons to gain access to financial information;

- Make use of the IRS Office of International Operations to examine books and records of U.S. companies abroad;

- Use coordinated and simultaneous industrywide audits of the principal concerns in a given industry furnishing similar services or products;

- Examine international transactions of multinational corporations, and;

- Strengthen our cooperative efforts with other nations with whom we have tax treaties.

The Internal Revenue Service is currently receiving tax-related information from the Securities and Exchange Commission. This information is being disseminated to IRS field offices where the particular corporations are being, or will be, examined by audit teams including some of its best revenue agents including international and computer specialists.

We do not keep statistics on the additional tax collected specifically from investigations of illegal payments by major corporations or for any other specific issue. Audits of such corporations usually involve a number of issues making it a difficult task to isolate the additional tax resulting from this one item. However, as a result of these intensified efforts by the IRS and other agencies to uncover tax evasion and avoidance schemes, several major corporations have disclosed that they have been making illegal payments.

In addition, the intelligence division is an active participant in the IRS effort in dealing with this erosion in corporate and personal integrity. Criminal prosecutions will be vigorously pursued when prosecution standards are met. The intelligence division is currently investigating 34 major corporations to determine whether illegal payments were fraudulently claimed as tax deductions or credits.

The Internal Revenue Service's efforts in this area cannot be viewed as a panacea in the area of improper or illegal payments, however. The Service's responsibility is to determine whether taxpayers' treatment of such payments was proper or resulted in a violation of Federal tax statutes.

I went on to describe the SEC's actions in this area.

Action has also been taken by the State and Defense Departments in connection with the administration of the foreign military sales program. They are, for example, making an effort to ensure that foreign governments are fully informed of all agents' fees that are included in the price of defense goods and services sold to them under the program. In addition, if the foreign government advises that a fee is unacceptable or if the Defense Department determines that a fee is unreasonable or not bona fide, the DOD will not allow the fee under the FMS contract.

Complementing these domestic actions, we have also taken a variety of initiatives in international forums aimed at cooperative action among governments to deal with this problem.

In September of last year at the annual meeting of the International Monetary Fund, the United States proposed to other industrial countries the idea of cooperative international action to curb illicit payments. They all responded positively. Two months later, a provision on ethical conduct was included in the draft Guidelines for Multinational Enterprises under negotiation in the Organization for Economic Cooperation and Development.

Another initiative was taken by the United States early last month in the United Nations Commission on Transnational Corporations where we proposed a comprehensive international agreement to curb corrupt practices. In presenting this proposal, the United States outlined a number of principles on which we feel the agreement should be based. These include the following:

It would apply to international trade and investment transactions with governments; it would apply equally to those who offer or make improper payments and to those who request or accept them; importing governments would agree to (i) establish clear guidelines concerning the use of agents in connection with government procurement and other covered transactions and (ii) establish appropriate criminal penalties for defined corrupt practices by enterprises and officials in their territory; all governments would cooperate and exchange information to help eradicate corrupt practices; and uniform provisions would be agreed for disclosure by enterprises, agents, and officials of political contributions, gifts, and payments made in connection with covered transactions.

Although the members of the Commission were not in a position to give a definitive reaction to our proposal, we were encouraged by their initial responses. We were also pleased by the action of the

Commission, which referred our proposal to its parent body, the Economic and Social Council, EcOSOCo, with a recommendation that the Council take the issue up as a matter of highest priority. We anticipate that the EcOSOCo will form a group of experts from member governments to draft the agreement and hope to see the results of their work within a short time.

In November of last year the Senate passed Senate Resolution 265 which called for the U.S. Government to seek an international code of conduct covering bribery kickbacks, and other similar activities as part of the multilateral trade negotiations currently being conducted under the General Agreement on Tariffs and Trade and in other appropriate international forums. Subsequently, the United States urged our trading partners that an international code of conduct on business practices be made a major goal of the negotiations.

Lastly, the State Department, the Justice Department, and the SEC have developed procedures to facilitate the exchange of information on questionable payments with interested foreign governments through cooperative arrangements with their law enforcement officers.

I believe that these activities represent a significant response to the problem of corrupt practices in international economic affairs. I anticipate that they will be strengthened and intensified under the coordination of the new Cabinet-level Task Force on Questionable Corporate Payments Abroad, which the President established last week. The task force was charged by the President, in part, with ensuring that existing Government actions to deal with corrupt practices abroad will be fully coordinated. It also has a mandate to conduct an indepth review of this matter and to recommend any new Federal Government actions as it may feel are necessary.

The task force is chaired by Secretary Richardson, and I am privileged to be a member. In my judgment there is no person more eminently qualified to assume this responsibility than Elliot Richardson. I intend to give him my full support in our search for effective and practical solutions to this problem, and the committee will look forward to working closely with the Congress in this effort. As our work progresses, we will certainly do our best to promote an interchange of ideas with individuals and groups in the private business sector and other sources as well.

I think it is important to emphasize, however, that the search for solutions to this problem cannot be solely the concern of governments. It is critical for the private sector to come to grips with the problem. This obligation extends not only to those firms that have engaged in corrupt practices, but also to the business community, as a whole. The sad fact is that the unethical practices of a small percentage of our business community are coloring our views of almost the entire private sector. The vast majority of businessmen are honest. What is required today, however, is more leadership from those businessmen who have deep convictions, will stand up for them, and will go to the public to state the case for ethics in busi-

ness, instead of keeping quiet while the free enterprise system comes under increasingly heavier attack.

As I indicated at the outset of my statement, these practices, aside from being morally wrong, cause serious distortions in the operation of the free market and have negative effects on the reputation of business in general. All firms, even those who have not indulged in illegal practices, are adversely affected as a result. All of us who want to preserve our free enterprise system find such conduct abhorrent and we must join in an international effort to find ways to deal with the problem.

In this connection, I was gratified to learn last month that the International Chamber of Commerce had formed a Commission on Unethical Practices—a blue ribbon panel of business leaders from many nations—to develop guidelines for promoting ethical and proper conduct in international commercial affairs. In addition, I understand that a number of individual firms have created special task forces to establish procedures to prevent unethical practices by their employees.

These actions indicate that the private sector does see the need to deal squarely and effectively with this problem. I know that such efforts will be a constructive adjunct to initiatives being taken by the United States and other countries and look forward to seeing their results.

In the same vein, I welcome your initiative in introducing S. 3133 and appreciate the opportunity to discuss it with you.

While I am strongly attracted by the general principle of greater disclosure, I do have some reservations as to the approach taken in the bill to achieve it. More specifically, I think we must also look at this bill in relation to the initiatives the United States now has underway in international organizations. Our chief concern here is that a unilateral effort like that involved in S. 3133 might undercut the vital principle that cooperative action by the whole international community of nations is needed in order to deal effectively with this problem. It is a truism that it takes two to make a bribe. We must discourage those who offer bribes, to be sure, but any effective approach must also strive to deter those who solicit and accept illicit payments as well.

The bill would require that a broad range of payments made abroad be disclosed to the public, even though the vast majority of these payments would likely be legitimate payments for agents and representatives engaged to assist in the sale of goods and services to governments and government corporations. In this respect, the disclosure requirements in the bill may go too far in that (1) a great amount of paperwork associated with reporting would be required by both the private sector and the SEC; and (2) a number of what are ordinary, legitimate, and confidential matters relative to commercial relationships would be opened up for examination by competitors, customers, and governments.

The bill would place a heavy responsibility on the Securities and Exchange Commission for enforcing both its disclosure requirements and its criminal sanctions, both of which would take the SEC into areas beyond its basic mandate of protection of investors. Whether

this should be done requires further study and, of course, the views of the SEC and the Department of Justice should be taken into account. In this regard I might note that the disclosure and criminal sanctions would be applicable only to corporations which have issued registered securities and thus come within the ambit of the Securities Exchange Act. I question whether any new disclosure requirements and criminal sanctions should be limited only to corporations with registered securities, as a bribe offered by a privately held corporation or a partnership is no different from a bribe offered by a publicly held corporation.

The upshot of my remarks is that while I support the intent of the bill before you today, I have serious reservations as to whether it represents the optimal approach to dealing with the problem of bribery and corrupt practices in international commerce. Although domestic legislation may be needed, the problems in this area are complex and should be carefully considered before we take action. The Task Force on Questionable Corporate Payments Abroad was established specifically to give these problems and possible solutions a hard and searching analysis and evaluation before we commit ourselves to one course or another. I suggest that you give us a chance to look into these matters further before taking action on this legislation. In this process we will exclude no reasonable possibility, but we will of necessity take into account the considerations I have just outlined.

Mr. Chairman, I also have a few technical points to make with respect to specific aspects of this bill. Our staffs can get together later to explore them, so I will not spell them out in detail now. Rather, I would like briefly to mention some of these questions in order to give you an idea of where our principal concerns lie. For example, one section of the bill has the effect of automatically adopting as a part of U.S. criminal law the relevant criminal laws of all foreign nations. Do we want this? One consequence of retaining this provision might be to create a situation where a single act was punishable under the laws of two countries. Finally, enforcement of the provisions of the bill could well result in the extraterritorial application of U.S. law and might require the U.S. Government to investigate the conduct of foreign government officials, resulting in potentially serious political problems with other countries.

The Lockheed situation—before concluding my statement, Mr. Chairman, I would like to take a moment to bring this committee up to date on the Lockheed situation. When I appeared before you in my capacity as Chairman of the Emergency Loan Guarantee Board (ELGB) last August and again on February 19, I indicated that the ELGB strongly condemned the payment of any type of bribe or kickback for the same basic reasons I have described today.

Since last summer, when it became aware that Lockheed had been involved in these practices, the ELGB has acted on a number of fronts to stop these activities. Initially, the ELGB insisted, as a condition to the continuance of the guarantee program, that Lockheed cease making any further questionable payments, and the ELGB worked with Lockheed to develop a definitive corporate

policy to control the company's relationship with foreign consultants. That policy expressly prohibits any foreign commissions or other payments that are not legitimate business expenses which would be deductible on the Company's U.S. tax returns. It also prohibits the maintenance of any slush fund or other fund outside normal accounting channels. The details of the plan were adopted by Lockheed's board of directors in a resolution that provides that any Lockheed employee who violates the policy will be dismissed immediately. During the fall of last year, Lockheed, under ELGB supervision, took steps to assure full implementation of its new policy. I might add that, at your request, copies of Lockheed's policy and the company's plans to implement it were furnished to you last month.

The ELGB has been closely monitoring Lockheed's activity under its new policy and will continue to do so. To complement that monitoring effort, the ELGB intends, in connection with Lockheed's refinancing plan, to insist on an amendment to its agreement with Lockheed and the lending banks that will expressly define the making of future improper payments as an event of default. These amendments also would establish a formal system of reporting to the ELGB to assure that no wrongful payments are made in the future. In addition, the ELGB will require a special accounting of past payments from a committee of outside Lockheed directors that has been established.

