[COMMITTEE PRINT]

MANUAL OF OFFENSES AND PROCEDURES
KOREAN INFLUENCE INVESTIGATION

Pursuant to House Resolution 252

COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS

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INTRODUCTION: PURPOSES OF INVESTIGATION

On February 9, 1977, the House of Representatives by a vote of 388 to 0 adopted House Resolution 252[1] directing this committee "to conduct a full and complete inquiry to determine whether Members of the House, their immediate families or their associates accepted anything of value, directly or indirectly, from the Government of the Republic of Korea or representatives thereof." The inquiry is intended, as the resolution explains, to ascertain the facts concerning allegations that "Members of the House have been the object of efforts by certain foreign governments or persons and organizations acting on behalf of foreign governments (including the Government of the Republic of Korea) to influence the Members' official conduct by conferring things of value on them or on members of their immediate families or their business or political associates."

Under House Resolution 252, the committee is charged with a twofold responsibility. First, the committee is directed to report to the House (*a*) its findings concerning the adequacy of the present Code of Official Conduct and current laws to protect against the exertion of improper influence by foreign governments on Members of the House of Representatives, and (*b*) its recommendations for changes in the Code or in Federal laws to respond to the problem of improper foreign influence. Second, the committee is to report to the House its recommendations "as to such action, if any, that the committee deems appropriate by the House with respect to individual Members, officers, and employees of the House as a result of any alleged violation of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities." On February 8, 1977 (contingent upon adoption of H.Res. 252 by the House), the committee adopted an implementing resolution establishing the scope of the investigation.[2]

The committee resolution contemplates two distinct types of proceedings, which may take place concurrently or in successive stages. (Compare secs. 1 and 2 with sec. 3.) One type is a general investigation to ascertain the basic pattern of questionable contacts between Korean representatives and Members of the House, so that the committee can assess the adequacy of existing laws and standards. The other type involves the lodging and investigating of charges against specific Members of the House, in order to determine whether to recommend that the House exercise its power under Article 1, Section 5, clause 2 of the Constitution to "punish its Members for disorderly Behaviour, and, with the concurrence of two-thirds, expel a Member."

In view of these responsibilities, it is both appropriate and desirable for the committee, at the outset of its inquiry, to set forth for the bene-

[1] House Resolution 252 is set forth as appendix A.
[2] The resolution is attached as appendix B.

fit of the Members of the House and the public a brief explanation of the principal provisions of the Constitution, Federal laws, the Federal regulations, the Code of Official Conduct, and other standards of conduct that may be of relevance to the present investigation. A number of these provisions are identified in House Resolution 252.[3] Other matters of importance which merit discussion at this stage are problems of knowledge and intent that the committee may confront in making recommendations pertaining to particular conduct, the standard of proof to be employed ; and the rules of evidence to be followed.

This Manual is divided into four parts. Part I examines the scope of the committee's jurisdiction to investigate the conduct of a Member, officer or employee of the House. Part II discusses the principal provisions of the Constitution, Federal statutes, regulations, House rules, and other standards of conduct on which the committee will rely in assessing the conduct of Members of the House. (The relevant provisions are included in appendix C.) Part III addresses the questions of knowledge and intent, and the concept of *de minimis* acts, and analyzes the relationship of those factors to the propriety of recommending sanctions. Part IV contains a discussion of the standard of proof to be employed by the committee in assessing complaints alleging specific misconduct by particular Members of the House. A separate document will be prepared discussing the rules of evidence to be followed in the committee's investigation and hearings.

I

The Committee's Jurisdiction

Prior to the 90th Congress, the House of Representatives had no permanent body charged with monitoring the conduct of its Members. Cases of apparent misconduct of a Member were handled either by the appointment of a special committee to pursue the matter on an ad hoc basis or by application from a standing committee for a resolution to authorize it to deal with an infraction it had chanced upon during an investigation.[4] These methods were "cumbersomely slow," often permitting "abuses to develop into serious losses of prestige before being dealt with" by the House.[5]

In April 1967 the House of Representatives adopted House Resolution 418, establishing the Committee on Standards of Official Conduct as a standing committee and charging it with the task of recommending

> as soon as practicable to the House of Representatives such changes in laws, rules and regulations as the committee deems necessary to establish and enforce standards of official conduct for Members, officers, and employees of the House

[3] The provisions noted in House Resolution 252 are (1) article I, section 9, clause 8 of the U.S. Constitution (prohibiting acceptances of presents or emoluments from foreign governments without the consent of Congress); (2) 2 U.S.C. 441e (forbidding the receipt of political contributions from a foreign national or foreign government); (3) 18 U.S.C. 201 (imposing criminal sanctions for soliciting of accepting bribes or gratuities), (4) 18 U.S.C. 203 (penalizing the receipt of any compensation for services before a government agency or department in a matter in which the United States is a party or has a direct and substantial interest), and (5) House Rule XLIII (the Code of Official Conduct for Members of the House, prohibiting—as initially adopted—the acceptance of any gift of substantial value from a person having a direct interest in legislation before the Congress).

[4] H. Rept. No. 1176, 90th Cong., 2d sess. 12 (1968) ; *see* H. Rept. No. 1364, 94th Cong., 2d sess. 5 (1976).

[5] 114 Cong. Rec. 8778 (1968) (remarks of Rep. Price) ; *see* H. Rept. No. 1176, *supra*, at 12.

After conducting hearings on this question, the committee issued a report recommending the adoption of a resolution that would continue the committee as a permanent standing committee of the House and establish a code of official conduct and a financial disclosure requirement for Members, officers and employees of the House. On April 3, 1968, the House, by a vote of 405 to 1, adopted House Resolution 1099 incorporating the committee's recommendations. Under the Rules of the House for the 95th Congress, the committee's regular legislative jurisdiction is confined to measures relating to the Code of Official Conduct. *See* Rule X1. (t).

The committee is also vested with general investigatory jurisdiction delineated in House Rule X4. (e) (1) (B), which authorizes the committee

> to investigate . . . any alleged violation, by a Member, officer, or employee of the House, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities, and, after notice and hearing, to recommend to the House, by resolution or otherwise, such action as the Committee may deem appropriate in the circumstances ;

This authority clearly extends to violations of formal standards of conduct, such as those set forth in the Constitution, Federal statutes, and the Code of Official Conduct. The committee also has construed the phrase "or other standard of conduct applicable to the conduct of such Member" to include unwritten or uncodified but "familiar ethical standards prohibiting conflicts of interests and the use of official position to benefit oneself." H. Rept. No. 1364, 94th Cong., 2d Sess., p. 7 (1976) [dealing with Rep. Sikes]. In pursuing its investigative authority, the Committee is required by House Rule X4. (e) (2) (C) [6] to apply the laws, rules, regulations, and standards of conduct in effect at the time the conduct under investigation occurred. *See* H. Rept. No. 1364, *supra*, at 5–6.

House Resolution 252, (appendix A), constitutes an additional grant of substantive and procedural authority to conduct the Korean investigation. *See* section 7. The resolution gives the committee the responsibility (1) to determine whether the Korean Government gave Members of the House, or their immediate families or close associates, anything of value [section 1]; (2) to assess the adequacy of the present provisions of the Code and of Federal law to eliminate actual or apparent conflicts of interest in the contacts between Members and foreign governments or their agents [section 2]; and (3) to probe possible violations of existing standards by specific Members [section 3]. Sections 4, 5, and 6 contain expanded procedural authority for the committee tailored to the needs of this comprehensive and sensitive investigation.

[6] House Rule X 4. (e) (2) (C) provides: "No investigation shall be undertaken by the committee of any alleged violation of a law, rule, regulation, or standard of conduct not in effect at the time of the alleged violation."

The floor debate on House Resolution 1099 indicates that this provision was intended to avoid the vice presented by *ex post facto* laws. 114 Cong. Rec. 8779–80 (1968) (remarks of Representatives Halleck, Price, and Belcher). Such laws are expressly prohibited by Article I, Section 9, clause 3 of the Constitution, but that constitutional prohibition has been construed to be directly applicable only to criminal or penal statutes. *See, e.g., Galvan v. Press*, 347 U.S. 522 (1954) ; *Burgess v. Salmon*, 97 U.S. 381 (1878).

II

Principal Constitutional Provisions, Laws, Regulations, Rules, and Standards of Conduct Relevant to the Investigation

A. CONSTITUTIONAL PROHIBITION: THE FOREIGN GIFTS CLAUSE

The Constitution prohibits persons holding Federal office from accepting gifts or payments for service from foreign governments without the consent of Congress. Article I, Section 9, clause 8 of the Constitution provides:

> No Title of Nobility shall be granted by the United States: *And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.* [*Emphasis added*].

1. The Elements of the Offense

This committee has previously examined this constitutional provision in connection with an advisory opinion seeking guidance regarding the acceptance of trips to foreign countries at the expense of the host country. *See* Advisory Opinion No. 3, issued June 26, 1974. In the advisory opinion the committee noted:

> This provision, described as stemming from a "just jealousy of foreign influence of every sort," is extremely broad as to whom it covers, as well as to the "presents" or "emoluments" it prohibits—speaking of the latter as *of any kind whatever*.
>
> It is narrow only in the sense that the framers, aware that social or diplomatic protocols could compel some less than absolute observance of a prohibition on the receipt or exchange of gifts, provided for specific exceptions with the consent of Congress. *Id.*

There are four essential elements to a violation of the constitutional provision:

> (1) the individual must hold an "Office of Profit or Trust" of the United States;
> (2) he must accept a "present" or "Emolument";
> (3) the source of the present or emolument must be a "King, Prince, or foreign State";
> (4) the acceptance of the present or emolument must not have been authorized by Congress.

a. *Officials covered.*—It is clear that a Member of Congress holds an office of profit or trust of the United States. The committee's advisory opinion No. 3 mentioned above concluded that the constitutional provision applied to House Members, noting that the prohibition "impinges equally on all Federal employees." Opinions issued by the Comptroller General and the State Department confirm that the phrase "any Office of Profit or Trust" includes Members of Congress. *See* Opinion of the Comptroller General, B–180472, March 4, 1974; Opinion of the Comptroller General, B–180472, May 9, 1974; Letter Opinion from the Department of State, May 9, 1974.

Although the prohibition applies by its terms only to the Federal official, it should be understood as extending as well at least to members of the official's immediate family and household if the circumstances suggest that such a person is merely the conduit for the gift or that the official is, in practical terms, the object or the beneficiary of the gift. This reading of the clause promotes its evident objective to insulate Federal officials from tangible benefits conferred by foreign governments that may affect—or appear to affect—their objectivity in protecting the national interests of the United States. Thus, if the wife of a Member received a gift of cash or property from a foreign government, the substance of this clause would be violated, unless it was clear that the gift was prompted by some consideration relating to his wife independently and did not benefit the Member, directly or indirectly. The Congress has already recognized that the constitutional clause should be given this somewhat broader sweep, for in the Foreign Gifts and Decorations Act of 1966, as amended, discussed below, a Federal "employee" is defined in § 7342(a)(1)(F) to include "a member of the family and household" of a Member of Congress.

b. *Gifts or presents covered.*—The second element includes the acceptance of "any present [or] Emolument . . . of any kind whatever." A 1974 opinion of the Comptroller General explains the meaning of the terms "present" and "Emolument" in the constitutional provision as follows:

> In connection with this provision, we have viewed the term "present" as synonymous with the term "gift," denoting "something voluntarily given, free from legal compulsion or obligation." 34 Comp. Gen. 331, 334 (1955); 37 Comp. Gen. 138, 140 (1957). "Emolument" has been defined as profit, gain, or compensation received for services rendered (49 Comp. Gen. 819, 820 (1970)); B–180472, March 4, 1974. Opinion of the Comptroller General, B–180472, May 9, 1974.

The opinion concluded that any trip paid for by a foreign government would constitute either a present (if given without regard to the Member's actions) or an emolument (if tendered as payment for services rendered or to be rendered). The breadth of coverage of the provision is apparent from the inclusion of the language "of any kind whatever" indicating that all gifts and emoluments are included, *regardless of their value.* A 1902 opinion of the Attorney General relied on the phrase "of any kind whatever" to conclude that the provision encompasses "even a simple remembrance of courtesy . . . like . . . photographs." 24 Op. Att. Gen. 116, 117 (1902). The Comptroller General concurs in that view: "It seems clear from the wording of the constitutional provision that the drafters intended the prohibition to have the broadest possible scope and applicability." 49 Comp. Gen. 819, 821, (1970). And this committee, in issuing Advisory Opinion No. 3 (June 26, 1974), has agreed: "This provision . . . is extremely broad as to whom it covers, as well as to the 'presents' or 'emoluments' it prohibits—speaking of the latter as of *any kind whatever.*" [7]

c. *Foreign government as source.*—The third requirement—that the present or emolument come from a "King, Prince, or foreign State"—also has been read broadly in conformity with the provision's purpose to guard against "foreign influence of every sort" (3 J. Story, *Commentaries on the Constitution of the United States*, 216–217 (1833)). In advising that a fee of $500 from the British Broadcasting Corporation (BBC) would violate Article I, Section 9, clause 8, the Comptroller General concluded that the British Government exerted sufficient control over the BBC to render it "an instrumentality of the British Government (in effect a British Government Corporation) and thus

[7] This all-inclusive interpretation of the plain language of the constitutional provision is reinforced by the fact that Congress in 1966 deemed it necessary to consent expressly to acceptance of gifts of minimal value (less than $50) in order to permit acceptance of such small gifts consistent with the Constitution. *See* Foreign Gifts and Decorations Act of 1966. 5 U.S.C. § 7342(c); House Rept. No. 2052, 89th Cong., 2 sess. p. (1966).

encompassed within the term foreign state as that term is used in the constitutional provision . . ." Opinion of the Comptroller General B-180472, March 4, 1974. Congress delineated the scope of the term "foreign State" when, in the Foreign Gifts and Decorations Act of 1966, it defined "foreign government" to include "a foreign government and an official agent, or representative thereof." 5 U.S.C. § 7342 (a) (2).