On February 19, I stated that we were in the process of negotiating with Lockheed for the names of the countries in which payments to government officials were known or suspected to have been made. We are close to completing these negotiations and in addition have obtained a substantial amount of detailed information relating to existing and potential foreign sales. Lockheed's revised December 1975 financial forecast will be completed within the next 2 weeks, at which time the ELGB staff will be in a position to finish its assessment of the impact that disclosure of foreign bribes may have on Lockheed's operations and hence the repayment of guaranteed borrowings. I would like to add that based on the ELGB's assessment of the company's latest forecast, thus far, I still believe there is a reasonable prospect that Lockheed will be able to return to the private capital markets by the time the Government guarantee program ends.

Lastly, I would note that, following the February 19 hearings, the GAO made a request of Lockheed and of the ELGB for further access to Lockheed records. Lockheed has recently agreed to provide the GAO access to its records concerning foreign agents and consultants in exchange for the GAO's promise that the information obtained would be kept confidential. I am informed that the GAO sent a team out to Lockheed's headquarters last week to begin their review of those records. The Treasury economic analysis group has begun an update of its assessment of the impact of a Lockheed failure. Although this analysis has been delayed pending the availability of Lockheed's 1975 yearend audited financial statements, Lockheed has indicated this information will be available in the next few days, and our analysis can then be completed shortly.

In sum, Mr. Chairman, I share your concern about the problem of bribery and corruption, at home or abroad. Although, I do have significant reservations as to the general approach embodied in S. 3133 as well as some of its specific provisions, I agree with the objectives you are seeking. There is no room in our society for such practices. What is needed is an united effort by business and government. The fact of the matter is that no free society or free economy can long survive without an ethical base.

Since the President's Task Force on Questionable Corporate Payments Abroad has just been established, I believe we should be given some time to analyze this important area more deeply. I assure you that we are committed to finding the proper solutions. Let us work together to formulate recommendations for action.

The CHAIRMAN. Thank you very much.

[Full statement follows:]

STATEMENT OF WILLIAM E. SIMON, SECRETARY OF THE TREASURY

Mr. Chairman and Members of the Committee: Thank you for giving me the opportunity to discuss with you the subject of questionable foreign payments abroad by U.S. corporations. In my testimony today, I will touch on some broad policy issues involved in bribery and other questionable payments by (1) reviewing the current status of the Administration's initiatives in this area and (2) outlining my views on S.3133, which you are considering.

Mr. Chairman, I welcome your contribution to the efforts to deal with this very difficult problem as I share your concerns about the problem of bribery and other illicit payments outside the United States. Both government and business should unite in unequivocally condemning illegal or unethical activities by American business, whether at home or abroad. Corruption, whether it involves bribes to secure overseas government contracts, illegal contributions to political candidates here at home, or any other form of graft, is abhorrent on ethical grounds and undermines the functioning of a competitive free enterprise system. It results in higher prices and lower quality of goods and services to the consumer. Bribes and kickbacks are based on the power of an individual to allocate business in an arbitrary manner and, thereby, to interfere with the normal competitive reasons for making trade and investment decisions. Not only does this distort trade and investment flows but it also erodes the general reputation of the American business community, may adversely affect our relations with foreign governments and can contribute to a general deterioration in the climate for fair and open international trade and investment. Bribery is, therefore, not only morally wrong but is destructive of the basic economic principles on which our country was built. Accordingly, the Administration has attached the highest priority to finding solutions to the problem of corrupt practices in international economic affairs and has initiated a number of efforts toward this end.

DOMESTIC ACTIONS TAKEN

I think that it would be useful for me to review briefly with you the initiatives currently under way within the Executive Branch.

Internal Revenue Service.—Let me outline for you first some of the steps which the Internal Revenue Service can, and is, taking in this area as part of its continuing program to combat corporate tax evasion and avoidance. At my direction, the Internal Revenue Service has intensified its investigations of tax evasion and avoidance by U.S. corporations through improper deductions of bribes, kickbacks, and similar illicit payments made abroad and in the United States.

As part of the Service's efforts to uncover corporate tax evasion and avoidance wherever it exists, it has issued instructions to its Revenue Agents to:

Make it mandatory to interview selected corporate officers and key employees regarding the use of slush funds, and to secure written affidavits in appropriate situations;

Refer to the Intelligence Division any false statements made in connection with these affidavits for appropriate criminal action;

Examine corporate officers' individual tax returns at the same time as the corporation return is being audited;

Use summons to gain access to financial information;

Make use of the IRS Office of International Operations to examine books and records of U.S. companies abroad;

Use coordinated and simultaneous industry-wide audits of the principal concerns in a given industry furnishing similar services or products;

Examine international transactions of multinational corporations;

Strengthen our cooperative efforts with other nations with whom we have tax treaties.

The Internal Revenue Service is currently receiving tax-related information from the Securities and Exchange Commission. This information is being disseminated to IRS field offices where the particular corporations are being, or will be, examined by audit teams including some of its best revenue agents including international and computer specialists.

We do not keep statistics on the additional tax collected specifically from investigations of illegal payments by major corporations or for any other specific issue. Audits of such corporations usually involve a number of issues making it a difficult task to isolate the additional tax resulting from this one item. However, as a result of these intensified efforts by the IRS and other agencies to uncover tax evasion and avoidance schemes, several major corporations have disclosed that they have been making illegal payments.

In addition, the Intelligence Division is an active participant in the IRS effort in dealing with this erosion in corporate and personal integrity. Criminal prosecutions will be vigorously pursued when prosecution standards are met. The Intelligence Division is currently investigating 34 major corporations to determine whether illegal payments were fraudulently claimed as tax deductions or credits.

The Internal Revenue Service's efforts in this area cannot be viewed as a panacea in the area of improper or illegal payments, however. The Service's responsibility is to determine whether taxpayers' treatment of such payments was proper or resulted in a violation of Federal tax statutes.

Securities and Exchange Commission.—As you know, the Federal securities laws which the SEC administers are primarily designed to protect investors by assuring full and fair disclosure of material facts regarding the nature of business operations of companies which have issued registered securities. The SEC is to be commended for its activities in obtaining disclosure of material facts regarding the conduct of publicly-held corporations on the foreign payments question.

To date, the Commission has brought court actions against some of this nation's largest publicly-held corporations. In each, the SEC has alleged that the defendants violated the reporting provisions of the Securities Exchange Act of 1934 by filing periodic reports with the Commission which omitted or misstated material information.

In those cases where settlements have been reached, the judgments enjoin the defendants from further violations of the Federal securities laws, and are enforceable by criminal contempt proceedings in the event of further violations. In addition, certain ancillary relief has been obtained where typically the subject company has been required to establish a special committee generally comprised of independent members of its board of directors, in order to conduct a full investigation of the irregularities alleged in the Commission's complaint. Upon the conclusion of an investigation, such special committees submit a complete report of the investigation to the board of directors, which, of course, has the ultimate responsibility for reviewing and implementing any recommendations contained in the report.

Lastly, the SEC has also instituted a voluntary disclosure program where approximately 25 publicly-held corporations have voluntarily come to the Commission's staff to discuss the existence and disclosure of improper and illegal practices in the past five years. A prerequisite for entering this voluntary program is that the board of directors declare that the company shall end all such practices and authorize a complete investigation of all related matters covering this five year period.

Departments of Defense and State.—Action has also been taken by the State and Defense Departments in connection with the administration of the Foreign Military Sales Program. They are, for example, making an effort to ensure that foreign governments are fully informed of all agents' fees that are included in the price of defense goods and services sold to them under the program. In addition, if the foreign government advises that a fee is unacceptable or if the Defense Department determines that a fee is unreasonable or not bona fide, the DOD will not allow the fee under the FMS contract.

INTERNATIONAL INITIATIVES

Complementing these domestic actions, we have also taken a variety of initiatives in international forums aimed at cooperative action among governments to deal with this problem.

OECD.—In September of last year at the annual meeting of the International Monetary Fund, the United States proposed to other industrial countries the idea of cooperative international action to curb illicit payments. They all responded positively. Two months later, a provision on ethical conduct was included in the draft Guidelines for Multinational Enterprises under negotiation in the Organization for Economic Cooperation and Development.

United Nations.—Another initiative was taken by the United States early last month in the United Nations Commission on Transnational Corporations where we proposed a comprehensive international agreement to curb corrupt practices. In presenting this proposal, the United States outlined a number of principles on which we feel the agreement should be based. These include the following:

It would apply to international trade and investment transactions with Governments;

It would apply equally to those who offer or make improper payments and to those who request or accept them;

Importing Governments would agree to (i) establish clear guidelines concerning the use of agents in connection with government procurement and other covered transactions and (ii) establish appropriate criminal penalties for defined corrupt practices by enterprises and officials in their territory;

All Governments would cooperate and exchange information to help eradicate corrupt practices;

Uniform provisions would be agreed for disclosure by enterprises, agents, and officials of political contributions, gifts, and payments made in connection with covered transactions.

Although the members of the Commission were not in a position to give a definitive reaction to our proposal, we were encouraged by their initial responses. We were also pleased by the action of the Commission, which referred our proposal to its parent body, the Economic and Social Council (ECOSOC), with a recommendation that the Council take the issue up as a matter of highest priority. We anticipate that the ECOSOC will form a group of experts from member governments to draft the agreement and hope to see the results of their work within a short time.

GATT.—In November of last year the Senate passed Senate Resolution 265 which called for the U.S. Government to seek an international code of conduct covering bribery, kickbacks, and other similar activities as part of the multilateral trade negotiations currently being conducted under the General Agreement on Tariffs and Trade and in other appropriate international forums. Subsequently, the United States urged our trading partners that an international code of conduct on business practices be made a major goal of the negotiations.

Information Exchange.—Lastly, the State Department, the Justice Department and the SEC have developed procedures to facilitate the exchange of information on questionable payments with interested foreign governments through cooperative arrangements with their law enforcement officers.

PRESIDENT'S TASK FORCE

I believe that these activities represent a significant response to the problem of corrupt practices in international economic affairs. I anticipate that they will be strengthened and intensified under the coordination of the new Cabinet-level Task Force on Questionable Corporate Payments Abroad, which the

President established last week. The Task Force was charged by the President, in part, with ensuring that existing government actions to deal with corrupt practices abroad will be fully coordinated. It also has a mandate to conduct an indepth review of this matter and to recommend any new Federal Government actions as it may feel are necessary.

The Task Force is chaired by Secretary Richardson, and I am privileged to be a member. In my judgment there is no person more eminently qualified to assume this responsibility than Elliot Richardson. I intend to give him my full support in our search for effective and practical solutions to this problem, and the Committee will look forward to working closely with the Congress in this effort. As our work progresses, we will certainly do our best to promote an interchange of ideas with individuals and groups in the private business sector and other sources as well.

PRIVATE SECTOR INITIATIVES

I think it is important to emphasize, however, that the search for solutions to this problem cannot be solely the concern of governments. It is critical for the private sector to come to grips with the problem. This obligation extends not only to those firms that have engaged in corrupt practices, but also to the business community, as a whole. The sad fact is that the unethical practices of a small percentage of our business community are coloring our views of almost the entire private sector. The vast majority of businessmen are honest. What is required today, however, is more leadership from those businessmen who have deep convictions, will stand up for them and will go to the public to state the case for ethics in business, instead of keeping quiet while the free enterprise system comes under increasingly heavier attack.

As I indicated at the outset of my statement, these practices, aside from being morally wrong, cause serious distortions in the operation of the free market and have negative effects on the reputation of business in general. All firms, even those who have not indulged in illegal practices, are adversely affected as a result. All of us who want to preserve our free enterprise system find such conduct abhorrent and we must join in an international effort to find ways to deal with the problem.

In this connection, I was gratified to learn last month that the International Chamber of Commerce had formed a Commission on Unethical Practices—a blue-ribbon panel of business leaders from many nations—to develop guidelines for promoting ethical and proper conduct in international commercial affairs. In addition, I understand that a number of individual firms have created a special task forces to establish procedures to prevent unethical practices by their employees.

These actions indicate that the private sector does see the need to deal squarely and effectively with this problem. I know that such efforts will be a constructive adjunct to initiatives being taken by the United States and other countries and look forward to seeing their results.

COMMENTS ON S. 3133

In the same vein, I welcome your initiative in introducing S.3133 and appreciate the opportunity to discuss it with you.

While I am strongly attracted by the general principle of greater disclosure, I do have some reservations as to the approach taken in the bill to achieve it. More specifically, I think we must also look at this bill in relation to the initiatives the United States now has underway in international organizations. Our chief concern here is that a unilateral effort like that involved in S.3133 might undercut the vital principle that cooperative action by the whole international community of nations is needed in order to deal effectively with this problem. It is a truism that it takes two to make a bribe. We must discourage those who offer bribes, to be sure, but any effective approach must also strive to deter those who solicit and accept illicit payments as well.

The bill would require that a broad range of payments made abroad be disclosed to the public, even though the vast majority of these payments would likely be legitimate payments for agents and representatives engaged to assist in the sale of goods and services to governments and government corporations. In this respect, the disclosure requirements in the bill may go too far in that (1) a great amount of paperwork associated with reporting would be required by both the private sector and the SEC and (2) a number of what are ordi-

nary, legitimate and confidential matters relative to commercial relationships would be opened up for examination by competitors, customers and governments.

The bill would place a heavy responsibility on the Securities and Exchange Commission for enforcing both its disclosure requirements and its criminal sanctions, both of which would take the SEC into areas beyond its basic mandate of protection of investors. Whether this should be done requires further study and, of course, the views of the SEC and the Department of Justice should be taken into account. In this regard I might note that the disclosure and criminal sanctions would be applicable only to corporations which have issued registered securities and thus come within the ambit of the Securities Exchange Act. I question whether any new disclosure requirements and criminal sanctions should be limited only to corporations with registered securities, as a bribe offered by a privately-held corporation or a partnership is no different from a bribe offered by a publicly-held corporation.

The upshot of my remarks is that while I support the intent of the bill before you today, I have serious reservations as to whether it represents the optimal approach to dealing with the problem of bribery and corrupt practices in international commerce. Although domestic legislation may be needed, the problems in this area are complex and should be carefully considered before we take action. The Task Force on Questionable Corporate Payments Abroad was established specifically to give these problems and possible solutions a hard and searching analysis and evaluation before we commit ourselves to one course or another. I suggest that you give us a chance to look into these matters further before taking action on this legislation. In this process we will exclude no reasonable possibility, but we will of necessity take into account the considerations I have just outlined.

Mr. Chairman, I also have a few technical points to make with respect to specific aspects of this bill. Our staffs can get together later to explore them, so I will not spell them out in detail now. Rather, I would like briefly to mention some of these questions in order to give you an idea of where our principal concerns lie. For example, one section of the bill has the effect of automatically adopting as a part of U.S. criminal law the relevant criminal laws of all foreign nations. Do we want this? One consequence of retaining this provision might be to create a situation where a single act was punishable under the laws of two countries. Finally, enforcement of the provisions of the bill could well result in the extra-territorial application of U.S. law and might require the U.S. Government to investigate the conduct of foreign government officials, resulting in potentially serious political problems with other countries.

THE LOCKHEED SITUATION

Before concluding my statement, Mr. Chairman, I would like to take a moment to bring this Committee up to date on the Lockheed situation. When I appeared before you in my capacity as Chairman of the Emergency Loan Guarantee Board (ELGB) last August and again on February 19, I indicated that the ELGB strongly condemned the payment of any type of bribe or kick-back for the same basic reasons I have described today.

Since last summer, when it became aware that Lockheed had been involved in these practices, the ELGB has acted on a number of fronts to stop these activities. Initially, the ELGB insisted, as a condition to the continuance of the guarantee program, that Lockheed cease making any further questionable payments, and the ELGB worked with Lockheed to develop a definitive corporate policy to control the Company's relationship with foreign consultants. That policy expressly prohibits any foreign commissions or other payments that are not legitimate business expenses which would be deductible on the Company's U.S. tax returns. It also prohibits the maintenance of any slush fund or other fund outside normal accounting channels. The details of the plan were adopted by Lockheed's Board of Directors in a resolution that provides that any Lockheed employee who violates the policy will be dismissed immediately. During the fall of last year, Lockheed, under ELGB supervision, took steps to assure full implementation of its new policy. I might add that, at your request, copies of Lockheed's policy and the Company's plans to implement it were furnished to you last month.

The ELGB has been closely monitoring Lockheed's activity under its new policy and will continue to do so. To complement that monitoring effort, the

ELGB intends, in connection with Lockheed's refinancing plan, to insist on an amendment to its Agreement with Lockheed and the lending banks that will expressly define the making of future improper payments as an event of default. These amendments also would establish a formal system of reporting to the ELGB to assure that no wrongful payments are made in the future. In addition, the ELGB will require a special accounting of past payments from a committee of outside Lockheed directors that has been established.

On February 19, I stated that we were in the process of negotiating with Lockheed for the names of the countries in which payments to government officials were known or suspected to have been made. We are close to completing these negotiations and in addition have obtained a substantial amount of detailed information relating to existing and potential foreign sales. Lockheed's revised 12/75 Financial Forecast will be completed within the next two weeks, at which time the ELGB staff will be in a position to finish its assessment of the impact that disclosure of foreign bribes may have on Lockheed's operations and hence the repayment of guaranteed borrowings. I would like to add that based on the ELGB's assessment of the company's latest forecast thus far, I still believe there is a reasonable prospect that Lockheed will be able to return to the private capital markets by the time the Government guarantee program ends.

Lastly, I would note that, following the February 19 hearings, the GAO made a request of Lockheed and of the ELGB for further access to Lockheed records. Lockheed has recently agreed to provide the GAO access to its records concerning foreign agents and consultants in exchange for the GAO's promise that the information obtained would be kept confidential. I am informed that the GAO sent a team out to Lockheed's headquarters last week to begin their review of those records. The Treasury Economic Analysis group has begun an update of its assessment of the impact of a Lockheed failure. Although this analysis has been delayed pending the availability of Lockheed's 1975 yearend audited financial statements, Lockheed has indicated this information will be available in the next few days, and our analysis can then be completed shortly.

CONCLUSION

In sum, Mr. Chairman, I share your concern about the problem of bribery and corruption, at home or abroad. Although, I do have significant reservations as to the general approach embodied in S.3133 as well as some of its specific provisions, I agree with the objectives you are seeking. There is no room in our society for such practices. What is needed is a united effort by business and government. The fact of the matter is that no free society or free economy can long survive without an ethical base.

Since the President's Task Force on Questionable Corporate Payments Abroad has just been established, I believe we should be given some time to analyze this important area more deeply. I assure you that we are committed to finding the proper solutions. Let us work together to formulate recommendations for action.

The CHAIRMAN. Thank you very much, Mr. Secretary.

Secretary Robinson, your statement, too, will be printed in full in the record if you choose to abbreviate it.

STATEMENT OF CHARLES W. ROBINSON, UNDER SECRETARY OF STATE FOR ECONOMIC AFFAIRS; ACCOMPANIED BY MONROE LEIGH, LEGAL ADVISER

Mr. ROBINSON. Thank you, Mr. Chairman.

I will very briefly review the basic thrust of my testimony particularly in view of the very effective manner in which Secretary Richardson and Secretary Simon have covered the subjects before me.

First: It is clear to us that we are dealing with a complex problem. It is an ethical problem. It is an economic problem. It is a

political problem, and for us in particular it is a foreign relations problem. Illicit payments abroad and disclosures in the United States of questionable transactions with foreign officials can and have caused serious damage to U.S. foreign relations.

The United States has taken actions as outlined in my statement. I will not review the action that it has taken because that has been fully covered by my predecessors on this platform, but I will refer briefly to the testimony of Deputy Secretary Ingersoll on March 5, who appeared before your Subcommittee on Priorities and Economy in Government, and announced two major new initiatives to deal with the international bribery problem. I am pleased to be able to report to you that we have achieved progress on both our proposal for negotiation of an international agreement in the U.N. and in the exchange of information with foreign governments on the Lockheed case.

On March 5, the U.S. delegation to the United Nations Commission on Transnational Corporations, then meeting in Lima, proposed a multilateral agreement to prevent and to punish illicit payments to foreign officials made in connection with government procurement and other governmental actions affecting international trade and investment. This proposal was based on the recognition that an international problem cannot be solved without international action.

Let me just add that we are also encouraged by the response, encouraged to feel that progress has been made and we will ultimately reach agreement on an international code of conduct with regard to bribery. We will be consulting with all of the interested governments on a bilateral basis in anticipation of the next session of the Economic Associate Council of the United Nations which will take place in July.

With regard to implementing the arrangements outlined by Mr. Ingersoll on the Lockheed case, the Department of Justice has signed agreements with the appropriate authorities of Japan on March 23 and with the Netherlands and Italy on March 29. Further agreements are expected soon. These agreements provide essentially for the exchange of relevant information, including documents and other assistance by the Department of Justice with the appropriate investigative and law enforcement authorities of the other parties under arrangements that will protect the integrity of ongoing U.S. investigations in the Securities and Exchange Commission and the Department of Justice, and will also protect the rights of individuals involved, whether or not they may ultimately be defendants in criminal proceedings. The parties are to use their best efforts to provide the requested information and to make it available in the form in which it is requested. The information furnished is to be used exclusively for law enforcement purposes and will be kept confidential until such time as it may be required to be made public in connection with the law enforcement proceeding under the laws of the country involved.