Clearly covered, therefore, would be any gift or honor conveyed by a foreign government in its own name. Also covered would be gifts given by foreign officials or agencies, or their representatives. As a technical matter, it would appear that the prohibition would apply even to receipt of a gift from an undercover agent or representative of a foreign government, even if the Member of the House did not know of his connection with that government. In light of the purpose of the restriction, however, there seems to be no compelling reason to treat the clause as applicable to a gift from a person not known to be a foreign official, at least if the Member is acting in good faith and without constructive notice of the donor's status. The clause is designed to avoid the exertion of improper influence by foreign governments over American national policy, and a Member's judgment cannot be swayed in favor of the wishes or interests of a foreign country if he is unaware, or at least not reasonably likely to be aware, that it is the actual source of some favor.

d. *Limited scope of congressional consent.*—Perhaps the most important element of the "constitutional offense" set forth in Article I, Section 9, clause 8, is that the acceptance of the gift not have been consented to by Congress. Prior to 1966, Congress had authorized the acceptance of gifts or emoluments from foreign governments through private or public bills directed to specific gifts and particular employees. See H. Rept. No. 2052, 89th Congress, 2d session, pp. 2–3 (1966). In 1966, Congress enacted the Foreign Gifts and Decorations Act "to provide a uniform set of standards and procedures for the acceptance of gifts and decorations offered by foreign governments to persons employed by the Government of the United States" (*Id.* at 1). Congress recognized that the "tender of gifts and decorations is an old and well-established practice that antedates the foundation of the United States." Such gifts often constitute "a mark of esteem and appreciation by a foreign government" and "[r]efusal often is regarded at least as a discourtesy and at most an insult." (*Id.* at 1–2).

Congress responded to the custom of exchanging gifts as a mark of esteem or courtesy by authorizing the acceptance *and* retention of "gifts of minimal value" which pose little threat of undue foreign influence. Requirements of diplomacy prompted the authorization to accept (but not to retain) gifts of more than the minimal value "when it appears that to refuse the gift would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States." Once accepted, however, gifts of more than minimal value must be deposited as property of the United States to avoid the possibility that it would unduly influence the Government employee receiving the gift.

The Act, as amended and presently codified in Title 5 of the United States Code, provides:

§ 7342. RECEIPT AND DISPOSITION OF FOREIGN GIFTS AND DECORATIONS.

(a) For the purpose of this section—

(1) "employee" means—

(A) an employee as defined by section 2105 of this title;

(B) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or of the District of Columbia;

(C) a member of a uniformed service;

(D) the President;

(E) a Member of Congress as defined by Section 2106 of this title; and

(F) a member of the family and household of an individual described in subparagraphs (A)–(E) of this paragraph;

(2) "foreign government" means a foreign government and an official agent, or representative thereof;

(3) "gift" means a present or thing, other than a decoration, tendered by or received from a foreign government; and

(4) "decoration" means an order, device, medal, badge, insignia, or emblem tendered by or received from a foreign government.

(b) An employee may not request or otherwise encourage the tender of a gift or decoration.

(c) Congress consents to—

(1) the accepting and retaining by an employee of a gift of minimal value tendered or received as a souvenir or mark of courtesy; and

(2) The accepting by an employee of a gift of more than minimal value when it appears that to refuse the gift would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States.

However, a gift of more than minimal value is deemed to have been accepted on behalf of the United States and shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(d) Congress consents to the accepting, retaining and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the agency, office or other entity in which the employee is employed and the concurrence of the Secretary of State. Without this approval and concurrence, the decoration shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this Section.

(e) The President may prescribe regulations to carry out the purpose of this section.

The consent contained in the Act is limited in several important ways. First, the Government employee "may not request or otherwise encourage the tender of a gift or decoration" (5 U.S.C. § 7342(b)). Thus, if a Member, or his spouse, staff aide, or associate, actively or intentionally stimulates the offer of even a token gift from a foreign government, that conduct is forbidden, and receipt of the gift would, without more, violate the Constitution.

Second, the consent is limited to a "gift of minimal value" and the State Department has determined[8] by regulation that this includes "any present or other thing, other than a decoration, which has a retail value not in excess of $50 in the United States." 22 C.F.R. § 3.3(e). The regulations place on the employee the burden of establishing that the gift is of minimal value. *Id.* § 3.5(b).[9]

[8] The President, by Executive Order 11320, delegated to the Secretary of State the authority to issue regulations to implement the Act. The text of the present regulations is attached as appendix C.

[9] The State Department regulations apply to all agencies unless the individual agency regulations provide different dollar limitations. 22 C.F.R. § 3.5(b). The House of Representatives has not fixed a different amount.

Third, the gift of minimal value must be "tendered or received as a souvenir or mark of courtesy." 5 U.S.C. § 7342(c)(1). It is therefore most unlikely that gifts of money or negotiable securities, for example, could qualify under the terms of the consent even if the dollar amounts were small. Moreover, gifts of even minimal value offered for the purpose of influencing a Member in his official acts would not be immunized from the criminal provisions covering bribery and acceptance of gratuities. *See* pages 20–26 *infra*.

Under these standards, it is clearly improper for a Member to accept the provision of transportation or lodging from a foreign government for himself or his family in connection with a visit to that country, and this committee's Advisory Opinion No. 3, *supra*, so holds. On July 12, 1976, however, Congress prospectively gave its consent to the acceptance of foreign travel and related forms of assistance provided by a foreign government to enable the Federal employee (including a Member of Congress) to participate in certain types of cultural exchange programs, if the trip is specifically approved by the Secretary of State. *See* 22 U.S.C. § 2458a, as added by § 111, Public Law 94–350, 90 Stat. 825 (1976).

Whether, apart from receipt of valuable travel benefits, the acceptance of an honorary degree from an institution controlled by a foreign government would in itself be forbidden is a somewhat more difficult question. An honorary degree from a government-controlled university bears some of the hallmarks of a "decoration," which under the Foreign Gifts and Decorations Act can be accepted only under circumstances not likely to apply to Members of the House in this investigation. *See* 5 U.S.C. § 7342(d). In addition, as a mark of governmental favor, an honorary degree bestowed by a foreign state also resembles a title of nobility, which cannot be accepted under any circumstances. An honorary degree itself has no instrinsic commercial value, and thus could be considered a "gift of minimal value tendered . . . or a . . . mark of courtesy," the acceptance and retention of which as permitted by the Act. The uncertainty on this question makes it inappropriate to treat a Member's prior acceptance and retention of an honorary degree from a foreign government-controlled institution, standing alone, as a punishable act. Receipt of a degree may be important, however, in assessing the broader context in which a Member acted.

If a Member accepted a gift of more than minimal value in the good faith belief that it would be offensive to refuse it (and properly declared it to Customs authorities, if appropriate), the propriety of his conduct would depend on what he did with the gift. Retaining it would violate the Constitution, since all gifts of more than minimal value, even if permissibly received, must be promptly surrendered to the Government, on whose behalf they are deemed accepted. If the Member gave the item away, he would still be in violation of the Constitution as implemented by the Act, since the premise under which the gift was lawfully received was that he was, in effect, accepting it in trust for the United States.

A crucial consideration in determining whether the Member committed any punishable conduct, however, would be whether he benefited from making a further gift of the item, as for example by passing it along to a personal friend or by taking a tax exemption for donating it to a charity. In addition, of course, if he kept and used the gift before finally parting with it, it would be hard to find mitigating circumstances. If, purely out of ignorance of provisions of the Act, the Member promptly donated the item to a charity after accepting it in good faith, and derived no benefit from that improper failure to surrender it to the United States, the Committee should treat the technical breach as insufficient to merit further investigation or punishment.

2. The Sanctions for Violation

There are no sanctions for violation of Article I, Section 9, clause 8 set forth in the Constitution and no penalties contained in the 1966 act for violating its directives. Whether any punishment is appropriate for a technical violation, and what punishment is proper for a culpable violation, will necessarily depend on all the circumstances, including the value of the gift, the probable effect of its acceptance, and its place in an overall pattern.

B. CRIMINAL PROVISIONS

1. Bribery

The crime of bribetaking poses a vicious threat to the proper functioning of our system of government:

> It is a major concern of organized society that the community have the benefit of objective evaluation and unbiased judgment on the part of those who participate in the making of official decisions. Therefore, society deals sternly with bribery which would substitute the will of an interested person for the judgment of a public official as the controlling factor in official decisions. *United States* v. *Labovitz*, 251 F.2d 393, 394 (3d Cir. 1958).

Section 201(c) of Title 18 of the United States Code prohibits any public official from soliciting or accepting anything of value in return for being influenced in the performance of his official duties. Members of Congress are expressly included within the term "public official" as defined in 18 U.S.C. § 201(a). The text of the bribery provision is as follows:

> (c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:
>
> (1) being influenced in his performance of any official act; or
>
> (2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or
>
> (3) being induced to do or omit to do any act in violation of his official duty; or
>
> * * * * * * *
>
> Shall be fined not more than $20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than 15 years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

a. *The Elements of the Offense.*—The elements of offense of bribery require proof that (1) a public official, (2) directly or indirectly, *corruptly* solicits, receives, or agrees to receive, (3) anything of value, (4) for himself or any other person or entity, (5) in return for being influenced in his performance of any official act. The gist of the offense is the "corrupt" intent with which the public official solicits, agrees to

receive, or accepts a thing of value. As the Supreme Court noted in *United States* v. *Brewster*, 408 U.S. 501, 526 (1972), the "illegal conduct is taking or agreeing to take money for a promise to act in a certain way. There is no need for the Government to show that [the Senator] fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise." If a public official accepts *anything of value* as "an explicit *quid pro quo*" for being influenced in his official conduct, he has violated the bribery statute. *United States* v. *Anderson*, 165 U.S. App. D.C. 390, 407–409; 509 F.2d 312, 329–331 (1974), *cert. denied*, 420 U.S. 991 (1975).

It is important to note that a Member would violate this Federal statute if he agreed that the receipt of something of value would influence his performance of his official responsibilities, such as introducing legislation, voting on it, or interceding with other Federal officials. It would be no defense that he might have taken, or indeed would have taken, the same action without any financial inducement. Nor is it an excuse that the action promised or offered was itself proper or otherwise in the national interest of the United States. There need be no proof of a formal contractual commitment, as long as it was understood and intended by both parties that the Member would take (or decline to take) official action in return for the requested or promised benefit. The benefit itself need not be cash, of course; anything of tangible value will suffice. This would include business opportunities, entertainment, and sexual favors, if the requisite intent is present. Not included, however, would be a promise of personal friendship or general philosophical or political support. Finally, the Member himself need not be the recipient of the valuable consideration; a benefit flowing to a relative or business associate, for example, would be covered if the corrupt intent is present.

b. *The Sanctions for Violation.*—The crime of bribery is a felony punishable by fine of "not more than $20,000 or three times the monetary equivalent of the thing of value, which ever is greatest," or imprisonment "for not more than 15 years, or both." [10] In addition, the statute provides that a public official convicted of bribery "may be disqualified from holding any office of honor, trust, or profit under the United States." *Id.* Although the Supreme Court has suggested that conviction itself under a statute of this type may not operate to remove a Senator from office without affirmative action by the Senate, *Burton* v. *United States*, 202 U.S. 344, 369 (1906), it is plain that a finding of bribery warrants expulsion from the House.

2. Acceptance of a Gratuity

Closely related to the offense of bribery is the prohibition against acceptance of a gratuity or reward by a public official "for or because

[10] Each bribe accepted constitutes a separate offense warranting a penalty. *See United States* v. *Anderson, supra*, 165 U.S. App. D.C. at 411, 509 F.2d at 333.

These penalties are also provided for persons who violate the bribery statute by corruptly giving or promising anything of value to a public official with the intent to influence any official act; 18 U.S.C. § 201 (b). The counterpart offense addressed to the person making or offering the bribe is committed when the bribe is offered with the requisite corrupt intent "even though the official offered the bribe is not corrupted, or the object of the bribe could not be attained, or it could make no difference if after the act were done it turned out that there had been actually no occasion to seek to influence any official conduct." *United States* v. *Jacobs*, 431 F.2d 754, 759–60 (2d Cir. 1970), *cert. denied*, 402 U.S. 950 (1971). *See United States* v. *Anderson, supra*, 165 U.S. App. D.C. at 410, 509 F.2d at 332.

of any official act performed or to be performed by him." The gratuity provision is set forth in 18 U.S.C. § 201 (g):

> (g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him; or
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> * * * * * * *
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> Shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both.

a. *The Elements of the Offense.*—There are three differences between the gratuity offense and the bribery provisions described previously. First, the gratuity provision is limited to a public official's acceptance of "anything of value *for himself*" whereas the bribery statute encompasses acceptance "for himself or for any other person or entity." Second, the gratuity offense, unlike bribery, applies primarily to things of value tendered in consideration of *past* official acts. In this sense the statute prohibits receipt of anything that constitutes a reward or token of appreciation for performance of official functions.