There is no restriction on the use of information in connection with an actual law enforcement proceeding and once such proceeding has been commenced the relevant material may be used freely in that proceedings.

As you are aware, Mr. Chairman, there has been confusion in certain articles in the press that execution of these arrangements would be delayed. That was never the intent and the information is now being made available. We are hopeful that vigorous programs of action by our Government—domestic and international—and the significant efforts being made in the business community to establish clear policies and controls will bring the desired results. At the same time, we recognize the possibility that more is needed. It is clear that we are faced with a very serious and pervasive problem.

President Ford recognized this in establishing the Cabinet task force with the distinguished Secretary of Commerce as chairman. We will participate actively in that effort and pledge to help bring that effort to successful conclusion in terms of defining the problem and determining action which should be taken in the resolution of those problems.

We don't want to prejudge the task force consideration of S. 3133 and other legislative proposals by commenting in detail at this time, but there are a few points which I would like to make.

First, from the standpoint of the State Department, there is a great deal being done in the United States through Government agencies, in the Congress, and by business itself. However, much less is being done by the international community. This imbalance is unfortunate for a number of reasons.

First, unilateral action alone cannot be an adequate solution to an international problem. Effective international cooperation is the only real answer.

Second, we agree that questionable payments can have a distorting effect on trade. Action by the United States that is not matched by others can place U.S. traders and investors at an unfair competitive disadvantage in foreign markets.

Third, the process of unilateral disclosure in the United States of alleged wrong-doing by foreign officials in their own countries causes serious injury to United States foreign relations. These strains would be eased by international agreement on procedures for coping with illicit payments in international transactions with foreign governments.

For all of these reasons, Mr. Chairman, the Department of State favors an international agreement to complement the actions taken by the United States. We are proposing a treaty that would be implemented by national law in all of the countries concerned. We gain effectiveness by obtaining such commitment from the governments in whose jurisdiction payments may take place. Also, the misunderstandings, accusations and foreign relations problems arising out of disclosure in the United States of payments overseas are substantially mitigated.

Our proposal emphasizes uniform disclosure legislation which could be backed up by penal sanction. The Department of State strongly believes that each country has the responsibility to determine the standard of conduct to be applied in its territory and to take appropriate steps to enforce those standards in a fair manner. Other interested governments can and should agree to cooperate within a framework of mutually agreed procedures. In the absence

of a framework of agreement and cooperation of the foreign governments concerned, we believe it is not appropriate and not in the national interest for the United States to attempt to police the relationship of its nationals with foreign officials in their own countries.

We believe the priority should be for international action, both for the practical advantages international action can afford and to avoid the serious disadvantages of public disclosure of commercial arrangements by U.S. firms alone.

In summary, Mr. Chairman, the Department of State and other agencies are supporting both domestic and international action designed to resolve this serious problem. We intend to press hard for meaningful international action and we are confident that the Cabinet task force will provide effective leadership on this issue.

Thank you very much.

The CHAIRMAN. Thank you, sir.

[Complete statement follows:]

STATEMENT OF CHARLES W. ROBINSON, UNDER SECRETARY OF STATE FOR ECONOMIC AFFAIRS

I am pleased to be here today with Secretary Richardson and Secretary Simon to discuss the problem of questionable payments involving U.S. firms abroad. The problem is a serious one with many aspects.

It is first of all an ethical problem: U.S. businessmen who offer or submit to pressures to make illicit payments abroad violate the behavior standards demanded of them at home. The Department of State has consistently stressed that it condemns such actions.

It is an economic problem: improper conduct by some corporations can damage the business climate for all.

It is a political problem: revelations of improper behavior by major U.S. enterprises weaken confidence in American institutions and in the strength of our free enterprise system.

Finally, it is a foreign relations problem: illicit payments abroad and disclosures in the United States of questionable transactions with foreign officials can and have caused serious damage to U.S. foreign relations.

I would like to emphasize two further points which have been noted in past hearings on this subject:

First, there is no reason to assume that the practices under discussion are exclusive to U.S. firms.

Second, each transaction involves at least two parties, and it is not always clear which one is the instigator.

The U.S. Government is determined to take appropriate and effective action to control illicit payments. Much has already been done.

The enforcement agencies have taken vigorous action. The SEC opened these investigations, and its broad campaign against improper payments has established a pattern of disclosures which should serve to inhibit many questionable transactions. Other agencies have taken measures to improve their own programs. Secretary Simon has described the substantial efforts being made by the Internal Revenue Service to ensure that the Treasury does not finance illicit payments.

The Departments of State and Defense have taken steps to ensure that foreign governments who purchase defense articles and services under the Foreign Military Sales Program are fully informed of any agents' fees that are included in the price of goods sold. Fees which DOD determines are unreasonable or not bona fide and any fee that is unacceptable to the foreign government will not be considered allowable costs under an FMS contract. Moreover, the New Security Assistance Act will give the Executive Branch new authority to improve reporting on commercial sales of military items and to control payments made in connection with military sales even where not included in the contract price.

The State Department has also been able to ensure that the OECD guidelines relating to multinational enterprises will include a strong statement con-

demning both bribery and the solicitation of bribes. We are hopeful that these guidelines can be completed by this June.

On March 5, Deputy Secretary Ingersoll appeared before your Subcommittee on Priorities and Economy in Government and announced two major, new initiatives to deal with the international bribery problem. I am pleased to be able to report to you that we have achieved progress on both our proposal for negotiation of an international agreement in the UN, and in the exchange of information with foreign governments on the Lockheed case.

On March 5, the United States delegation to the United Nations Commission on Transnational Corporations, then meeting in Lima, proposed a multilateral agreement to prevent and to punish illicit payments to foreign officials made in connection with government procurement and other governmental actions affecting international trade and investment. This proposal was based on the recognition that an international problem cannot be solved without international action. It emphasized

the responsibility of host—or importing—governments to establish clear standards concerning the use of agents and criminal penalties for bribery and extortion;

the responsibility of all governments to cooperate and exchange information to eradicate such corrupt practices, and

the need for uniform provisions for disclosure of political contributions, gifts and payments made in connection with covered transactions.

The U.S. delegation called for urgent action and asked that an inter-governmental working group be set up by this summer to draft an agreement.

While others require some time to consider this major initiative, the preliminary reaction to our proposal was encouraging. The Commission forwarded the U.S. proposal to the Economic and Social Council of the United Nations and recommended that ECOSOC give priority attention to the matter at its next session in July. We will be consulting with interested governments over the next few weeks to seek their support for effective international action on an urgent basis.

The Government has also made significant progress in implementing the arrangements outlined by Mr. Ingersoll concerning the Lockheed case. The Department of Justice signed agreements with the appropriate authorities of Japan on March 23 and with the Netherlands and Italy on March 29. Further agreements are expected soon. These agreements provide, essentially, for the exchange of relevant information, including documents and other assistance, by the Department of Justice with the appropriate investigative and law enforcement authorities of the other parties under arrangements that will protect the integrity of ongoing U.S. investigations in the Securities and Exchange Commission (SEC) and the Department of Justice and will also protect the rights of individuals involved whether or not they may ultimately be defendants in criminal proceedings. The parties are to use their best efforts to provide the requested information and to make it available in the form in which it is requested. The information furnished is to be used exclusively for law enforcement purposes and will be kept confidential until such time as it may be required to be made public in connection with a law enforcement proceeding under the laws of the country involved. There is no restriction on the use of information in connection with an actual law enforcement proceeding, and once such a proceeding has been commenced, the relevant material may be used freely in that proceeding.

You will be pleased to learn that arrangements under the agreements which have been concluded are proceeding smoothly. As you are aware, Mr. Chairman, there has been confusion in certain articles in the press that execution of these arrangements would be delayed. That was never the intent, and the information is now being made available.

We are hopeful, Mr. Chairman, that vigorous programs of action by the United States Government—domestic and international—and the significant efforts being made in the business community to establish clear policies and controls will bring the desired results. At the same time, we recognize the possibility that more may be needed. It is clear that we are faced with a problem of pervasive concern.

President Ford has recognized the seriousness of this matter to the United States Government by establishing the Cabinet Task Force on Questionable Payments Abroad under the leadership of our distinguished Secretary of Com-

merce. The Department of State welcomes the opportunity to collaborate with Secretary Richardson and to contribute to the work of the Task Force.

The Task Force will consider all the options with an open mind. One phase of that examination will be to consider what is already being done—to measure the results of our efforts and the extent of any gaps. The Task Force will also have to consider the implications of proposed new measures including both advantages and disadvantages.

It is within this framework that I would like to offer some general comments on the present situation and possible future actions. I would not want to prejudge the Task Force's consideration of S. 3133 and other legislative proposals by commenting in detail at this time, but I would like to offer a few considerations which are relevant to the bill.

From the perspective of the State Department, it is apparent that a great deal is being done in the United States to address the bribery problem—by the government agencies, in the Congress, and by business itself. Much less is being done by the international community. This imbalance is unfortunate for a number of reasons.

First, and foremost, unilateral action cannot be an adequate solution to an international problem. Effective international cooperation is the only real answer.

Second, we agree with the view reflected in Senate Resolution 265, adopted by vote of 93-0 on November 12, 1975, that questionable payments can have a distorting effect on trade. Thus, action by the United States that is not matched by others can place U.S. traders and investors at an unfair competitive disadvantage in foreign markets.

Third, the process of unilateral disclosure in the United States or alleged wrong-doing by foreign officials in their own countries causes serious injury to United States foreign relations. These strains would be eased by international agreement on procedures for coping with illicit payments in international transactions with foreign governments.

For all these reasons, Mr. Chairman, the Department of State favors an international agreement to complement the actions taken by the United States. Clearly it will take some time to negotiate an effective treaty which can attract international support. Some delay, however, does not vitiate the fact that a treaty would provide the best solution to the problem of international bribery.

We are proposing a treaty that would be implemented by national law in all the countries concerned. U.S. legislation enacted pursuant to such a treaty would have the full effect unilateral legislation would have, but the treaty would provide for matching legislation in other countries. Whereas U.S. legislation can only affect U.S. companies, parallel national legislation embracing uniform disclosure requirements can include the companies, markets, and officials of other states. We gain effectiveness by obtaining commitments from the governments in whose jurisdiction payments may take place. Also, the misunderstandings, accusations and foreign relations problems arising out of disclosure in the United States of payments overseas are substantially mitigated if such disclosure takes place under an internationally agreed framework which the concerned governments have negotiated.

You will have observed, Mr. Chairman, that our proposal emphasizes uniform disclosure legislation—which could be backed-up by penal sanctions—and does not contemplate extraterritorial criminal proscriptions of illicit payments.

The Department of State strongly believes that each country has the responsibility to determine the standard of conduct to be applied in its territory and to take appropriate steps to enforce those standards in a fair manner. Other interested governments can and should agree to cooperate within a framework of mutually agreed procedures. In the absence of a framework of agreement and cooperation of the foreign governments concerned, we believe it is not appropriate and not in the national interest for the United States to attempt to police the relationship of its nationals with foreign officials in their own countries.