Third, and most important, while the bribery section requires a specific corrupt intent to influence or be influenced, the gratuity section is violated anytime an official receives anything of value "otherwise than as provided by law . . . for or because of any official act performed or to be performed by him." The Supreme Court, in contrasting the two statutes, has noted that the gratuity offense merely requires that the public official "solicited, received, or agreed to receive, money with knowledge that the donor was paying him compensation for an official act." *United States* v. *Brewster*, *supra*, 408 U.S. at 527.

The difference between the bribery and gratuity sections is most easily illustrated in the case where a payment is made for or because of a past official act. In such a situation, the payment raises an appearance of impropriety, offends the policy that officials' salaries should only be paid by the public at large, and creates the danger that future official acts may be influenced, but there is no *quid pro quo* bargain corrupting unbiased decisionmaking. "The offense of giving a gratuity was designed primarily to apply to situations where payment is not made until after official action is taken and the element of a corrupt bargain is absent or unprovable." *United States* v. *Haran*, 457 F. 2d 471, 466 n.11 (2d Cir. 1972). Thus, if a Member of the House solicited or received anything of value because he had taken legislative action or exerted the influence of his office in a way that pleased his benefactor, he would be in violation of this felony statute.

Where the payment is made for or because of an act to be performed by the public official, the distinction between the bribery and gratuity offenses is more difficult to discern. The basic difference involves the intent proven: a violation of the gratuity section by simply establishing "knowing and purposeful receipt by a public official of a payment, made in consideration of [a future] official act," without showing an offer or promise to be influenced. *United States* v. *Brewster*, 165 U.S. App. D.C. 1, 16; 506 F. 2d 62, 77 (1974).

b. *The Sanction for Violation.*—Violation of the gratuity provision is a felony punishable by a fine of not more than $10,000 or imprison-

ment for not more than two years, or both.[11] Since this offense is treated as a serious crime affecting the integrity of the governmental process, a severe sanction could be warranted in an aggravated case.

3. *Accepting Compensation for Services in Matters Involving the United States*

In an attempt to prevent conflicts of interest that might threaten the integrity of governmental decisions, Congress long ago enacted a criminal statute barring Members of Congress (among other public officials) from receiving compensation for services in certain proceedings in which the United States has an interest. The present conflict of interest statute, 18 U.S.C. § 203(a), provides:

§ 203. COMPENSATION TO MEMBERS OF CONGRESS, OFFICERS, AND OTHERS IN MATTERS AFFECTING THE GOVERNMENT.

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

* * *

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust or profit uder the United States.

In construing an earlier version of the present conflict of interest provision, the Supreme Court explained the purpose underlying the application of the legislation to Members of Congress:

> Congress, when passing this statute, knew, as, indeed, everybody may know, that executive officers are apt, and not innaturally, to attach great, sometimes, perhaps, undue, weight to the wishes of Senators and Representatives. Evidently the statute has for its main object to secure the integrity of executive action against undue influence upon the part of members of that branch of the government, whose favor may have much to do with the appointment to, or retention in, public position of those whose official action it is sought to control or direct. *Burton* v. *United States*, 202 U.S. 344, 367–68 (1906).

a. *The Elements of the Offense.*—The elements of the conflict of interest offense require proof that (1) a Member of Congress or an officer or employee of the United States (2) knowingly (3) directly or indirectly received or agreed to receive any compensation for (4) any services rendered or to be rendered either by himself or another (5) in connection with a "particular matter" (6) in which the United States "is a party or has a direct and substantial interest" (7) before a nonjudicial agency or tribunal, (8) otherwise than as provided by law for the proper discharge of his official duties. *See United States* v. *Quinn*, 141 F. Supp. 622, 626–27 (S.D.N.Y. 1956). The elements, in general, can be understood from the language of the statute.[12]

[11] As with the bribery provision, there is a counterpart gratuity section outlawing the provision or promise of anything of value to a public official for or because of any official act performed or to be performed by him. 18 U.S.C. § 201(f).

The critical provision for purposes of ascertaining the reach of the statutory prohibition is the requirement that the United States be a party or have a "direct and substantial interest" in the proceeding. The Supreme Court has indicated that the United States is "interested" in a proceeding within the meaning of the statute, even in the absence of a "direct moneyed or pecuniary interest in the result," where an agency is considering the application of a law regulating the use of its property. *Burton* v. *United States*, *supra*, 202 U.S. at 371–72 (proceeding before the Post Office Department charging company with fraudulent use of the mails).

This statute would apply, for example, if a Member of the House facilitated the award of a grain export contract by a Federal agency and then accepted "compensation" for this effort. Unlike either the gratuity or bribery statutes, the Member need not have been exercising the powers and privileges of his office; the statute broadly prohibits a Member from having any financial interest in specific matters involving or pending before executive departments, even if a business associate is primarily—or even exclusively—pursuing the matter.

b. *The sanction for violation.*—Violation of § 203(a) is punishable by a fine of not more than $10,000 and by imprisonment for not more than two years. In addition, conviction results in a mandatory disqualification from holding any office under the United States. Since this statute purports to require disqualification from office upon conviction, *but see Burton* v. *United States*, *supra*, 202 U.S. at 369, punishment by the House extending to expulsion could be warranted.

4. *Making False Statements to a Department Or Agency of the United States.*

More than 100 years ago, Congress enacted legislation to prevent the making of false or fraudulent claims against the United States. The original statute, which was designed to cope with the flood of frauds upon the government during the Civil War, was limited to false claims affecting the pecuniary or property interests of the United States. *United States* v. *Cohn*, 270 U.S. 339 (1926). In 1934, Congress broadened the scope of the enactment by eliminating the restriction requiring that the claim threaten the financial interests of the government. *See, e.g.*, *United States* v. *Bramblett*, 348 U.S. 503 (1955); *United States* v. *Gilliland*, 312 U.S. 86 (1941). The present statute prohibiting the making of false statements to an agency or department of the United States, 18 U.S.C. § 1001, derives its scope from this 1934 enactment. As the Supreme Court has explained, the purpose of § 1001 is "to protect the authorized functions of governmental departments from the perversion which might result from the deceptive practices described." *United States* v. *Gilliland*, *supra*, 312 U.S. at 93. This broad purpose extends to the protection of "the integrity of official inquiries." *Bryson* v. *United States*, 396 U.S. 64, 70 (1969).

[12] The legislative history of the statute indicates that Congress intentionally excluded appearance before courts from the conflict of interest bar because a "Congressman, officer, or employee of the United States, in appearing in a court before a judge or jury, could have no such weight or influence as might be present if the appearance were before some governmental department or agency." *United States* v. *Adams*, 115 F. Supp. 731, 735 (D.N.D. 1953); *see United States* v. *Walding*, 122 F. Supp. 903 (E.D. Pa. 1954); *United States* v. *Quinn*, 111 F. Supp. 870 (E.D.N.Y. 1953).

Section 1001 provides as follows:

> *Whoever*, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or *makes any false, fictitious or fraudulent statements or representations*, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both. [Emphasis added].

a. *The Elements of the Offense.*—There are five essential elements of the § 1001 offense: (1) the defendant made a statement or representation; (2) it was false; (3) the false statement was made knowingly and willfully; (4) it was made in a matter within the jurisdiction of any department or agency of the United States; and (5) it was material to such a matter.

Highly significant for purposes of this committee's investigation is the Supreme Court's holding in *United States* v. *Bramblett*, *supra*, that Congress intended the word "department" in § 1001 "to describe the executive, *legislative*, and judicial branches of the Government." 348 U.S. at 509 [emphasis added]. Reasoning that Congress would not have intended to leave frauds on branches other than the executive without penalty, the Court in *Bramblett* found that § 1001 applied to a false representation made by a Member of the House to the Disbursing Office of the House of Representatives. While *Bramblett* involved a false statement threatening the government with pecuniary loss, *Gilliland* establishes that any false statement or deceptive practice that would interfere with the proper functioning of the House of Representatives comes within the prohibition of § 1001. The false statement would have to meet the materiality requirement that has been read into the latter portion of § 1001 by the courts. *See, e.g., United States* v. *Johnson*, 530 F.2d 54, nn.2–3 (5th Cir. 1976), *cert. denied*, — U.S. — (1977); *Brethauer* v. *United States*, 333 F.2d 302, 306 (8th Cir. 1964). Courts have uniformly found that a statement which has the "natural tendency to influence, or was capable of influencing, the decision of the tribunal" in making a required determination satisfies the materiality standard. *See, e.g., United States* v. *Johnson*, *supra*, at 54; *Brethauer* v. *United States*, *supra*, at 306.

The knowing and willful submission of a false report or affidavit to the House of Representatives would place a Member in violation of § 1001. For example, a Member who received a political contribution from a foreign government or its agent or who obtained a substantial financial interest in a foreign business operation would be in violation of section 1001 if he knowingly and willfully submitted a false financial disclosure statement under House Rule XLIV [13] or filed a false campaign contribution report. *See* pages 46–55, *infra*, discussing the restriction on receipt of political contributions from foreign governments or foreign nationals.

In addition to any false reports that may previously have been made by Members in connection with the receipt of funds from the Korean Government or its agents or in connection with joint business ventures

[13] Prior to its revision on Mar. 2, 1977, pursuant to H. Res. 287, House Rule XLIV required every Member to file annually with the Comittee on Standards of Official Conduct a report showing any interest valued at $5,000 or more in an entity doing substantial business with the Government or from which he derives more than $1,000 in income. Also to be reported are sources of certain other income over $5,000 and honorariums over $300.

with suspected Korean representatives, section 1001 may be implicated if false statements are made to the committee or its staff during the course of this investigation.

There is substantial disagreement among the Federal courts as to the application of section 1001 in the context of a criminal investigation. While it has generally been held that a "statement" under section 1001 need not be in writing, under oath, or be required to be made by law, *see Adler* v. *United States*, 380 F.2d 917, 922 (2d Cir.), *cert. denied*, 389 U.S. 1006 (1967), some courts have concluded in the context of criminal investigations that a mere "exculpatory 'no'" or other oral, unsworn response to questioning by government investigators does not constitute a "statement" within the meaning of section 1001. *See, e.g., United States* v. *Bedore*, 455 F.2d 1109 (9th Cir. 1972); *Paternostro* v. *United States*, 311 F.2d 298 (5th Cir. 1962); *United States* v. *Erlichman*, 379 F. Supp. 291 (D.D.C. 1974); *United States* v. *Stark*, 131 F. Supp. 190 (D. Md. 1955). Section 1001 also has been found to be inapplicable to statements made during an investigation on the ground that the FBI and the Department of Justice lack "jurisdiction" over the subject matter of the statement because they lack the power to decide criminal cases. *See Friedman* v. *United States*, 374 F.2d 363 (8th Cir. 1967); *United States* v. *Stark*, *supra*.

The decisions restricting the application of section 1001 in the context of a criminal investigation rest primarily on concerns that a literal reading of section 1001 would render perjury and other more specific false statements statutes unnecesary, would obviate the need to administer oaths, would jeopardize open communications between the public and law enforcement agencies, and would vest law enforcement officers with a formidable and dangerous power. These concerns, however, have failed to persuade other courts which have concluded that false statements made during a criminal investigation properly fall within the proscription of section 1001. *See, e.g., United States* v. *Isaacs*, 493 F.2d 1124 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974); *United States* v. *Adler*, *supra*; *United States* v. *Mitchell*, 397 F. Supp. 166 (D.D.C. 1974).

Whether a false statement by a Member or his staff made during the course of this investigation should be the subject of a criminal prosecution under section 1001 or 18 U.S.C. section 1505 (prohibiting the obstruction of congressional committees) [14] is a matter for the Department of Justice to resolve. This committee need not take a position on the precise scope of those criminal statutes, since the committee may recommend the imposition of sanctions upon a Member for violation of the House rules or other fundamental ethical standards. A member who willfully and knowingly makes a false statement to this committee or its staff in an attempt to impede or divert its investigation would breach traditional notions of basic ethical conduct and the

[14] 18 U.S.C. § 1505 provides in pertinent part:

> "Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness . . . in connection with any inquiry or investigation being had by either House, or any committee of either House . . . ; or
>
> Whoever corruptly, or by threats or force, or by any threatening letter or communication, *influences, obstructs, or endeavors to influence, obstruct, or impede . . . the due and proper exercise of the power of inquiry under which such either House, or any committee of either House* . . . Shall be fined not more than $5,000 or imprisoned not more than 5 years, or both." . . . [Emphasis added].

requirement of Rule XLIII(1) of the House of Representatives that a Member "conduct himself at all times in a manner which shall reflect creditably on the House of Representatives."

b. *The Sanction for Violation.*—Violation of 18 U.S.C. § 1001 is a felony punishable by a fine of not more than $10,000 and/or by imprisonment for not more than 5 years. The severity of the criminal sanction indicates the serious threat to the proper functioning of governmental departments that may be posed by false statements. In view of the potentially broad range of circumstances that may be presented by false statement cases, the determination of the appropriate sanction should be made on a case by case basis. A severe sanction, however, would appear warranted in an aggravated case, especially if calculated to conceal corrupt behavior or to frustrate an investigation ordered by the House itself.

5. Conspiracy To Defraud the United States

The broadest criminal statute designed to safeguard the proper functioning of governmental processes is 18 U.S.C. § 371. That statute, prohibiting conspiracies to defraud the United States or to commit any offense against the United States, provides:

> *If two or more persons conspire* either to commit any offense against the United States, or *to defraud the United States, or any agency thereof, in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.* (Emphasis added.)
>
> If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

a. *The Elements of the Offense.*—In order to establish the offense of conspiracy to defraud the United States there must be proof that (1) two or more persons (2) conspired (3) to defraud the United States or agency thereof, and (4) engaged in any act in furtherance of the conspiracy. The element of conspiracy merely requires proof of an agreement between two or more persons to engage in the proscribed conduct. There need not be a formal or an express agreement to establish a conspiracy; and agreement may be implied from conduct indicating a mutual understanding to pursue a common design or purpose.

The critical language defining the scope of the offense is the phrase "to defraud the United States." The Supreme Court has found that while the phrase "means primarily to cheat the Government out of property or money" it also encompasses conduct which "interfere(s) with, or obstruct(s) one of [the Federal Government's] lawful government functions by deceit, craft, or trickery, or at least by means that are dishonest." *Hammerschmidt* v. *United States*, 265 U.S. 182, 188 (1924); *see Glasser* v. *United States*, 315 U.S. 60, 66 (1942). There is no requirement that "the Government shall be subjected to property or pecuniary loss by the fraud . . . *Hammerschmidt* v. *United States*, *supra*, 265 U.S. at 188. It is sufficient if the Government's "legitimate official action and purpose shall be defeated" by fraudulent conduct. *Id.*

This statute has been used on a number of occasions to punish the use of congressional influence for private advantage. For example, an agreement between a Congressman and another person under which

the Congressman was paid to exert his influence to seek to persuade the Department of Justice to dismiss a criminal indictment was held to constitute a conspiracy to defraud the United States of its right to unobstructed performance of its lawful government functions. *See United States* v. *Johnson*, 383 U.S. 169 (1966). Similarly, an indictment charging an assistant to the Speaker of the House with agreeing with another person to use the influence of the Speaker's Office to exert influence on Government agencies was prosecuted under 18 U.S.C. § 371. *See United States* v. *Sweig*, 316 F. Supp. 1148 (S.D.N.Y. 1970). The *Sweig* opinion indicates that the receipt of payments by Government officials for the performance of official acts constitutes "dishonest" conduct sufficient to bring any resulting interference with lawful governmental functions within the prohibition against conspiracy to defraud the United States. *Id.* at 1156. Indeed, in *Sweig*, the court concluded that it was not essential to allege that the assistant to the Speaker had taken money or any other items of value so long as he participated in a design to interfere with the Government's lawful right to have its business conducted unhindered and unobstructed by undue pressures and influences. *Id.*

It thus appears that participation by a Member in an agreement to intervene in matters before Federal agencies or executive departments may come within the prohibition contained in 18 U.S.C. § 371, if the scheme involves personal gain for the Member, or includes misrepresentations or material omissions. Similarly, section 371 would apply to an agreement by a Member of Congress to promote the interest of an agent of the Korean Government or a representative of Korean business interests, if he was acting as a result of some favor or in expectation of personal aggrandizement. In practice, such agreements are likely to involve conduct outlawed by the acceptance of compensation for services, bribery,[15] and gratuity statutes discussed previously. The amorphous contours of the conspiracy to defraud statute, however, may encompass conduct that does not meet one or more of the particularized elements of these other statutes.

It is not clear whether 18 U.S.C. § 371 reaches agreements to impair, obstruct, or defeat the lawful and proper functioning of Congress as opposed to a Federal agency or executive department. But there is nothing in the language of the statute itself that precludes such an application, and broad coverage would promote the statutory purpose of securing the wholesome administration of the laws and affairs of the United States. *See United States* v. *Moore*, 173 F. 122 at 131 (9th Cir. 1909). As a practical matter, however, any dishonest or deceitful scheme to interfere with the proper functioning of Congress is likely to violate a more definite statutory prohibition or standard of conduct. It appears preferable where possible to employ more definite and focused standards than that contained in section 371's prohibition of conspiracies to defraud the United States.

b. *The Sanction for the Violation.*—A criminal conviction for conspiracy to defraud the United States may be punishable by a fine of not more than $10,000, imprisonment for not more than 5 years, or

[15] Unlike the bribery statute, however, the evil is not the acceptance of something of value with the intent to be influenced but the agreement to interfere with or obstruct the lawful discharge of Government's business.

both. Since this offense is treated as a serious crime affecting the proper functioning of the Federal Government, the House would be warranted in imposing a severe sanction upon a Member found to have violated the statute.

6. Engaging in Private Correspondence with Foreign Governments

The Logan Act, now codified at 18 U.S.C. § 953, provides as follows:

> Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined not more than $5,000 or imprisoned not more than three years, or both.
>
> This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

This provision was adopted in 1799 in response to the actions of Dr. George Logan, a Pennsylvania Quaker who journeyed to France in 1798 to attempt to ease strained relations between that country and the United States. Logan was denounced by the Federalists for meddling in the province of foreign affairs entrusted to the Executive. The year following Logan's travels, Congress enacted legislation to bar future efforts at private diplomacy.

a. *The Elements of the Offense.*—Assistant Attorney General Charles Warren outlined the elements of the offense created by the Logan Act in a 1917 memorandum. The memorandum states in pertinent part:

THE ELEMENTS OF THE CRIME

The actions made criminal by the statute fall into two classes: (1) Those performed by United States citizens wherever resident or abiding; (2) those performed by a person resident in the United States, whether alien or citizen.

(1) The actions forbidden to the United States citizens are:

(a) Without the permission or authority of the Government;

(b) Directly or indirectly;

(c) To commence or carry on any verbal or written correspondence or intercourse with any foreign Government or any officer or agent thereof,

Or—

(d) To counsel, advise or assist in any "such correspondence" i.e., in any verbal or written correspondence by a United States citizen with any foreign Government or any officer or agent thereof;

(e) With an intent to influence the measures or conduct of any foreign Government or any officer or agent thereof in relation to any disputes or controversies with the United States,

Or—

(f) With an intent to defeat the measures of the Government of the United States.

(2) The actions forbidden to persons resident within the United States, whether alien or citizen, are: to counsel, advise or assist in the verbal or written correspondence, or intercourse made criminal as above, with the intent designated as above. History of Laws Prohibiting Correspondence With a Foreign Government and Acceptance of a Commission, Senate Document No. 696, 64th Cong., 2d Sess. 9–10 (1917).

The precise reach of this statute is quite clouded, and it appears that there has never been a prosecution for violation of the Logan Act in the 178 years since it was enacted. The scant judicial references to the provision, however, suggest that at least the portion of the Act prohibiting correspondence with a foreign Government with an "intent . . . to defeat the measures of the United States" may be unconstitutionally vague. *Waldron* v. *British Petroleum Co.*, 231 F. Supp. 72, 88–89 and n. 30 (S.D.N.Y. 1964).[16] Apart from vagueness problems, the statute suffers from evident defects when placed next to the First Amendment, and is in any event likely to be unconstitutionally overbroad.

Furthermore, even assuming the validity of the Act, there is a substantial question whether all correspondence between a Member of Congress and a foreign government relating to disputes or controversies with the United States would be barred under the Logan Act since its prohibition is limited to citizens acting "without authority of the United States." While the conduct of foreign affairs is entrusted to the Executive by Article II of the Constitution, and the President is sometimes termed the "sole organ" of the Nation in foreign relations,[17] Members of Congress have an important, independent role in some of these activities. Apart from the Senate's responsibilities relating to treaties and ambassadors, the House exercises responsibilities in regulating international trade, foreign aid, military assistance, and the Armed Forces. Accordingly, Members of Congress may well have authority to engage in direct contacts with representatives of foreign governments on matters pertinent to their legislative responsibilities.

b. *The Sanction for Violation.*—Although the statute provides for substantial criminal penalties (a fine of not more than $5,000 and/or imprisonment of not more than 3 years), no investigation or punishment dependent on a violation of the Logan Act would be warranted in view of the serious question regarding the statute's constitutionality and its applicability to official actions of Members of Congress.

7. Acting as Agent for a Foreign Principal

In 1966, Congress adopted amendments to the Foreign Agents Registration Act of 1938. One of the amendments provided for the creation of a new conflict-of-interest section making it a felony for an officer or employee of the United States to act as an agent of a foreign principal required to register under the Foreign Agents Registration Act. This section, codified as 18 U.S.C. § 219, provides in pertinent part:

> Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of

[16] The *Waldron* decision rejected the argument that the Logan Act had been abrogated by desuetude. *Id.* at 89 n. 30.

[17] *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936); *see also United States* v. *Pink*, 315 U.S. 203, 229 (1942); *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 410 (1964).

1938, as amended, shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

The purpose of the Foreign Agents Registration Act is described in the House Report on the 1966 amendments:

> The act is intended to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political. Such disclosures as required by the Act will permit the Government and the people of the United States to be informed as to the identities and activities of such persons and so be better able to appraise them and the purposes for which they act. H. Rept. No. 1470, 89th Cong., 2d sess. 2 (1966).

The conflict of interest provision, 18 U.S.C. § 219, goes beyond mere disclosure and prohibits officers and employees of the United States from acting as agents of a foreign principal. The prohibition complements the overall purpose of the disclosure requirement by assuring that the government officials, for whose benefit the disclosure of foreign interests is required, will not themselves be biased in favor of the policies urged by agents of foreign principals.

a. *The Elements of the Offense.*—As is evident from the language of 18 U.S.C. § 219, the critical elements of the offense rest on the definition of an "agent of a foreign principal" and the scope of the exemptions to the general requirement that an agent of a foreign principal must register with the Attorney General. From among the lengthy definitions of an agent of a foreign principal and the list of exemptions to the registration requirement contained in the 1966 amendments to the Foreign Agent Registration Act, the following excerpts are most pertinent:

An "agent of a foreign principal" is defined in 22 U.S.C. § 611 as follows:

> (c) Except as provided in subsection (d) of this section, the term "agent of foreign principal" means—
>
> (1) any person who acts as an agent, representative, employee, or servant, or *any person who acts in any other capacity at the order, request,* or under the direction or control, *of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal,* and who directly or through any other person—
>
> (i) *engages within the United States in political activities for or in the interests of such foreign principal;*
>
> (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
>
> (iii) within the United States *solicits,* collects, disburses, or disperses contributions, *loans, money, or other things of value for or in the interest of such foreign principal;* or
>
> (iv) within the United States *represents the interests of such foreign principal before any agency or official of the Government of the United States;* and
>
> (2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection." [Emphasis added].

All persons acting as an agent of a foreign principal are required to register with the Attorney General pursuant to 22 U.S.C. § 612(a) unless exempted from registration by 22 U.S.C. § 613. The latter provision states:

> § 613. Exemptions.
>
> The requirements of section 612(a) of this title shall not apply to the following agents of foreign principals:
>
> (a) *A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State,* while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer;
>
> (b) *Any official of a foreign government, if such government is recognized by the United States,* who is not a public relations counsel, publicity agent, information service employee, or a citizen of the United States, whose name and status and the character of whose duties as such official are of public record in the Department of State, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the function of such official;
>
> (c) *Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State,* other than a public relations counsel, publicity agent, or information service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee;
>
> (d) *Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal;* or (2) in other activities not serving predominantly a foreign interest; or (3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering. . . .
>
> (g) *Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal* before any court of law or any agency of the Government of the United States: *Provided,* That for the purposes of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of established agency proceedings, whether formal or informal. [Emphasis added.]

As a general matter, a person is considered to be an agent of a foreign principal if he acts at the order of, *or on request of,* or is under the control of a foreign principal or an agent of a foreign principal. The House report on 1966 amendments indicates that indirect exercise of control through the payment of subsidies would render the person receiving the subsidy an agent of the foreign principal to the extent that the principal exercised "direction and control of the activities subsidized." H. Rept. 1470, 89th Cong., 2d sess. 5 (1966). Persons who come within the definition of an agent of a foreign principal are normally required to register with the Attorney General if they engage in activities that are political in nature, including efforts to influence policies of the legislative or executive branches of the U.S. Government. *See id.* at 4.

Under these circumstances, a Member of the House who asserted political or policy positions at the behest of the Korean Government or an agent of that government and sought to influence other Members of Congress or officials of the executive branch on Korean matters could be considered a foreign agent within the meaning of the Foreign Agents Registration Act. Of course, merely accepting a suggestion by a foreign official or being convinced of the merits of a position asserted by a foreign government would not be covered. The Act depends on the existence of a relationship, whether or not for hire, in which the "agent" acts *on behalf of* the foreign principal. If a Member is found

to have engaged in a course of conduct demonstrating that he was acting in that capacity, his conduct would constitute that of a foreign agent, and he would have violated the flat prohibition of 18 U.S.C. § 219.

b. *The Sanction for Violation.*—The penalty established for violation of section 219 is a fine of not more than $10,000, imprisonment for not more than 2 years, or both. Since a Member of the House is elected to represent the interests of his voting constituents and of the people of the United States as a whole, any finding that he actually served as an agent for a foreign government could justify severe punishment, whether or not the acts were themselves corrupt.