Disclosure, on the other hand, can be an effective device to deter bribery. The SEC is already requiring substantial disclosures which should very greatly inhibit questionable payments by U.S. firms. There will be additional disclosure of agents' fees in connection with military sales under the new Security Assistance Act. Further unilateral disclosure may be required, but

this would be premature now. We believe the priority should be for international action—both for the practical advantages international action can afford and to avoid the serious disadvantages of public disclosure of commercial arrangements by U.S. firms alone.

In summary, Mr. Chairman, the Department of State and other agencies are supporting both domestic and international action designed to resolve this serious problem. We intend to press hard for meaningful international action and we are confident that the Cabinet Task Force will provide effective leadership on this issue.

The CHAIRMAN. I want to congratulate all of you gentlemen for your assertion and your clear assertion, and I'm sure very sincere condemnation of bribery and your determination to act on it.

I think that the problem here is how we act, how soon we act, and how effectively we act. No. 1, what we have here in the bill that's before us today, S. 3133, is a specific requirement for disclosure to the SEC of bribes which in turn would be made public. No. 2, we have a prohibition against—a flat prohibition, making it illegal, subject to penalties to pay bribes to foreign officials, foreign political parties or to pay or agree to pay any money or give or agree to give anything of value in a manner or for a purpose which is illegal under the laws of a foreign government having jurisdiction over the transaction.

Now, Mr. Richardson, you said that you agree with the thrust of this legislation. Secretary Simon, you indicated that you supported the principle but were concerned with the consequences and effect of this legislation. Frankly, it would seem in view of your firm and consistent opposition—all three of you gentlemen—to bribery, I can't understand why this action to require disclosure of it and outlaw it shouldn't get your support or why we can't modify it or amend it in a way that would secure your support. I will start off with Secretary Simon.

Secretary SIMON. One thing that I didn't want to imply or indicate was that some sort of domestic legislation, and perhaps this legislation amended in some parts where it gives us trouble, is not going to be necessary. Clearly, as we work in the multilateral efforts that are underway to negotiate an international treaty, it may indeed require domestic legislation to back it up. That is one question that the group that Elliot Richardson is chairing is going to look at. I think it's more a matter of the chicken and the egg. Would domestic legislation indeed create more problems than it would solve at this point, before we move down the international road?

The CHAIRMAN. On that point, yesterday former Secretary Ball argued exactly the opposite. He said this was essential if we are going to have any kind of an effective international agreement. The first thing to do is put our house in order, act ourselves, to make this illegal. He felt that this would strengthen any international agreement, would advance any international agreement, would strengthen our hand and the prospects of securing its adoption.

Secretary SIMON. Again, one has to identify whether it would create more problems than it solved. Also, as I pointed out in my testimony, we have to be concerned with not only the briber but the bribee as well. Any action at this point that would conflict with leg-

isolation, or lack of it, in another country could indeed disrupt our ability to seek this international agreement.

The CHAIRMAN. Let's try to put that in perspective. Supposing England or France should adopt legislation of this kind. Wouldn't that advance the prospect of our securing an international agreement? Supposing five or six countries adopted legislation of this kind. Wouldn't that be helpful in securing international agreement? Could you possibly with any kind of reason argue, well, we can't adopt an international agreement because Britain and France have their own laws? Why wouldn't that make it easier for us to say that the world community is moving in this direction and therefore we have a solid basis for it?

Secretary SIMON. At present there are so many different practices and laws in all these countries, it's not a matter of those countries having laws, but the lack of them that presents the problem. For instance, in the United Kingdom and Canada and other countries, it's not illegal, as it is here in the United States for corporations to give to political parties and the full fact be kept confidential as well. So there's an obvious conflict that would present a problem.

Elliot, would you want to comment?

Secretary RICHARDSON. May I make one additional comment, Mr. Chairman? Perhaps two comments. I think what we are saying here today is partly the result of a reflection of the fact that our task force has just been appointed and won't have its first meeting until Monday of next week. For that reason alone it is impractical for us as a government to give you a clear-cut position on legislation which hasn't yet fully been considered by the body appointed by the President to look at this and related problems.

The other comment I wanted to make follows up what Secretary Simon said and it deals with the fact that in this situation I doubt whether there is any country in the world where bribery and extortion are not crimes under local law. So the question then is really, what is the practical way of proceeding to the enforcement of law which we must assume in these situations isn't being enforced? And I think we do have on the threshold the question of judgment whether it really does effectively strengthen the enforcement of local law in another country for the United States to make violation of that law a U.S. crime when it would involve in effect the attempt to create some sort of investigation and enforcement machinery operating abroad that we don't now have.

The question then is: In the light of that, what can we do, not so much to involve U.S. law enforcement officials in what amounts to the enforcement of foreign law, but what do we do to stimulate those countries themselves to enforce their own law? And it is for that reason which leads us in our statements to stress as we have the importance of a multilateral approach.

The CHAIRMAN. Supposing we had this simple language in the bill; eliminated some of the other prohibitions and had disclosure plus this: That it would be illegal to pay or agree to pay any money, or offer, give, or promise to give anything of value in a manner or for a purpose which is illegal under the laws of a foreign country having jurisdiction over the transaction. That's a very

simple provision that if it's illegal in the country it's illegal for American firms to engage in this kind of action. We have seen that these laws are being violated. They were violated by Lockheed and they were violated by a number of other companies who have indicated that's the case. It's been documented and proven, no question about it. It seems to me it's outrageous that we don't make it illegal here so we can act effectively against it.

Secretary RICHARDSON. Mr. Chairman, I'm speaking as a former investigator of corruption, kickbacks, both as U.S. Attorney General and State attorney general. I think I can reflect the clear impression that the problem in all these situations is the problem of proof. It doesn't take a whole lot of ingenuity to conceal corrupt payments. One of the problems clearly, and the SEC's investigation to date points out that there is often involved the distribution by some middle man of money paid to him ostensibly in the form of a commission or fee. This means, therefore, that the money that it paid to that person must be traced into other hands and the question then is: If we were to adopt such a law, what does it mean in terms of its enforcement when you are already faced with the situation not of lack of law but of a lack of investigative capacity and follow-through in the enforcement of that law?

The CHAIRMAN. We have considerable investigative action already and considerable proof as we have indicated here. Furthermore, we have this kind of a situation: The IRS, which is under the jurisdiction of Secretary Simon, took a very commendable action as reported in the New York Times this morning. I'll just read it.

The IRS announced today that it was intensifying its investigations of major corporations by requiring them to answer 11 specific questions about possible bribes, kickbacks and other illegal payments. The questions will be asked of the 1200 major corporations routinely audited by the IRS. All corporations which have in excess of \$200 million in assets. If they lie they will have problems, the IRS said. If they don't answer, they will have problems.

Now the difficulty is that the IRS made it clear this is strictly for tax purposes, not to prevent bribes unless those bribes are deducted from income in computing your tax return. So I think what the IRS has done is write in commendable—and it may have a very salutary effect in discouraging and reducing the number of bribes paid. Nevertheless, it just seems to me it would be ethically outrageous for us to say that so long as you pay taxes on it, in effect that's what we are saying here, it's not illegal. Go right ahead and do it.

Secretary RICHARDSON. I don't think we are saying, Mr. Chairman, that it isn't illegal or shouldn't be illegal. The problem is: What is the most effective way to try to achieve consistent enforcement of standards which we here clearly believe should be applicable not only to U.S. corporations but to the conduct of officials in other countries and the corporations of other countries?

I think this is the reason why we are not saying that we will eventually recommend to you and to your committee that there should be legislation along the lines of your bill, but why we are saying really simply two things: (1) Whatever may be done unilaterally, there is a clear need for multilateral approach also, given the effort to achieve greater consistency and enforcement worldwide; and (2) we want to look further to the question of the appropriate-

ness of the form of domestic legislation given the stage at which we now are and given the very considerable amount of action that is already being taken.

The CHAIRMAN. You see, the problem I have with this, Mr. Secretary, is that if we pass legislation affecting our corporations, our own corporations domestically, I'm convinced it will be effective. Action of this kind has been effective in the past. We have our ways of finding out through the IRS and the SEC to require a tremendous amount of disclosure at the present time to them. If we act on the information that's available it's not a big investigative job. If we act on it I think we can prohibit it. On the other hand, waiting for a treaty could take a long, long time. Once you get it, what do you have? In 1927 this country agreed to outlaw war. That had all the power of a butterfly's hiccup. There are all kinds of things we would like to have done by the international community. We have adopted a whole series of international treaties of various kinds. Their enforcement is rather feeble because we have or we don't have, as you know far better than I do, the kind of effective international enforcement machinery that we have domestically.

If we mean business on something like this, it seems to me we have to pass legislation that can be enforced by our own very powerful investigative and enforcement arms, and not say that we want to hold this up until we can get some kind of international treaty which the United Nations or some other international group is going to help us enforce.

Secretary RICHARDSON. I don't think we have said it should be held up, Mr. Chairman. We have said that whatever we do unilaterally must be complemented by international action because otherwise we have a situation in effect in which U.S.—

The CHAIRMAN. I don't think we disagree. What you're saying is you wouldn't object necessarily to our committee going ahead. You may have some reservations on it, but what you're saying is you think it would be proper at the same time for the administration and Congress to go ahead and work toward international agreement. I see no objection to that at all.

Secretary RICHARDSON. I'm saying this, Mr. Chairman: Subject to the understanding, of course, that with respect to the specific terms of domestic legislation we need more opportunity to think it through simply because, while there has been individual consideration of the problem by individual departments—

The CHAIRMAN. When would you be able to come up with some kind of conclusion about the need for legislation this year?

Secretary RICHARDSON. I can't very well speak for the task force on this, Mr. Chairman, except to say that this is a question that we can take up on Monday. I would think we could certainly give you our views in time for the Congress to act in his session.

The CHAIRMAN. Fine. We would appreciate that very much. My time is up. I'll be back.

Senator GARN. I have no questions at this time. Mr. Chairman, but just to follow up this line of thinking, I think you know my attitudes. I don't, for once, have any differences of opinion with you on the need to prohibit bribes. I do think legislation is necessary. I

just happen to think this particular bill is premature and to try and mark up a bill and not for the reasons that you gentlemen are talking about—I tend to agree with the chairman that multinational agreements may be months or years in coming and when they come, whether they can be enforced and whether they can be trusted, the people that sign them, I have great difficulty in believing from past experience they are worth a great deal, although I certainly agree with the intent of what you're trying to accomplish.