8. Campaign Act Violations

a. *Prohibition on Receipt of Contributions from Foreign Nationals.*—Since 1966, there has been some form of statutory restriction on the receipt by congressional candidates of political contributions from foreign governments or foreign nationals. These restrictions changed in 1974.

(1) The Elements of the Offense: Before and After 1974

The 1966 amendments to the Foreign Agents Registration Act prohibited the making of political contributions by an agent of a foreign principal acting in his capacity as an agent and the knowing receipt of contributions from such an agent or a foreign principal.[18] Unlike the conflict of interest provision, 18 U.S.C. § 219, the prohibitions on contributions extended to all agents of a foreign principal, even those who were exempted from the registration requirement of 22 U.S.C. § 612(a). The prohibition reflected Congress' overall purpose in the 1966 amendments to reduce foreign influence in the internal political affairs of this country.

As part of the Federal Election Campaign Act Amendments of 1974, Congress altered the 1966 prohibition "to make the restrictions . . . apply directly to foreign nationals." H. Rept. No. 1239, 93d Cong., 2d sess. 17 (1974). The alteration was a response to the Department of Justice's position that the 1966 provision only prohibited acceptance of a contribution by a "foreign national" if the foreign national was a foreign principal with an agent located within the United States.[19] The 1974 legislation specified that a "foreign

[18] The 1966 prohibition on contributions by agents of foreign principals, codified at 18 U.S.C. § 613, provided:

"§ 613. CONTRIBUTIONS BY AGENTS OF FOREIGN PRINCIPALS.

"Whoever, being an agent of a foreign principal, directly or through any other person, either for or on behalf of such foreign principal or otherwise in his capacity as agent of such foreign principal, knowingly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or

"Whoever knowingly solicits, accepts, or receives any such contribution from any such agent of a foreign principal or from such foreign principal—

"Shall be fined not more than $5,000 or imprisoned not more than five years or both.

"As used in this section—

"(1) The term 'foreign principal' has the same meaning as when used in the Foreign Agents Registration Act of 1938, as amended, except that such term does not include any person who is a citizen of the United States.

"(2) The term 'agent of a foreign principal' means any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control of a foreign principal or of a person any substantial portion of whose activities are directly or indirectly supervised, directed, or controlled by a foreign principal."

[19] *See* Letter from L. Fred Thompson, Director, Office of Federal Elections, General Accounting Office, to Senator Lloyd Bentsen, Mar. 26, 1974, reprinted in 120 Cong. Rec. 8782–8783 (1974).

national" included any "individual who is not a citizen of the United States and who is not lawfully admitted into the United States for permanent residence." H. Rept. 1239, *supra*, at 19. Senator Bentsen, the sponsor of the amendment in the Senate, took the position that "contributions by foreigners are wrong, and they have no place in the American political system." 120 Cong. Rec. 8782 (1974). The exclusion of permanent resident aliens from the ban on political contributions rested on the recognition that this group included many "immigrants in the United States who have lived here for years and who spend most of their adult lives in this country; they pay American taxes and for all intents and purposes are citizens of the United States except perhaps in the strictest sense of the word." *Id.* at 8783 (remarks of Senator Bentsen).

The Federal Election Campaign Act Amendments of 1976 recodified (without substantive change) the 1974 version of the prohibition on contributions by foreign nationals, then appearing at 18 U.S.C. § 613, as 2 U.S.C. § 441e.[20] The provision (2 U.S.C. § 441e) now reads as follows:

§ 441e. CONTRIBUTIONS BY FOREIGN NATIONALS.

(a) It shall be unlawful for a foreign national, directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution for any such foreign national.

(b) As used in this section, the term "foreign national" means:

(1) a foreign principal, as such term is defined by section 611(b) of Title 22, except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 1101 (a)(20) of Title 8.

The statutory prohibition is violated if (1) any person, (2) solicits, accepts, or receives, (3) a contribution "in connection with any primary election, convention, or caucus held to select candidates for any political office", (4) directly or through another person from a foreign national. The expansive scope of the class of prohibited donors—"foreign nationals"—has been discussed above. In essence, it is illegal for a Member or candidate seeking nomination or election to accept a political contribution from any person other than an American citizen or a permanent resident alien.

The only remaining ambiguity relevant to the detection of violations of the statute is the meaning of a "contribution." The statute contains a broad definition of contributions which includes providing (or promising to provide) "anything of value" "for the purpose of . . . influencing" a Federal nomination or election or compensat-

[20] The House Report explained the recodification as follows:

"Section 324 [of the Campaign Act, as added by the Senate bill and the House amendment] is the same as section 13 of title 18, United States Code [as amended by Public Law 93–443], except that the penalties were omitted in order to conform with section 328 of the Act." H. Rep. No. 1057, 94th Cong., 2d sess. 67 (1976).

ing someone rendering personal services for a candidate. 2 U.S.C. § 431(e).[21]

Whether the provision of (or promise to provide) anything of value to a candidate is a contribution depends on whether it was (a) made "in connection with a Federal election" and (b) for the purpose of influencing the election. *See Miller* v. *AT&T*, 507 F. 2d 759, 764–65 (3d Cir. 1974). In *Buckley* v. *Valeo*, 424 U.S. 1 (1976), the Supreme Court noted that the statute "does not define the phrase—'for the purpose of influencing' an election—that determines when a gift, loan, or advance constitutes a contribution." 424 U.S. at 23–24 n. 24. The Court concluded, however, that ordinarily "[f]unds provided to a candidate or political party or campaign committee either directly or indirectly through an intermediary constitute a contribution." *Id.*[22] The timing and circumstances of a payment therefore will be highly relevant to whether it constitutes a "contribution."

(2) The Sanctions for Violation

The prohibition in § 441e against receipt of contributions from foreign nationals does not require knowledge on the part of the recipient that the contributor was in fact a foreign national. However, the criminal penalty provisions, 2 U.S.C. § 441j, punishes only *knowing and willful* violations which, along with other violations of the Campaign Act, have an aggregate value of $1,000 or more during a calendar year. Violation of this penalty provision may be punished by a fine of not more than the greater of $25,000 or 300 percent of the amount of the contribution involved in the violation and by imprisonment for not more than 1 year, or both.

Under the savings provision of the 1976 amendments, all violations occurring prior to the date of its enactment (May 11, 1976) remain subject to prosecution under statutes in force at the time of the challenged conduct. A knowing acceptance occurring between January 1, 1975, (the effective date of the 1974 amendment to 18 U.S.C. § 613) and May 11, 1976, would be subject to the penalties then provided for violation of former 18 U.S.C. § 613—a fine of no more than $25,000 and/or imprisonment for no more than 5 years.

[21] A contribution is defined in 2 U.S.C. § 431(e) as follows:

"(e) "contribution"—

"(1) means a gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of—

"(A) influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates of a national nominating convention of a political party; or

"(B) influencing the result of an election held for the expression of a preference for the nomination of persons for election to the office of the President of the United States;

"(2) means a written contract, promise, or agreement, whether or not legally enforceable, to make a contribution for such purposes;

"(3) means funds received by a political committee which are transferred to such committee from another political committee or other source;

"(4) means the payment by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purposes, * * * but

"(5) does not include—

"(A) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

"(B) the use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities."

[22] The mere fact that the payment is not made until after an election is not conclusive so long as a nexus between the payment and election is shown. *See Miller* v. *AT&T*, 507 F.2d 759, 764–65 (3d Cir. 1974); *United States* v. *Clifford*, 409 F. Supp. 1070, 1974 (E.D.N.Y. 1976).

Conduct occurring prior to January 1, 1975, would be judged under the 1966 provision applying only to knowing acceptance of contributions from an agent of a foreign principal or a foreign principal. The penalties under the 1966 provision are the same as those under the 1974 version of 18 U.S.C. § 613 except that the maximum fine was set at $5,000 rather than $25,000. 80 Stat. 248.

For purposes of determining an appropriate punishment for the House to impose upon a Member found to have violated these various provisions, several factors are pertinent. One is that the 1974 amendments covering contributions from virtually any foreign national, not just a foreign agent or foreign government, apply to the situations where the threat to the political process is less grave than under the earlier, more limited statute. Another is that Congress in the 1976 amendments saw fit to reduce the criminal penalty from a felony to a misdemeanor, even though a larger fine is now authorized. In this light, and in the absence of evidence of some aggravating circumstances, a relatively minor punishment would be sufficient.

b. *Acceptance of Contributions in Name of Another.*—Any knowing violation of the prohibition on the acceptance of contributions from foreign nationals may also involve a violation of the provision banning the making and receiving of campaign contributions in the name of another. As part of the Federal Election Campaign Act of 1971, Congress adopted detailed disclosure provisions designed to provide "the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek Federal office." *Buckley* v. *Valeo*, *supra*, at 66–67, *quoting* H. Rept. No. 564, 92d Cong., 1st sess. 4 (1971). The 1974 amendments added a provision, codified as 18 U.S.C. § 614, prohibiting the giving and receiving of contributions in the name of another. The provision appears to have been designed to deter circumvention of the disclosure scheme and to aid detection of violations of other portions of the Act.

1. The Elements of the Offense

The 1976 amendments recodified this provision as 2 U.S.C. § 441f. The current provision states:

> No person shall make a contribution in the name of another person or knowingly permit this name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

If a Member, while a candidate, knowingly accepted a gift from a foreign national and participated in concealing that illegal act by receiving the gift in the name of a citizen or permanent resident alien, both 2 U.S.C. § 441e and 2 U.S.C. § 441f were violated.

2. The Sanctions for Violation

The criminal provision (2 U.S.C. § 441j) discussed previously is triggered in the case of the provision prohibiting knowing receipt in the name of another when violations involving receipt in the name of another total $250 or more in a calendar year. As with § 441e, the previous title 18 provision (here 18 U.S.C. § 614) governs conduct occurring between January 1, 1975, and May 11, 1976.

E. THE CODE OF OFFICIAL CONDUCT: HOUSE RULE XLIII

In 1968, the House of Representatives adopted a Code of Official Conduct that had been proposed by this committee. The committee's report recommending adoption of the Code explained that these standards are "based upon abstract principles of public morality" and are set forth in "the subjective terms necessary in spelling out the Code of Official Conduct." House Report No. 1176, 90th Cong., 2d Sess. 5, 13 (1968). One of the principal reasons for the establishment of this committee as a permanent standing body of the House of Representatives was to assure that there would be a body "acquainted with the history and development of the standards" equipped to explore the "facts and nuances" necessary to measure an allegation against the subjective language of the Code. *Id.* at 13.

1. The Elements of the Offense

The Code of Official Conduct, as originally enacted in House Resolution 1099, (90th Cong., 2d Sess.), contained the following eight standards of conduct:

1. A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.
2. A Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof.
3. A Member, officer, or employee of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.
4. *A Member, officer, or employee of the House of Representatives shall accept no gift of substantial value, directly or indirectly, from any person, organization, or corporation having a direct interest in legislation before the Congress.* [Emphasis added].
5. A Member, officer, or employee of the House of Representatives shall accept no honorarium for a speech, writing for publication, or other similar activity, from any person, organization or corporation in excess of the usual and customary value for such services.[23]
6. A Member of the House of Representatives shall keep his campaign funds separate from his personal funds. Unless specically provided by law, he shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable prior campaign expenditures and he shall expend no funds from his campaign account not attributable to bona fide campaign purposes.[24]
7. A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fund-raising events if the sponsors of such affairs do not give clear notice in advance to the donors or participants that the proceeds are intended for other purposes.[25]
8. A Member of the House of Representatives shall retain no one from his clerk hire allowance who does not perform duties commensurate with the compensation he receives.

The Code (Rule XLIII of the House of Representatives) was amended twice during 1975 to include two additional standards:[26]

[23] The House on Mar. 2, 1977, adopted a new rule (House Rule XLVII) imposing limitations on outside earned income of Members. House Resolution 287, 95th Cong., 1st sess. § 601. As part of this limitation, Members will be prohibited from accepting any honorarium of more than $750 in value in any calendar year beginning after Dec. 31, 1978. House Rule XLVII(2).

[24] Standard six has undergone two changes. House Resolution 5, 94th Cong. (Jan. 14, 1975) added the words "unless specifically provided by law" at the beginning of the second sentence. Section 303 of House Resolution 287, *supra*, deletes those words.

[25] This standard was amended on Mar. 2, 1977, by House Resolution 287, *supra*, to delete the qualifying language concerning clear notice to donors by sponsors of the affair. As a result, all proceeds from testimonial dinners or other fund-raising events must be treated as campaign contributions.

[26] *See* H. Res. 5, *supra*; H. Res. 46, 94th Cong., 1st sess. (Apr. 16, 1975).

9. A Member, officer, or employee of the House of Representatives shall not discharge or refuse to hire any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.
10. A Member of the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member, and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction.

On March 2, 1977, the House of Representatives adopted House Resolution 287 which, among other changes in the House Rules, revised the standard of conduct set forth in Rule XLIII(4). As originally enacted, the fourth standard contained a general ban on the acceptance of any gift of "substantial value" from a person or organization having "a direct interest in legislation before Congress." The legislative history of the initial version of this provision indicated that it was intended to cope with the "ill-motivated giving or receiving of gifts [that] certainly has no place in government." H. Rept. No. 1176, *supra*, at 19. The House plainly eschewed specifying a definite dollar limit dividing "substantial value" from an insubstantial amount. *See id.*; 114 Cong. Rec. 8778 (1968), remarks of Representative Price: "It is just not reasonable to try to establish dollar limits on what is substantial value;" 8782—remarks of Representative Halleck, substantial value used to indicate situations that "give rise to conflicts of interest"; 8799—remarks of Representative Teague: "Whether a gift is of 'substantial value' depends on its worth to the recipient and cannot be decided on the basis of dollar value alone."