But just strictly on the domestic area, with your Commission not having met yet, with additional information coming from the SEC, certainly there's a lot of proof that bribes have taken place. Nobody doubts that. What I'm saying, Mr. Chairman, is I want to come up with some good legislation that will hopefully accomplish what all of us seem to want to accomplish, and I think we are rushing too rapidly to try and develop a piece of legislation to show that, "Aha, Congress knows this is going on. We're going to stop it. We're going to be big heroes." Well, I want this to take place but in a meaningful way.

My constant example that you gentlemen may not be aware of is the Real Estate Settlement Procedures Act. That was a bill that we rushed into and we had to correct. I'm just saying I think we should proceed carefully, make certain that we are coming up with a domestic piece of legislation that will accomplish the intent of prohibiting what has been going on which no one condones. I can't agree to wait and see what happens internationally, but I think we ought to be willing to wait. I don't know whether that's a few weeks, but certainly your assurance that during this year that we get some information, factual information, intelligent information on which to come up with a good bill that will solve the problem.

Secretary RICHARDSON. One further comment, Mr. Chairman and Senator GARN. I think Secretary Simon I thought very appropriately suggests the initiatives that are being taken by the business community, by business organizations, as well as by individual corporations. I think there can be no doubt—as Mr. John J. McCloy emphasized the other day—that the very exposure of what has been going on, IRS and the SEC inquiries, these and other hearings, will have had a profound impact on whatever may be done legislatively by this country or whatever may be done internationally. I think that the American public is entitled to reassurance that business really is taking action that—let me put it this way—given all that has come to light, very few corporate executives in the present climate would not be conscientious about putting a stop to this sort of thing. I think that is an affirmative byproduct of what has so far happened and ought not to be overlooked.

Senator GARN. I think you're correct. I also have not heard anyone—this is one issue that I have not heard anyone testify in favor of bribes. No one is in dispute on that. This is not a controversy. All we are talking about in all this conversation is how do we solve the problem, and I'm just pleading for enough time, not in behalf of anyone, but just to make sure that we do it right and do not rush into a bill. Maybe this is a perfectly good bill. I'm not saying it isn't. I'm not fighting the bill. I just don't know at this point and I

think we need more information. I certainly do before I can sit down and mark up a bill and with confidence cast my vote and say, yes, I think this is the solution to the problem. I think your Commission will undoubtedly shed some light that would be helpful to us in coming up with legislation.

Secretary RICHARDSON. Thank you, Senator; I think that very well expresses our own position.

The CHAIRMAN. You also seem to agree that in differing ways perhaps that the disclosure of illegal payments is helpful. Why not systematize disclosure as provided in S. 3233 with regular reports of payments to foreign officials, parties, intermediaries? What would be wrong with that part of the bill?

Secretary Simon. If I could just comment for a moment on that, Mr. Chairman. You know that trying to define exactly what bribery is is a real problem. You and I would have no trouble saying what is a bribe and what isn't. However, having said that, it's very difficult to put it down on paper in statutory language that would not be damaging to some legitimate things that happen on the periphery, such as payments of commissions. It's almost like the Justice who said that he can't define pornography, but he knows what it is when he sees it. In certain instances, we have a gray area when it comes to this bribery question. Outright payment to secure a particular contract to an official of a foreign government, fine, we have no trouble with defining that as a bribe. Payment of commissions to agents, which is an accepted practice throughout the world, is another matter. There's a gray area in between that where the agent may be related to, if you will, or indeed may be a government official, which is allowed in certain countries. That's why full disclosure of this type—and I dealt with this in my testimony—would open wide to competitors and others who properly have no access to confidential information on the way a company does business, with very damaging effects on their competitiveness. It also could be unnecessarily embarrassing from a foreign policy point of view—which I'll let Chuck speak to—for us to force disclosure of actions that are probably not illegal in another country.

The CHAIRMAN. I would agree there are confidential matters, matters of proprietary right, which a corporation has every reason not to disclose, and it might be very harmful to the competitive position if they do. I think we are very sensitive to that in the language here and I think we can amend the language and protect that confidentiality. We provide that each issuer of a security register and this, of course, applies only to them—report any payment of money or furnishing of anything of value in an amount in excess of \$1,000 paid or agreed to be paid or furnished by the issuer during the period covered by the report (i) to any person or entity employed by, affiliated with, or representing directly or indirectly, a foreign government or instrumentality thereof; (ii) to any foreign political party or candidate for foreign political office; or (iii) to any person retained to advise or represent the issuer in connection with obtaining or maintaining business with a foreign government or instrumentality thereof or with influencing the legislation or regulations of a foreign government.

It would seem to me this kind of disclosure doesn't go to the patents, doesn't go to competitive secrets. It would be something that would make it possible to identify bribes and to discriminate—and, of course, the corporation would be free to explain any of these payments—discriminate between a bribe and a perfectly proper and legitimate payment to a sales agent which we all recognize has to be made.

Secretary SIMON. You see, we are all saying basically the same thing, and I agree completely with Senator Garn that we don't wish to act in haste and repent in leisure. As we work down the road through the multilateral negotiations are underway and when the new look force identifies exactly what we need in this area, we will be working in conjunction with you to define legislation that is going to be more helpful than harmful.

You talk about donations to political parties abroad. As I said, in England and Canada—and there are many others—contributions by corporations to political parties are not illegal.

The CHAIRMAN. I think that's a good point. I think we can modify this language to make it clear to any foreign political party or candidate for foreign political office where disclosure is required.

Secretary SIMON. Also, you take agents in some of these countries that act as brokers, if you will, for particular deals. Some of them are vaguely connected with the governments in these countries, and that's been their standard practice.

The CHAIRMAN. Why not disclose that? What harm do you do by disclosing that? Who do you hurt?

Secretary RICHARDSON. Mr. Chairman, may I just point out—

The CHAIRMAN. I met your first point and that was a very good point. We can take care of Canada and England by simply saying that disclosure won't be required if it's not required in a foreign country as it is in this country.

Secretary SIMON. Again, I would think that we are treading on our foreign policy and the potential embarrassment—

The CHAIRMAN. We are not. That wouldn't have to be reported under those circumstances. So we're not treading on them in any way.

Secretary SIMON. I was speaking of agents that were even vaguely connected with the governments in some of these countries. They say, we have been doing business like this for years and we don't wish to have these names disclosed. But I will leave it to Chuck to deal with the foreign policy aspects of this question.

Secretary RICHARDSON. May I just point out, Mr. Chairman, that I think what we are getting into are the kinds of questions that point toward the need for the kind of deliberation Senator Garn has stressed, but I would point out further, though, as evidence of our general support for the principle of disclosure, that we did at Lima—Secretary Robinson may want to comment on this further—we did propose as a part of the international treaty that we hope to negotiate that there would be in that treaty uniform provisions for disclosure by enterprises, agents, and officials of political contributions, gifts, and payments made in connection with covered transactions.

So from our point of view, really it's the question of how to give

that specificity in a fair way with due regard for proprietary interests.

Mr. ROBINSON. Mr. Chairman, if I could just add to what Secretary Richardson and Secretary Simon have stated with regard to the problems, No. 1: Of defining what it is we are trying to prevent, and there are gray areas that could cause us problems in the foreign policy area because there are differences in our ethical standards, and there could be problems in releasing disclosing information with regard to allegations of improper payments which are not proven which could seriously harm the political position of the parties in power magnified and distorted by opponents—that there is an area here that is filled with potential dangers which we should consider very carefully.

That doesn't mean that we shouldn't in the final analysis come up with a provision and a standard on disclosure and certainly we are dedicated to finding answers to those problems.

The CHAIRMAN. Well, that's good, but I think what we need to do is to get a specific date. Today is the 8th. Monday, the first day on which the Commission meets, is the 12th. Now I would ask you, Secretary Richardson, if you think it would be reasonable that we get the recommendations of the panel by May 1, May 15, June 1? I'm pressing for a date in that area because, as you know, this is a very difficult year for the Congress. We recess in July for the Democratic Convention, in August for the Republican Convention. It's an election year and if we're going to act on legislation of this kind we should get recommendation from your panel within 6 weeks.

Secretary RICHARDSON. I can only say, Mr. Chairman, that we will certainly endeavor to meet that deadline. I really shouldn't try to speak for the panel.

The Chairman. I understand.

Secretary RICHARDSON. I would only undertake to express the concerns that have been addressed here when we meet and further undertake to get word back to you on what the judgment of the panel is as to a realistic goal.

The CHAIRMAN. That would be fine. Perhaps on Monday you could give us a clearer indication of what the panel thinks would be an appropriate date.

Now, Secretary Simon, you have to leave. I do have a couple questions before you go and then I have a few more questions for the other members of the panel. As you know, this committee has been attempting to exercise its oversight responsibilities in the Lockheed loan guarantee. We have the responsibility in the Senate for that. We have been attempting since last September to enlist the loan guarantee board's cooperation in gaining access for the GAO to Lockheed's records as required by both the enabling legislation and the loan guarantee agreement.

On March 2, GAO sent a letter to you formally requesting you to take whatever actions are necessary to enforce the contractual provisions affecting GAO's access to Lockheed's records. You told us in your statement this morning that GAO is going to have that access and what I would like to know is whether or not this means that GAO is going to have that access to Lockheed fully because they

complained that they have never been given subpoena powers—the committees have them in the Congress but GAO, our agent, does not have the subpoena powers. Does that mean that GAO is going to have full and complete access with the understanding, of course, that they keep the information confidential?

Secretary SIMON. As I indicated, Mr. Chairman, in my statement, GAO sent a team out there last week. Lockheed and GAO have agreed fully to go over whatever records GAO needs to conduct the audit, and there will be full disclosure subject to the proviso, as you correctly stated, that the records will be kept would be confidential.

The CHAIRMAN. But it would be full?

Secretary SIMON. Yes, sir.

The CHAIRMAN. Thank you very much. I understand you have to leave and I apologize for keeping you past your 11 o'clock deadline and I understand that Secretary Richardson may have to leave, too, but I would appreciate it if you would stay a little longer, Mr. Secretary. We do have some more questions for you.

Secretary Richardson, as former Under Secretary of State and former Ambassador to Britain, as well as having many other important responsibilities in your prior position in the State Department, were you aware of the prevalence of foreign bribery or were you totally unaware of these practices?

Secretary RICHARDSON. I was totally unaware of them, Mr. Chairman. I suppose I might have assumed that there must be some, but I never had any information about it brought to my attention.

The CHAIRMAN. How could that be? It's hard for me to understand, especially a man as intelligent and with your fine experience as an investigator, and the top positions you held in the State Department, how could you be unaware of something which now appears to be so widespread and being revealed as being so common?

Secretary RICHARDSON. Well, I suppose there are two answers to that, Mr. Chairman. One is that the companies involved saw no need to volunteer the information to me, and in the second place, what I was doing didn't really get much into international multinational corporation transactions. I was largely involved at the time in problems of SALT, the Middle East, military force reductions and mostly military issues rather than—

The CHAIRMAN. But you were Ambassador to Great Britain.