The recent amendment to standard four sets forth definite dollar limits to replace the original "substantial value" formulation and broadens the class of donors to which the standard applies. The prohibition now applies automatically to gifts from foreign nationals—and their agents—and certain lobbyists. The revised standard provides:

4. A Member, officer, or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of $35 or less) in any calendar year aggregating $100 or more in value, directly or indirectly, from any person (other than from a relative of his) having a direct interest in legislation before the Congress or who is a foreign national (or agent of a foreign national). Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any successor statute), any officer or director of such registered person, and any person retained by such registered person for the purpose of influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.[27]

Several of the standards contained in the Code of Official Conduct by their terms appear potentially relevant to the Korean investigation.

[27] House Resolution 287 also amended the Code of Official Conduct (House Rule XLIII) to define "relatives" and "foreign national" for purposes of the fourth standard of conduct:

"(1) The term 'relative' means, with respect to any Member, officer, or employee of the House of Representatives, an individual who is related as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the person reporting.

"(2) The term 'foreign national' means an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence."

However, the actual importance of some of the standards to the present inquiry is likely to be quite minimal. The first standard—requiring that a Member conduct himself in a manner which shall reflect creditably on the House of Representatives—was intended to afford the committee the ability to deal with any given act or accumulation of acts which, in the judgment of the committee, are severe enough to reflect discredit on the Congress. 114 Congressional Record 8778 (1968) (remarks of Representative Price). The standard was viewed by its drafters as a "safeguard" protecting the integrity of the House that "probably would remain untested." H. Rept. No. 1176, *supra*, at 17. The second standard, requiring adherence to the spirit and letter of House and committee rules, is broadly worded but is directed primarily at the use of unfair and dilatory tactics by Members. *Id.*; 114 Congressional Record 8778.

More important for purposes of the Korean inquiry are the third, fourth, and fifth standards. These standards are each "meant to deal with areas of potential conflicts of interest." 114 Congressional Record 8799 (1968) (remarks of Representative Teague). The third standard, which supplements criminal conflict of interest provisions discussed previously, appears to focus on improper influence on a Member's decision-making stemming from his financial interests in the course of legislative policy.

The legislative history of the standard reveals both the committee's understanding of the inherently subjective nature of the "improper influence" standard and its determination to move swiftly to redress "an unmistakable violation." *See* 114 Congressional Record 8779 (1968) (remarks of Representative Price). The fifth standard addresses the problem of masking payments to influence a Member's conduct through inflated honoraria or other remuneration for non-legislative services. Allegations that the Korean Government may have funded travel in connection with the receipt of honorary degrees may present questions under this standard. The provision of travel, however, is more likely to be classified as a gift covered by standard four than as an honorarium *governed* by standard five. *See* 123 Congressional Record H1601 (March 2, 1977, daily edition) (Representative Obey indicated that travel expenses paid in connection with an honorarium are not counted against the limit on receipt of honorarium contained in new House rule XLVII(2)).

The critical Code provision for purposes of the present inquiry, however, is the fourth standard, Rule XLIII(4) of the House of Representatives. Since under House Rule X4. (c) (2) (C) the committee must apply the standard of conduct in effect at the time the conduct under investigation occurred, the original version of the fourth standard rather than the recently amended form must be employed in assessing whether to impose sanctions upon Members who received gifts from the Korean Government or their agents or from other related persons having legislative interests. Under the original standard, the elements of the offense are (1) that a Member of the House (2) accepted a gift of "substantial" value (3) directly or indirectly from a person having a "direct interest" (4) in legislation before the Congress."

As noted earlier, the House consciously opted for the indefinite "substantial value" formulation to permit a flexible determination whether in a particular situation a gift will compromise or appear to compromise the integrity of the legislative process. While the recent amendment to the fourth standard cannot be applied as a basis for imposing penalties on Members for conduct antedating its adoption, the more definite dollar limits set forth in the amended standard can be used by the committee at least as a reliable guide to identifying gifts and benefits that *do not* rise to the level of "substantial value" since the recent amendment was intended to "tighten up the present rule." 123 Congressional Record 1578 (March 2, 1977, daily edition). (remarks of Representative Obey) Based on the amendment, the committee can—and, for purposes of the present investigation, should—exclude personal hospitality (such as dinners at Korean embassy) and receptions funded by the Korean Government or its representatives. In addition individual items worth $35 or less as well as the receipt of gifts from a single source totaling less than $100 in any calendar year, should be considered "insubstantial."

Apart from these indications of what falls short of "substantial value," the question whether a gift exceeding those minimums is of "substantial value" must be judged against the particular circumstances to determine whether its receipt by a Member created an actual or apparent conflict of interest. The legislative history discussed above shows that substantiality was to be judged in each case in the overall context.

So, too, the "direct interest" phrasing of the standard was intended to be suggestive of situations presenting the danger of actual or apparent conflicts of interest. (*See* 114 Congressional Record 8778 (1968), remarks of Representative Price: "Another question will be 'Do not all people have legislative interests?' The answers again must be found in the facts in a given case."; 8799 remarks of Representative Teague: "Moreover, one cannot fix exact criteria for direct interest or decide when influence is 'improperly exerted' without taking into account the particular circumstances." The test here appears to be whether the donor would be personally (or officially) affected in some specific and definable way by the passage or defeat of legislation. The more the donor's interest is shared with a large class of persons, however, or with the public at large, the less likely it is that the provision was meant to prohibit the acceptance of the gift. Similarly, if the consequences for the donor are remote or contingent, the rule probably should not apply. At one extreme, a large gift from the head of an energy company during the pendency of an energy company divestiture bill would be barred. But a similar gift from the same source during the pendency of general minimum-wage or economic stimulus legislation might not amount to a "direct interest."

The fourth standard is further limited to gifts from donors with a "direct interest" in legislation before Congress. No rationale for this particular restriction on the scope of the standard is set forth in the legislative history of the standard and it would appear that the danger of conflicts of interest may be almost as great where the donor is interested in future legislation not yet before Congress or in obtaining the Member's assistance in a nonlegislative matter. Whether legisla-

tion is "before the Congress" for purposes of the Code provision presents some problems of interpretation such as (1) whether legislation that has been drafted by the Administration or a Member but not yet introduced is "before the Congress," (2) whether a bill that has been introduced only in the Senate is "before the Congress" for purpose of the House rule, (3) whether a bill that has passed the House and is pending in the Senate is "before the Congress," (4) whether legislation awaiting Presidential action is still "before Congress," or (5) whether a bill that has been defeated in committee is nevertheless still "before the Congress." Despite the ambiguity and subjectivity of Rule XLIII (4), this committee stated that it firmly believed that, "given the facts to test the standard, the subjectivity can be resolved . . ." *See* H. Rept. No. 1176, *supra*, at 19; 114 Congressional Record 8778 (1968) (remarks of Representative Price), 8782 (remarks of Representative Halleck).

At the very least, principles of fair warning and fidelity to the underlying purpose suggest that Rule XLIII (4) should apply only where the legislative *issue* in which the donor had a "direct interest" was under *active* consideration within at least one House of Congress. This would include preliminary discussions with Members of staffs about the need for legislation and the conduct of legislative oversight hearings, not just the pendency of a particular bill.

The present investigation may well test the workability of this general guide to conduct and enable the committee to assess the advantages and disadvantages of the more definite revised version of the standard. The committee will have to decide such questions as (1) whether the application of the standard should be affected by the fact that the source of the gift is a foreign government, (2) whether the nature of the gift affects the absolute dollar amount required for "substantial value," and (3) whether a donor with ongoing interest in U.S. policy is or should be even if particular legislation of "direct" interest to the donor is not pending at the time the gift is received. The committee will have to decide whether to treat the "substantial value" and "direct interest" factors as separate essential elements of an offense or to rely on the standard's flexibility to reach commonsense judgments regarding the overall propriety of the Member's conduct. Regardless of the particular approach adopted, care must be taken to insure that the subjectivity of the standard does not lead to arbitrary or inconsistent applications in particular cases.

As with the constitutional prohibition discussed previously, the standards set forth in the Code of Official Conduct do not contain a requirement that the Member have acted with knowledge of the identity of the source of the gift, the gift's actual value, or the interest of the donor in legislation before Congress. Theoretically, therefore, House Rule XLIII (4) could be violated by a Member acting in good faith without any basis for a belief that a gift he received was related to his legislative responsibilities. Common Sense, as well as the legislative history of the Code, suggests that an innocent, unknowing receipt of a gift raises little risk of actual or even apparent conflict of interest.

The difficult task for the committee will be sifting the facts of particular cases to ascertain whether the Member was placed on notice of the identity of the actual donor and the donor's interest in legislation. The dollar value as well as the form of the gift—money, or negotiable

securities, or sexual favors as opposed, for example, to traditional handicrafts of a foreign country are among the circumstances that the committee will have to weigh in determining whether a Member violated the Code.

2. *The Sanctions for Violations*

House rule XLIII does not specify the sanction to be imposed upon a finding that a Member failed to adhere to the Code of Official Conduct. The committee should evaluate the particular circumstances of each violation to determine whether any sanction is warranted and, if so, the severity of the sanction that is appropriate under circumstances. Reprimand, censure, and expulsion are among the sanctions that the committee may recommend.

There is a distinct question raised about what should be done with a gift that was received in complete innocence but which would have been improper if all relevant facts had been known. Under this circumstance, even though the initial acceptance was not wrongful on the Member's part, he has no legitimate interest in retaining a gift he never should have been given. Thus, even if a Member innocently received a gift without knowledge that its source was a foreign government or a person with a direct interest in legislation before the Congress, the Member is obliged to return the gift (or transfer it to the United States) upon discovery of facts which, if known, would have made its acceptance or retention improper.

(b) OTHER APPLICABLE STANDARDS OF CONDUCT

As stated in House Rule X 4.(e)(1)(B) defining the committee's jurisdiction, the committee is not restricted to considering violations of the Code of Official Conduct, constitutional provisions, or statutes but may investigate "any alleged violation . . . of any . . . other standard of conduct applicable to the conduct of such Member . . . in the performance of his duties or the discharge of his responsibilities." The committee's recent report, *in the Matter of A Complaint Against Representative Robert L. F. Sikes*, H. Rept. 1364, 94th Cong., Second session (1976), noted that the committee is empowered to enforce "familiar ethical standards prohibiting conflicts of interests and the use of official position to benefit onself" (at p. 7), even if not expressly defined in written regulation.

In the *Sikes* report, the committee relied on the Code of Ethics for Government Service adopted by House Concurrent Resolution 175 in 1958 as "an expression of the traditional standards of conduct applicable to Members of the House prior to both its adoption and the adoption of the Code of Official Conduct in 1968." *Id.* at 8.[28] The com-

[28] The committee's position with respect to the 1958 Code of Ethics drew support from the legislative history of that Code, which included the following explanation of its principles of conduct:

"House Concurrent Resolution 175 is essentially a declaration of fundamental principles of conduct that should be observed by all persons in the public service. It spells out in clear and straightforward language *long-recognized* concepts of the high obligations and responsibilities, as well as the rights and privileges, attendant upon services for our Government. It reaffirms the *traditional standard*—that those holding public office are not owners of authority but agents of public purpose—concerning which there can be no disagreement and to which all Federal employees unquestionably should adhere. It is not a mandate. It creates no new crime or penalty. Nor does it impose the positive legal requirement for specific acts of omissions." [Emphasis added.] H. Rept. 1028, 85th Cong., 1st sess. 2 (1957).

mittee may appropriately look at the principles declared in the 1958 Code of Ethics supplemented by the Code of Official Conduct in forming its interpretation of the Code of Official Conduct.

The 1958 Code of Ethics provides:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not; *and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his government duties.*
6. Make no private promises of any kind binding on the duties of office, since a government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means of making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that a public office is a public trust.

House Concurrent Resolution 175, 72 Stat. pt. 2, B12 (July 11, 1958). [Emphasis added.]

The portion of the fifth standard of the Code of Ethics prohibiting the acceptance of "favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties" is of particular importance for the present investigation. By applying the fifth standard of the Code of Ethics, the committee will have a general principle of ethical conduct to use in determining whether to recommend sanctions against individual Members of the House for accepting gifts from representatives of the Korean Government or from Korean businessmen who stood to profit from actual or apparent influence in the House.

Although the *Sikes* report indicates that the committee need not confine its inquiry to the Code of Official Conduct and the Code of Ethics but may employ other traditional ethical standards which the committee believes relevant to its inquiry, it would be preferable for the committee to focus on standards that have been previously articulated in these prior codes. These provisions are of sufficient generality

and flexibility to cover the range of alleged misconduct to be explored in the present investigation. Reliance on previously stated standards, where possible, will limit claims that a Member under investigation had no fair notice of the standard when he engaged in the conduct under review or that the committee is formulating standards to meet the evidence adduced by its investigation. In addition, use of extant standards will avoid possible accusations that the committee has violated the directive in House Rule X 4. (e) (2) (C) to apply the laws, rule, regulations and standards of conduct in effect at the time the conduct under consideration by the committee occurred.

III

PROBLEM OF KNOWLEDGE AND INTENT

A. DEGREE OF CARE OR KNOWLEDGE REQUIRED

The "substantive offenses" discussed in Part II of this memorandum involve a wide range of constitutional, statutory, and code provisions. The statutory provisions which form the basis for criminal liability either expressly or implicitly require proof that the person charged with the offense acted knowingly and, often, that the accused had a specific intent to engage in the prohibited conduct. By contrast, the constitutional prohibition against the receipt of foreign gifts and emoluments as well as the Code of Official Conduct and the Code of Ethics contain no explicit requirement of knowledge or intent. The committee faces the perplexing tasks of (1) adapting criminal law provisions to a legislative disciplinary context, and (2) drawing upon standards devised to guide conduct and to determine whether sanctions are appropriate.

What degree of knowledge and type of intent should be required as a predicate for penalizing a Member? This is essentially a question of policy. This portion of the memorandum will discuss the requirements of knowledge and intent basic to our system of criminal justice and examine their relevance to the noncriminal disciplinary context in which the committee functions.

As a general matter, criminal liability is imposed only where the accused is found to have acted with "guilty knowledge" or "*mens rea*." As Justice Jackson observed in his landmark decision in *Morissette* v. *United States*:

> The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of human will and a consequent ability and duty of the normal individual to choose between good and evil . . .
>
> Unqualified acceptance of this doctrine by English common law in the Eighteenth Century was indicated by Blackstone's sweeping statement that to constitute any crime there must first be a "vicious will." 342 U.S. 246, 250-51 (1952) (footnote omitted).

With the exception of certain regulatory offenses which impose criminal liability for mere failure to exercise a prescribed duty of care,[29] criminal sanctions normally require proof that the accused

[29] *See, e.g., United States* v. *Park*, 421 U.S. 658, 670–73 (1975).

acted with knowledge of the facts underlying the offense and, in many cases, acted with a specific intent to engage in the proscribed conduct. Even where the criminal statute contains no express requirement of knowledge or intent, courts imply such a requirement unless there is an indication the Congress purposefully omitted that normal prerequisite to the imposition of criminal sanctions. *See Morissette* v. *United States, supra*, 342 U.S. at 262–63.

These principles can be illustrated by reference to the criminal statutes discussed in Part II. The bribery statute (18 U.S.C. § 201(c)) states a specific intent that must be proven to establish the offense—an intent to be influenced in the performance of official duties. Absent proof of that intent, the receipt of money or any other item of value by a public official cannot be the basis for a bribery conviction. Both the gratuity provision (18 U.S.C. § 201(g)) and the conflict of interest statute (18 U.S.C. § 203(a)) fail to specify anything about intent or knowledge as elements. In interpreting both of these statutes, however, courts have held that the offense requires proof that the accused *knew* that the thing of value received was for an official act rendered or to be rendered (§ 201(g)) or constituted compensation for service rendered before a government agency or tribunal (§ 203(a)). *See United States* v. *Brewster*, 165 U.S. App. D.C. 11, 11–13 n. 26, 506 F. 2d 62, 72–74, n. 26 (1974) (interpreting § 201(g)); *United States* v. *Johnson*, 419 F. 2d 56, 60 (4th Cir. 1969), *cert. denied*, 387 U.S. 1101 (1970) (interpreting § 203(a)).

Even where serious criminal sanctions are imposed, however, the law does not insist on proof of actual knowledge. Courts have often held that proof that the accused acted in reckless disregard of the facts or deliberately closed his eyes to avoid obtaining knowledge may suffice to support a conviction. Courts generally explain their reliance on the accused's reckless disregard for the facts as a circumstance from which knowledge can be inferred. *See, e.g.*, *Gusow* v. *United States*, 347 F. 2d 755, 756 (10th Cir.) *cert. denied*, 382 U.S. 906 (1965) ("Direct proof of willful intent is not necessary. It may be inferred from the activities of the parties involved. . . . Not only are patently false statements prohibited, but also those made with reckless indifference as to whether they are true or false.")

Several cases involving convictions of accountants for making false and misleading statements in connection with securities matters illustrate the use of recklessness to substitute for a requirement of actual knowledge. In one of these cases the court concluded, "the Government can meet its burden by proving that a defendant deliberately closed his eyes to facts he had a duty to see. . . ." *United States* v. *Benjamin*, 328 F. 2d 854, 862 (2d Cir. 1964). In another case an accountant was held to have acted "knowingly" because he failed to discharge what the court found was his duty to inquire further into the validity of highly suspicious contracts before permitting their inclusion in a company's financial statements. *United States* v. *Natelli*, 527 F. 2d 311, 320–23 (2d Cir. 1975), *cert. denied*, 425 U.S. 934 (1976).

The general requirement that knowledge and/or intent be proven in order to impose criminal sanctions rests on the basic value judgment: the stigma and opprobrium attached to a criminal conviction as well as the potential deprivation of liberty should only be imposed for misconduct for which the accused is shown to be morally blameworthy.

In considering whether the conduct of Members of the House warrants noncriminal, disciplinary sanctions, this Committee should not adhere to the general criminal law standard making actual or constructive knowledge a prerequisite to conviction. As the Code of Official Conduct and the Code of Ethics for Government service indicate Members of Congress are expected to adhere to standards of conduct far more demanding than the bare minimum standards established by our criminal laws. In order to protect the integrity of our governmental processes, public officials must take care to avoid even the appearance of impropriety. Insistence on that more exacting degree of care required of Members of the House is critical to the committee's determination whether to recommend the imposition of sanctions on Members as a result of the facts revealed by this investigation.

Even if a Member did not have actual knowledge of a donor's ties to the Korean Government, for example, or did not actually know of any corrupt motivation underlying the gift offered, the Member should still be subjected to at least some sanction if the circumstances *placed him on notice* that the gift was tendered in an attempt by a foreign government to influence his present or future official actions and he *took no action* (*or insufficient action*) to attempt to discover the true nature and purpose of the gift. That is, if all the circumstances should have alerted a responsible Member, concerned about both the letter and spirit of the law, to hesitate and inquire before acting, the failure of a Member to learn the truth should not be an excuse. This is a higher standard than the actual knowledge or the reckless disregard standards of the criminal law, and would permit sanctions to be imposed upon a finding of a breach of duty of reasonable inquiry.

The latter standard is particularly appropriate for evaluating a Member's conduct in receiving gifts or compensation, since all public officials should be conscious of the possibility that any substantial gift may be offered in an attempt to secure improper influence. Only by holding a Member to an affirmative duty of reasonable inquiry can the House protect against the serious problem posed by the creation of actual or apparent subversion of independent decision-making. Such a duty of reasonable inquiry is also appropriate in view of the ability of a Member to obtain an advisory opinion with respect to the appropriateness of his proposed course of conduct. *See* House Rule X 4.(c)(1)(D).[1]

In sum, the committee should adapt the substantive constitutional, statutory, and code provisions discussed in Part II to the disciplinary context by considering the recommendation of sanctions where the substance of those provisions was violated by a Member acting: (1) with actual knowledge of all the relevant facts; (2) in reckless disregard of the relevant facts; or (3) without exercising reasonable care to ascertain the propriety of the gift or compensation accepted or of the transaction when he participated.

The practical result of this policy is that the requirement of knowledge in a criminal provision, such as the gratuity prohibition, would, for the committee's disciplinary purpose, be replaced by the duty of at

[1] House Resolution 888, 95th Cong., 1st sess., adopted Mar. 17, 1977, empowered the House Select Committee on Ethics to issue advisory opinions respecting the application of House rules XLIII through XLVII. Section 7 of the resolution provided that the Select Committee shall expire on Dec. 31, 1977, and its records, files, and material shall be referred to the Committee on Standards of Official Conduct.

least reasonable inquiry. Similarly, violation of the constitutional prohibition or the various code of conduct standards, which do not by their terms require any knowledge or intent, would provide a basis for imposing sanctions only upon proof that the Member was placed on notice of an ethical problem and failed to discharge his duty of reasonable inquiry to determine the propriety of accepting the tendered gift or payment.

While the failure of a Member to adhere to this higher duty of care is an appropriate basis for imposing sanctions such as reprimand or censure, it would be appropriate to confine the grave penalty of expulsion from the House to knowing and intentional violations by a Member amounting to serious, morally culpable misconduct.

B. EXCLUSION OF DE MINIMIS CONDUCT

House Resolution 252 authorizing the committee to conduct this investigation expressly invests the committee with discretion to determine the scope of the inquiry. The public allegations of questionable conduct involving Members of the House demonstrate the complexity of the task facing the committee. The allegations range from conduct that might, at worst, have involved bad judgment to conduct that may have involved serious violation of criminal laws. The effectiveness of an expeditious investigation depends upon a careful determination, at the outset, that certain kinds of allegations are so minute or technical that they do not warrant investment of the committee's limited resources.

The central purpose of this investigation is to determine whether persons or organizations acting on behalf of the Government of the Republic of Korea have attempted to influence Members' official conduct by providing them with payments, gifts, or things of value. In view of the basic concern with the purchase of influence and the committee's authority to define the scope of its inquiry, it is both appropriate and desirable for the committee to focus its inquiry on conduct which as a practical matter poses a realistic danger of influencing a Member's performance of his official duties or, at least, creating a substantial appearance that a Member's independence and integrity have been compromised.

All of the most broadly structured guides to conduct of Members of the House recognize the permissibility of accepting gifts of minimal value offered as a mark of esteem or courtesy. The Foreign Gifts and Decorations Act of 1966, as implemented by regulation, permits Members to accept gifts having a retail value of $50 or less in the United States.

The Code of Official Conduct of the House of Representatives, House Rule XLIII(4), initially restricted its prohibition on the acceptance of gifts to items of "substantial value" and now contains a specific dollar limit which prohibits receipt of gifts totaling $100 or more in 1 year from a particular source and expressly excludes acceptance of personal hospitality and gifts worth $35 or less. Similarly, the 1958 Code of Ethics for Government Service bars only the acceptance of "favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his Government duties."

These provisions, while differing in precision and phrasing, reflect a common sense judgment that there exists a category of gifts or benefits of such minimal value that their acceptance does not create even a reasonable appearance of improper influence buying, much less an actual threat to the Member's objectivity and integrity. While a number of criminal statutes discussed previously prohibit the acceptance of anything of value or any compensation for a specified improper purpose, the committee may reasonably presume that gifts of minimal value have not been tendered or accepted as bribes or gratuities for his legislative work or as compensation for a Member's intervention in agency or departmental proceedings. The concept that the law does not trifle with minutiae—*de minimis non curat lex*—is an ancient one and, as the Supreme Court has recently noted, even where constitutional questions are at stake, there is "a *de minimis* level . . . with which the Constitution is not concerned." *Ingraham* v. *Wright*, ___ U.S. ___, ___ (1977) (45 U.S.L.W. 4364, 4370, April 19, 1977).

As this committee noted in its 1968 report recommending adoption of a Code of Official Conduct: "Under most circumstances the giving and receiving of gifts is an expression of genuine unselfishness, and is evidence of the civilization which man has achieved." H. Rept. No. 1176, *supra*, at 19. The tender of gifts as a mark of esteem and appreciation by one government to officials of another country is "an old and well-established practice that antedates the foundation of the United States." H. Rept. 2052, 89th Congress, 2d session, 2 (1966). By the same token, it is only natural that Members of Congress will retain or form friendships with private citizens. While every elected official must be zealous to avoid any acts that could compromise his public responsibilities, the House has never sought to isolate its Members completely from ordinary gestures of friendship or fondness. In this context, the committee reasonably may presume that gifts of insubstantial value were offered without evil purpose and received without either compromising or appearing to compromise the integrity of the legislative process. This presumption will fall, of course, if the facts show a pattern of conduct or any other unusual element suggesting real impropriety.

The dollar limits set forth in the recent amendment to standard four of the Code of Official Conduct, House Rule XLIII(4) are appropriate for use by the committee to define the category of *de minimis* conduct that would not, without more, justify disciplinary action in this matter. These limits were adopted on March 2 of this year by an overwhelming vote of 402 to 22. They express the sense of the House of Representatives that individual gifts worth less than $35 and the extension of personal hospitality pose no threat of improper interest and that the receipt of more substantial gifts totaling less than $100 from a single source during a calendar year does not raise conflict-of-interest concerns.

The $100 limit established in the revision to House Rule XLIII(4) is roughly comparable to the $50 ceiling set in 1966 under the Foreign Gifts and Decorations Act if inflation is taken into account. Moreover, a recent General Accounting Office study proposing to strengthen that Act has recommended an increase to $100 in the definition of gifts of minimal value that may be accepted and retained by Government employees. *See Report by the Comptroller General to the Senate Com-*

mittee on Foreign Relations: Proposals to Strengthen the Foreign Gifts and Decorations Act of 1966, at v, 24–25 (March 26, 1975). Finally, it would be incongruous for this committee to recommend that sanctions be imposed on a Member for conduct that is deemed acceptable and proper under the present Code of Official Conduct of the House of Representatives. *Cf. United States* v. *United States Coin & Currency*, 401 U.S. 715 (1971); *Hamm* v. *City of Rock Hill*, 379 U.S. 306 (1964); *Bell* v. *Maryland*, 378 U.S. 226 (1964).