Secretary RICHARDSON. Yes, and in Great Britain, of course, I followed in general what was already beginning to be disclosed here and had some discussions about it, but I didn't undertake to inquire into the scope of this kind of activity.

The CHAIRMAN. One of the most disturbing aspects of this is the role the Defense Department has played, especially with respect to defense contractors who sold abroad. We have a document which indicates that at one point a top official in the Defense Department had counseled defense contractors on paying bribes and urged them to do so under circumstances where it was necessary. As a former Secretary of Defense, as well as I think you served elsewhere in the Defense Department, too, were you aware of this policy?

Secretary RICHARDSON. No.

The CHAIRMAN. I'll see if we can get that document and I will call it to your attention in a few minutes if we can get it.

Now both you and Secretary Robinson have mentioned the new language in the Foreign Military Sales Act that would require reports of foreign payments of agents fees and commissions to the Secretary of State. Congressional committees and Government agencies would have access to such reports but this is a far cry from public disclosure.

In your judgment, Mr. Secretary, should there be public disclosure of such reports or will there be a tendency to stamp them proprietary or confidential to be sure they will not be disclosed?

Secretary RICHARDSON. I think subject to our sorting out the kinds of issues that have already been identified here, Mr. Chairman, I would be in favor of public disclosure. But again, of course, not only do we have the points that have been made earlier with respect to confidentiality, proprietary information and so on, but there's also a point about the question we touched on earlier and that is the question of what should be the agency to which information is reported and which would then be the instrument of its disclosure. Your bill contemplates that it would be the SEC. The SEC has, I believe, told the committee through its chairman, Mr. Hills, it already has substantially the authority to require the information reported to it that the bill would cover, but this other provision in the foreign aid bill would require the information to be reported to the Department of State.

The CHAIRMAN. You see, the SEC doesn't have the power that we would provide in the bill. That's one of the reasons we think the bill is essential. They don't have the power unless the payment is regarded as material. That is, it would be regarded as material in its effect on an investor.

Now with a very large corporation you would have quite a substantial payment, hundreds of thousands of dollars, that you could say with sales of hundreds of billions wouldn't be material, and this is why we think we should go a little farther than the authority that the SEC now has.

Secretary RICHARDSON. I'm certainly not qualified to adjudicate a matter of interpretation of the SEC's organic law in a hearing conducted by the SEC's own oversight committee. My only point really was that we see under the Foreign Military Sales Act certain Defense Department authorities under the new provisions of the Foreign Aid Act still another reporting requirement to the Department of State. Your bill would confirm and/or strengthen the authority of the SEC and I was simply pointing out that one of the things, it seems to me, we ought to look at further is the question not only of the desirability of disclosure but reporting to whom and disclosure by whom.

The CHAIRMAN. You refer to the proposed OECD guidelines. Yesterday, former Under Secretary Ball described the proposed guidelines and I quote "as little more than a pious expression of disapproval." Even if these guidelines were approved, how would they be enforced?

Secretary RICHARDSON. They wouldn't be enforceable, Mr. Chairman, which is why we believe that there is a need from OECD

guidelines or code for a treaty of the kind that we have already proposed to the U.N. Commission on Transnational Enterprises, provisions of which are summarized on page 10 of my testimony, and there would be provision for enforcement through the cooperation of governments in exchanging information with each other and through the disclosure provisions that I have mentioned earlier.

The CHAIRMAN. On page 8 of your statement you say the United States "is prepared to deal with bribery as a national matter and on a unilateral basis as well as through multilateral pressure." I think that's a very good statement. I certainly welcome it. Do you agree with former Under Secretary Ball who testified yesterday that only when the United States has put its house in order by imposing on the U.S. corporations a standard of conduct in their overseas dealings fully as strict as that required at home will we be entitled to insist that foreign governments do likewise?

Secretary RICHARDSON. No, I don't agree with that. I think we have good reason to proceed concurrently as we are in OECD, in GATT, in the Commission on Transnational Corporations, because in each case we are dealing with violations of the law of other countries. We are entitled to proceed on the assumption that they share with us the objective of seeing to it that their own law is enforced. We are at least entitled to presume that.

The CHAIRMAN. But in view of the fact that we are the super industrial power, that our influence is so great and our sales, particularly in many areas with regard to weapons, for example, are so overwhelmingly dominant, wouldn't it come with far better grace and far better influence if we have taken firm action here at home to disclose and prohibit bribery? Wouldn't our influence be greater? Wouldn't we get a more effective international law?

Secretary RICHARDSON. I think if we had done it in a manner that didn't seem to imply that we propose to use our law enforcement agencies to enforce the law of other countries in their own territory perhaps would help.

The CHAIRMAN. I think I would agree and I don't think we should indicate that we are trying to enforce other countries' laws in any way.

Secretary RICHARDSON. My response was simply that I didn't agree to the extent that I don't think we should hold up our effort to launch multilateral action until we have done everything that we might decide to do unilaterally. I think we are doing enough unilaterally already both through the voluntary action of corporations as well as through the SEC, IRS, Military Sales Act, and the new foreign aid provision, so that we can go to other countries in good grace and point to what we are doing to clean our own house even now.

The CHAIRMAN. We are just saying we shouldn't hold up legislation until we get the treaty and I take it you agree with that.

Secretary RICHARDSON. Yes, and I say we wouldn't hold up international action until we have legislation. I think we could go forward with the consideration of legislation. We can go forward with the things we are already doing and go forward with international action in tandem.

The CHAIRMAN. When you were at the State Department or the Pentagon, did you have any policy on bribery?

Secretary RICHARDSON. No. We didn't address the issue. It isn't a matter that I remember having come up.

The CHAIRMAN. It seems rather astonishing that that wouldn't have been a matter of concern.

Senator GARN. If the Chairman would yield, we didn't ask former Assistant Secretary George Ball yesterday whether he addressed himself to that when he was in the State Department.

The CHAIRMAN. I think we did, if you will review the transcript. I think I asked him that question.

Senator GARN. Maybe it was when I wasn't here.

Secretary RICHARDSON. What did he say, Mr. Chairman? Why wasn't anything done about it earlier?

The CHAIRMAN. I think he gave us the same answer you did. I'm not saying—this isn't partisan. I don't think anybody would argue that this is something Republicans do and Democrats don't do. Obviously, we have had—

Senator GARN. Well, there are some Democrats that would like to leave that implication in the last couple years.

The CHAIRMAN. I won't leave that impression at all. There's no question that there's been corruption under both administrations. I don't mean corruption in the administration but there's been corruption by our large firms.

Senator GARN. Make sure that's in the record.

The CHAIRMAN. While we had Democratic Presidents as well as Republican Presidents. There's no question about that. What surprises me is we have taken so long to get around to acting on this.

Secretary RICHARDSON. It is surprising. We have, however, had domestic equivalent situations in which at a county level or in a city or in some states kickbacks or payoffs were routine. People were so used to this sort of practice that it only got sort of occasional low level exposure and prosecution. Then at a given time something bad enough happened to shock public conscienceness into realizing that something has to be done, a drive is launched against it. We wonder then—I used to feel as an investigator of corruption at the State level it was sort of like kicking over a log in a dark forest and seeing a lot of little creatures huddling around whose first reaction is that you had crassly disturbed their way of life.

The CHAIRMAN. Massachusetts and Boston are remarkable for the quality of their creatures.

Secretary RICHARDSON. I think standards can change. I think the overall level of political morality in Massachusetts is definitely higher today than it was say 10 or 15 years ago.

The CHAIRMAN. I think that's true nationally, and I'm sure that you played an important part in achieving that from what I have heard.

Secretary RICHARDSON. Certainly one of the people, your colleague Senator Brooke, played a very large role as attorney general of the State.

The CHAIRMAN. Mr. Robinson, the committee values your testimony and we appreciate your appearance. As you know, we are also

particularly anxious to hear from Secretary Kissinger. Members of the committee have specifically requested that. We have written the Secretary. I sent him a second invitation last week offering to accommodate his schedule. Do you know whether Secretary Kissinger will be able to testify?

Mr. ROBINSON. No, sir. I can't answer that. I know that he's very concerned about this issue. He is pressed to do many things and is testifying before many committees and when he could arrange to fit that into his schedule, I couldn't say.

The CHAIRMAN. Well, when the Secretary couldn't appear we were told that you were the true expert, that you had more understanding of this and more knowledge of it than the Secretary or anybody else in the Department, which kind of puts you on the spot. As an expert, do you know of any evidence or facts or is there any evidence in the State Department that officials of the Department have been involved either in the negotiations of foreign commissions or the payment of bribes?

Mr. ROBINSON. Not to me. I have no information nor have I heard of any action on the part of State Department officials either supporting or knowing and not reporting illegal action, payments and bribery.

The CHAIRMAN. Have you had a chance—well, let me just ask you about something else and I'll come back to this later.

I have got a question for Secretary Richardson.

Mr. Robinson, there have been recent press reports showing a connection between a Lockheed agent in Japan, Yoshio Kodama, and the CIA. These reports suggest that money was being funneled by both Lockheed and the CIA to Kodama and that the CIA was giving money to Kodama through Lockheed. Have you or other officials in the State Department been aware of the CIA-Lockheed-Kodama connection?

Mr. ROBINSON. I'm aware of the general allegations that there has been a relationship. I'm not aware of the facts and I am not qualified to discuss it.

The CHAIRMAN. Why shouldn't you be aware of those facts as the expert in the State Department in this area?

Mr. ROBINSON. I'm afraid I have been described incorrectly. I have been involved and was the first one in the State Department to have testified before the Church Subcommittee on bribery. I have been out of the country a good deal of the time during the past 6 months. Deputy Secretary Ingersoll has been primarily responsible for this area of our operation. He's now left the Department. I am in the process of becoming acquainted with all of the facts but at this moment I do not know of any facts on this.

The CHAIRMAN. Something that affects our foreign policy so profoundly and perhaps so dangerously, I would think that the State Department would be involved and you particularly would be informed of it.

Mr. ROBINSON. I intend to be informed and I am only indicating at this moment I do not have those facts.

Secretary RICHARDSON. I might just add, Mr. Chairman, that in anticipating the meeting of the task force that I have already con-

tacted the CIA for information about that allegation, any information they have bearing on it.

The CHAIRMAN. All right. Mr. Robinson, suppose in the course of your investigation it turns up CIA involvement in the foreign bribes. Will you disclose the facts to the public? What action will you take?

Mr. ROBINSON. I will take whatever action is appropriate and proper within the law. Obviously, this is a matter which would be considered by the task force in broader implications and I'm only speaking personally when I say we obviously will take whatever action is called for by the law.

The CHAIRMAN. What task force are you referring to?

Mr. ROBINSON. I'm talking about the interagency task force that Secretary Richardson will head on questionable payments.

The CHAIRMAN. Will the task force brief the committee on this kind of involvement?

Mr. ROBINSON. I will refer that question to our chairman.

Secretary RICHARDSON. Yes, Mr. Chairman. There's no information that we would obtain that is not going to be available to this committee subject, of course, to whatever understanding may be appropriate as to its confidentiality in given instances.

The CHAIRMAN. Mr. Robinson, earlier in the year Secretary Kissinger was very concerned with the facts about the Lockheed bribes and that they might be publicly disclosed. Is it possible that he intervened in the SEC court case against Lockheed in order to prevent disclosure of the CIA involvement in the foreign bribe?

Mr. ROBINSON. The only intervention I know is the one that's on the record pointing out some of the foreign policy considerations and requesting that there not be premature disclosure of information unless it was essential for law enforcement purposes.

The CHAIRMAN. Let me follow on that question with respect to the intervention of Secretary Kissinger. Why did he intervene? What was the reason?

Mr. ROBINSON. Secretary Kissinger was concerned over premature disclosures which could have an impact on the political structure of Japan.

The CHAIRMAN. But all the indications were that the Japanese Government was very anxious to get this. The Prime Minister asked for the information. Both branches of the Diet passes resolutions calling for it. The Ambassador requested the information. We have had a number of correspondents from Japan and some of whom are here today who have been constantly seeking that information aggressively as they can and I don't know of anybody in the Japanese Government who seemed to want to conceal the information.

Mr. ROBINSON. We have acceded to Japanese requests for that information and have done it through an agreement with our appropriate law enforcement agency, the Department of Justice here, and the appropriate agency in Japan which provides assurance that the information will not be prematurely disclosed to the public.

The CHAIRMAN. Well, that's the problem. So this information will not be disclosed. Why shouldn't it be disclosed?

Mr. ROBINSON. There's no restriction against disclosure as long as it's necessary and a part of the proper law enforcement process. Its

premature disclosures of allegations which could be used to create problems for both innocent and possibly guilty, but that can only be determined through appropriate legal action.

The CHAIRMAN. The administration witnesses always say that and it sounds rather persuasive because nobody wants to smear an innocent person, but the kind of information we want is the documented evidence of payment and who got the payment and how much and when and under what circumstances they were. We want to still the rumors. People have been hurt by rumors that they have been involved. In some cases they may well be innocent. We want to clear it up. That's why I couldn't understand why the Secretary wanted to conceal it.

Mr. ROBINSON. I am not qualified to talk in legal terms, but the information is still alleged information and still allegations until proven.

The CHAIRMAN. Well, this is exactly why we wanted Mr. Kissinger here. Senator Helms is very insistent on it and I think he's right. It's very hard and it's unfair to question you since you can't answer for what the Secretary had in mind. I think it would be helpful if the Secretary would appear.

Mr. Richardson, have you had a chance to read some of the SEC material on foreign corporate bribery?

Secretary RICHARDSON. Not in individual corporate cases, no, Mr. Chairman.

I have met with the Chairman of the SEC. I have read his speech and his letter to this committee, but I haven't gone into individual cases.

The CHAIRMAN. From what you know about it, do you have any doubt that it's a serious, well documented problem?

Secretary RICHARDSON. None at all.

The CHAIRMAN. Well, then, I take it that the administration is not recommending a delay in legislation except for a few days at least until you can determine and talk to your commission and determine whether or not you can take a position on this legislation and you will do your very best to let us know about your position on S. 3133 within the next 6 weeks or so.

Secretary RICHARDSON. I will do my utmost to assure that result. Mr. Chairman, subject to the deliberations of the committee and, of course, as Senator Garn has emphasized, we share with the committee the objective of trying to assure that whatever legislation does result has been fully and carefully considered.

The CHAIRMAN. Yesterday we received testimony from Mr. Ball that the prevalence of bribery abroad emphasizes the irresponsibility of our current arms policy and that bribes are part of the process of persuasion. What's your response to the serious charge of a highly responsible former official?

Secretary RICHARDSON. I have two comments, Mr. Chairman. One is that I think that the conduct generally of military sales is appropriately a subject for vigorous oversight on the part of the executive branch as well as the Congress that we cannot for all the reasons that have been stressed before today allow U.S. relations with other countries and the perception by foreign nationals of American cor-

porate enterprise be poisoned by the involvement of improper payments in military sales.

Beyond that, the question is the one we have been addressing of what are the appropriate additional means of preventing this kind of thing. Insofar as Mr. Ball is saying in effect military sales are a bad thing and what do you expect of military sales, I can't read in condemning all military sales because there have been improper payments associated with some.

The CHAIRMAN. Well, we're talking about the policy of pushing military sales zealously. Let me say I have got a document here, Defense Security Assistance Agency, signed by Josef G. Hoenig, Assistant Director for Sales Negotiations. Let me read three short paragraphs:

The term "influence" is used here rather loosely. To be more specific, it can range from normal friendships or family ties between local agent and procuring officer to the payment of substantial sums of money to individuals in high government positions with somewhat lesser amounts paid to lower echelon government officials. One local agent had admitted to the writer that he has three members of the National Assembly (Parliament) of the country on retainer fees for the purpose of obtaining inner circle intelligence and to promote the sales potential of his principal's product.

Since most major defence contractors (both U.S. and foreign) have local agents for the express purpose of influencing a sale, it is no wonder that the decision-making process is complicated by conflicting points of view as to the proper equipment to acquire. Obviously the agent with the greatest margin of profit or percentage has a distinct advantage over those with a lesser fee in that greater "influence" can be applied to all personnel in the governmental decision-making chain.

This was a document issued by the Defense Department on July 5, 1974. Has this been repudiated to your knowledge?

Secretary RICHARDSON. I don't know, Mr. Chairman. I think certainly it's officially by implication repudiated by the policies being applied to military sales with the requirement of the reporting of commissions and with the provision for the disallowance as part of the amount that could be covered by the act and any amount that looks like an excessive payment but certainly any amount that would be an improper payment. I think it follows from those politics that the action reflected by that memorandum is being condemned by the Department of Defense.

The CHAIRMAN. Well, I would hope the most explicit and firm expression could be made that this is not only not our policy, but it's a policy that is quite the reverse and that the Defense Department is very, very much opposed to any such action and that they are advising the defense contractors under no circumstances to engage in bribery.

Secretary RICHARDSON. I'm sure that is the position of the Secretary of Defense, Mr. Chairman.

The CHAIRMAN. I think it is, too, but as I say, this statement has been issued in the past and in view of the fact that it had been the policy, expressed as the policy of our Government, it seems to me it should require a specific clear repudiation.

One more question. In some countries the CIA made large political payments through industry conduits. Since ambassadors are in charge of the CIA in each country, why wouldn't the State Department know this? Both you gentlemen can help us with that.

Secretary RICHARDSON. It was relatively recently that there were issued explicit instructions by the President making clear that all personnel, including CIA personnel, were under the jurisdiction of the Chief of Missions and it may be that before this there were situations in which the ambassadors were not informed of certainly the policy of the government.

Perhaps Secretary Robinson knows when that Presidential instruction was issued, but I think it was a couple years ago.

The CHAIRMAN. I think it was 1961 with President Kennedy. Is that correct?

Secretary RICHARDSON. I thought it was considerably more recent.

Mr. ROBINSON. Mr. Chairman, I can't add anything to that. I don't know when that action took place.

Secretary RICHARDSON. In any event, Mr. Chairman, I think it may well be that whatever the effective date of it, that it was not always explicitly followed by the CIA. I have no doubt but there have been ambassadors who didn't know exactly what the CIA was up to in the country to which the ambassador was assigned.

The CHAIRMAN. Shouldn't the embassy know this? Shouldn't it be of concern to the embassy? Shouldn't it be informed?

Secretary RICHARDSON. Clearly, yes.

The CHAIRMAN. Well, I want to thank you gentlemen very, very much. I beg your pardon. Senator Garn?

Senator GARN. I have no more questions, but just a couple of concluding comments really to summarize what I have said before.

I thought the purpose of the hearing was on S. 3133. I do feel that legislation is needed at some point. I am a little bit concerned that we are getting into areas beyond S. 3133 and what the defense and arms sales and what you knew and what you didn't know. I would suggest there are a lot of U.S. Senators who may have been here for years who don't know what's going on in the Senate either, and I'm not quite sure it's fair to put you or any of these gentlemen on trial for what you did or did not know was going on at one time or another. Things do go on. I don't know how many Senators knew what Bobby Baker was doing when he was here in the Senate.

I do want to emphasize the need for legislation, but on a considerate basis of doing it well and doing it correctly and not rushing and I might suggest that knowing some of my colleagues—and I'm not referring to the chairman—he and I sit together most every day, day after day, and know each other rather well—but a timetable that may be necessary for you to make certain that we get the information so we can pass legislation prior to adjourning on October 2, so that my colleagues can go home to their States and districts and say, "I helped cure the bribe problem," so there is that push for getting some action.

I would hope that we would consider the legislation on a more careful basis and do something to solve the problem of bribes rather than getting credit when we go home in November.

Secretary RICHARDSON. I hear what you say, Senator, and you may be sure that, as the British would say, I take your point.

The CHAIRMAN. Let me conclude by saying this: I have the highest personal regard for both of you gentlemen and also, of course,

for Secretary Simon and the other members of the task force, and I do not want what I am going to say to be interpreted as a personal criticism, but I must say that in view of the seriousness of the problem, how long it has taken the administration to establish a task force to study foreign bribery, I think it will be clearly a stall unless we get information up and down on this legislation by the first of June. Despite the excellence of the men appointed to the task force, it will be a stall.

The Cabinet committee to study a problem is, by definition, a prescription to delay making hard decisions. Cabinet members, heads of Government departments are busy men and they have many duties and I'm frankly skeptical as to how much time they will have to devote to the study of bribery. And the problem of foreign bribes has been investigated and studied vigorously for over a year. The administration knows this. It knows what the SEC has done and what the committees of Congress have done. To come out now with a study which will absorb months and months is, in my judgment, a stall.

Secretary Richardson, you said we should deliberate before moving ahead. I agree that we should deliberate over the language of the legislation and I will be glad to do that with you or to have my staff meet with your staff over what should go into the legislation and I would agree with Senator Garn that we should be very careful about this and perhaps have more hearings, certainly a very careful markup with ample notice to members and the administration, but I do not agree that we need months to study a problem that has already been exhaustively studied before we deliberate or agree on the bill. I can only express my strong view that we should quit stalling, quit procrastinating, wasting time, and get down to the business of legislating.

Secretary RICHARDSON. Thank you, Mr. Chairman. You may be assured that I will have no part of a stall and will not deal with this committee on any basis that could fairly be characterized as a stall. We will undertake to give you our views just as expeditiously as possible and we certainly will approach our share of this problem in an entirely cooperative spirit so far as this committee is concerned.

The CHAIRMAN. Thank you very much.

The committee stands adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]