In light of historic practice and diplomatic custom, attendance at an embassy reception or dinner should be treated similarly to "personal hospitality" and presumed to be consistent with the Constitution, Federal statutes, and the Code of Official Conduct.

In applying this *de minimis* concept, however, the committee should exclude certain items, such as gifts of cash, negotiable securities, or sexual favors. Such "gifts" are inherently suspect since they are not subject to innocent explanation as a traditional mark of courtesy or token of appreciation.

The policy determination that the committee will not treat the receipt of *de minimis* items as illegal or unethical does not mean that the investigation under House Resolution 252 will ignore the existence of such gifts. On the contrary, under House Resolution 252 this committee is expected to determine whether or not the Republic of Korea developed and pursued a campaign to influence the official conduct of Members of the House by conferring things of value on them or on members of their families or their business or political associates. Section 1 of House Resolution 252 as well as section 2 of this committee's implementing resolution adopted on February 8 require that the inquiry comprehensively and accurately ascertain the scope of the Korean efforts, even though some or most of those efforts may not have involved Members of the House in conduct for which they should be sanctioned. To discern the existence and scope of such a campaign, the committee and the House must acquire all relevant evidence, even information that does not suggest misconduct by individual Members.

IV.

Standard of Proof of Violations

Another important question involves the establishment of the standard of proof of a violation of the Constitution, Federal statute, or the Code of Official Conduct in a trial-type hearing upon a complaint against a specific Member of the House.[31] The standard of proof employed in determining contested questions of fact serves to allocate the risk of an erroneous outcome.

[31] This following discussion is *not* directed at the distinct issues raised when accusations or suggestions of misconduct are raised in the course of general oversight or general investigative hearings which the committee may conduct under H. Res. 252 to attempt *to learn* the general nature and contours of any influence-buying campaign by the Korean Government or its agents. Since the purpose of such hearings would not be to "find facts" in the adjudicative sense, there is no formal standard of proof that is legally applicable. The Rules of the House, however, do provide certain safeguards that may be applicable (e.g., Rule XI 2. (k)(5)(B) and (C) relating to submission of explanatory material, and Rule XI 2. (k)(5)(A) relating to receipt of defamatory or incriminatory material in executive session). Moreover, the committee and the staff have an implicit obligation not to provide a forum for any accusations or insinuations that appear, after due inquiry, to be malicious or unworthy of belief.

In a criminal proceeding, for example, our system of justice requires that every essential element of the crime be established by proof beyond a reasonable doubt. *See Mullaney* v. *Wilbur*, 421 U.S. 684 (1975); *In re Winship*, 397 U.S. 358 (1970). The exacting requirement of proof beyond a reasonable doubt in criminal cases reflects the grave consequences of stigmatization and loss of liberty typically accompanying a criminal conviction. *See Speiser* v. *Randall*, 357 U.S. 513, 525–26 (1958). By contrast, the standard in most civil proceedings is proof by a preponderance of the evidence—merely that a fact is more likely than not. Civil cases generally involve disputes among private parties over the propriety of awarding money damages. In such cases, society is normally indifferent with regard to which party should bear the risk of an erroneous fact determination. *See In re Winship*, *supra*, 397 U.S. at 371 (Harlan, J., concurring.)

An intermediate standard requiring clear, unequivocal and convincing evidence has been employed in certain types of civil cases, however.[32] For example, the Supreme Court has held that this standard of proof is required where the Government seeks to obtain an order of deportation. *See Woodby* v. *Immigration and Naturalization Service*, 385 U.S. 276 (1966).

The Court in that case noted "the drastic deprivations that may follow when a resident of this country is compelled by the Government to foresake all the bonds formed here and go to a foreign land where he often has no contemporary identification" and concluded that the seriousness of the consequences required a higher degree of proof than applies, for instance, in an ordinary negligence case. *Id.* at 285. The clear and convincing evidence standard also has been employed in cases involving allegations of civil fraud. *See id.* at 288 and n. 18; J. Wigmore, *Evidence*, § 2498 at 329 (3d ed. 1940).

Proceedings involving charges that attorneys have engaged in misconduct warranting sanctions ranging from reprimand to disbarment provide a close analogy to the disciplinary proceedings conducted by this committee under the House Rules. Such proceedings, unlike the normal civil case, are designed to detect misconduct and to impose punishment. Based on these considerations, the Supreme Court has found that disbarment proceedings are "quasi-criminal" in nature. *In re Buffalo*, 390 U.S. 544, 551 (1968). The Federal courts normally apply the "clear and convincing evidence test." *See e.g.*, *In re Ryder*, 263 F. Supp. 360, 361 (E.D. Va.) *aff'd*, 381 F.2d 713 (4th Cir. 1967). States diverge on whether to employ a mere preponderance of the evidence standard or the more rigorous clear and convincing evidence standard of proof. New York, Pennsylvania, and Michigan, for instance, employ "the fair preponderance of the evidence" standard whereas States like California, Maryland, and South Carolina require the higher standard that the conduct be established by "convincing proof." *Compare In re Feola*, 37 App. Div. 2d 789, 791, 324 N.Y.S. 2d 654, 656 (3d Dept. 1971); *In re Berlant*, 328 A. 2d 471, 473 (Pa. 1974); *In re Paseler*, 390 Mich. 581, 213 N.W. 2d 133 (1973), *with Bluestein* v. *State Bar*, 118 Cal. Rptr. 175, 178, 529, P. 2d 599, 602 (1975); *Skelly* v. *State Bar*, 108 Cal. Rptr. 6, 10, 509 P. 2d 950, 954 (1973). *Bar Assn.*

[32] These cases include civil suits involving charges of fraud and undue influence, reform, or modification of written transactions on grounds of fraud, mistake, or incompleteness, as well as special proceedings like deportation, denaturalization, expatriation, and disbarment proceedings. *See McCormick, Handbook of the Law of Evidence* § 340 (3d ed. 1972).

of Baltimore v. Marshall, 307 A. 2d 677, 681 (Md. Ct. App. 1973); *In re Friday*, 208 S.E. 2d 535, 537 (S.C. 1974).

Of even more direct relevance, the Judiciary Committee considered it appropriate to use the "clear and convincing evidence" standard in the proceedings relating to the possible impeachment of President Nixon. As Representative Eilberg explained, the use of that standard was a "recognition of the gravity of a decision to recommend the impeachment of the President." *See* Eilberg, The Investigation by the Committee on the Judiciary of the House of Representatives into the Charges of Impeachable Conduct Against Richard M. Nixon, 48, Temple L.Q. 209, 227 (1975).

A number of factors support the use of the "clear and convincing evidence" standard of proof in determining whether to recommend that the House take action to punish its Members for misconduct. First, and perhaps most importantly, the consequences of any finding of misconduct by a Member in connection with his official duties are quite serious, exposing the Member to public rebuke and jeopardizing his ability to continue to serve as an elected official. Moreover, although some findings of misconduct are unlikely to form a basis for the House to impose the most severe sanction—of expulsion—that is a judgment that lies wholly within the discretion of the House. The possible invocation of that extreme sanction should color the degree of certainty required for any determination by this committee that a Member has engaged in punishable misconduct.

Second, many of the standards governing a Member's conduct are far from paragons of clarity and precision and in applying them it is especially important for the committee to be satisfied that the Member did in fact engage in the prohibited conduct. The ordinary civil standard is, therefore, inadequate.

Third, on the other hand, although the Constitution describes as punishment the action taken by the House in disciplining its Members for misbehavior (*see* Article I, Section 5, clause 2), the proceedings are not criminal in nature. The public interest in allowing the House adequate discretion and flexibility to protect its own integrity strongly militates against adoption of the stringent "reasonable doubt" standard. Where the ultimate sanction of expulsion is being considered, the Constitution itself offers a different type of protection to an accused Member, requiring a two-thirds vote for such action, whereas a simple majority vote suffices for other forms of punishment.

Under all these circumstances, in any disciplinary proceedings conducted by this committee, the complainant or the staff should bear the burden of proving the alleged acts of misconduct by clear and convincing evidence.

APPENDIX A

[H. Res. 252, 95th Cong., 1st sess.]

RESOLUTION ADOPTED FEBRUARY 9, 1977

Whereas article I, section 9, clause 8 of the United States Constitution prohibits any person holding Federal office, including Members of Congress, from accepting any present, emolument, office, or title from any foreign government without the consent of Congress; and

Whereas Congress has forbidden the receipt of political contributions from a foreign national, including a foreign government (2 U.S.C. 441e); and

Whereas the Federal Criminal Code prohibits the receipt of anything of value by any Member of Congress to influence his performance of his official duties or to reward or compensate him, other than as provided for by law, for the performance of those duties (18 U.S.C. 201, 203); and

Whereas rule XLIII of the Rules of the House of Representatives sets forth the Code of Official Conduct for Members, officers and employees of the House of Representatives and, among other things, prohibits the acceptance of any gift of substantial value, directly or indirectly, from any person, organization, or corporation having a direct interest in legislation before the Congress; and

Whereas information has come to the attention of the House of Representatives alleging that Members of the House of Representatives have been the object of efforts by certain foreign governments or persons and organizations acting on behalf of foreign governments (including the Government of the Republic of Korea) to influence the Members' official conduct by conferring things of value on them or on members of their immediate families or their business or political associates; and

Whereas clause 4(c)(1) of rule X of the Rules of the House of Representatives entrusts the Committee on Standards of Official Conduct with particular responsibility—

(A) to recommend to the House of Representatives from time to time such administrative actions as it may deem appropriate to establish or enforce standards of official conduct for Members, officers, and employees of the House of Representatives;

(B) to investigate any alleged violation by a Member, officer, or employee of the House of Representatives, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities, and after notice and hearing, to recommend to the House of Representatives, by resolution or otherwise, such action as the committee may deem appropriate in the circumstances; and

(C) to report to the appropriate Federal or State authorities, with the approval of the House of Representatives, any substantial evidence of a violation by a Member, officer, or employee of the House of Representatives, of any law applicable to the performance of his duties or the discharge of his responsibilities, which may have been disclosed in a committee investigation: Now, therefore be it

Resolved, That the Committee on Standards of Official Conduct be and it is hereby authorized and directed to conduct a full and complete inquiry and investigation to determine whether Members of the House of Representatives, their immediate families, or their associates accepted anything of value, directly or indirectly, from the Government of the Republic of Korea or representatives thereof. The scope of the inquiry and investigation shall be determined by the committee in its discretion and may extend to any matters relevant to discharging its responsibilities pursuant to this resolution.

SEC. 2. The committee shall report to the House of Representatives any findings, conclusions, and recommendations it deems proper with respect to the adequacy of the present Code of Official Conduct or the Federal laws, rules, regulations, and other standards of conduct applicable to the conduct of Members of the House of Representatives in the performance of their duties and the discharge of their responsibilities (1) to protect the House of Representatives against the exertion of improper influence by or on behalf of foreign governments and (2) to prohibit Members of the House of Representatives from receiving things of value under circumstances that conflict, or appear to conflict, with their obligations to perform their constitutional duties without regard to private gain or benefit.

SEC. 3. The committee, after appropriate notice and hearing, shall report to the House of Representatives its recommendations as to such action, if any, that the committee deems appropriate by the House of Representatives as a result of any alleged violation of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities.

SEC. 4. (a) For the purpose of conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to require—

(1) by subpena or otherwise—

(A) the attendance and testimony of any person at a hearing or at the taking of a deposition by any member of the committee; and

(B) the production of such things; and

(2) by interrogatory, the furnishing under oath of such information as it deems necessary to such inquiry or investigation.

(b) The authority conferred by subsection (a) of this section may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole.

(c) Subpenas and interrogatories authorized under this section may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them. A subpena may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them and may be served either within or without the United States on any national or resident of the United States or any other person subject to the jurisdiction of the United States.

(d) In connection with any inquiry or investigation pursuant to this resolution, the committee may request the Secretary of State to transmit a letter rogatory or request to a foreign tribunal, officer, or agency.

(e) Subpenas for the taking of depositions or the production of things may be returnable at specified offices of the committee or at a scheduled hearing, as the committee may direct.

(f) The chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness.

(g) For the purposes of this section, "things" includes books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printout, data compilations from which information can be obtained (translated, if necessary, into reasonably usable form), tangible objects, and other things of any kind.

SEC. 5. For the purpose of conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to sit and act, without regard to clause 2(m) of rule XI of the Rules of the House of Representatives, during the present Congress at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings, as it deems necessary.

SEC. 6. The committee is authorized to seek to participate and to participate, by special counsel appointed by the committee, on behalf of the committee and

the House of Representatives in any judicial proceeding concerning or relating in any way to the inquiry or investigations conducted pursuant to this resolution.

SEC. 7. The authority conferred by this resolution is in addition to, and not in lieu of, the authority conferred upon the committee by the Rules of the House of Representatives. In conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to adopt special rules of procedures as may be appropriate.

SEC. 8. Any funds made available to the committee after the adoption of this resolution may be expended for the purpose of carrying out the inquiry and investigation authorized and directed by this resolution.

APPENDIX B

Committee Resolution Defining Scope and Procedures for Korean Investigation

(Adopted February 8, 1977, contingent upon adoption of H. Res. 252 by the House)

Whereas the House, pursuant to H. Res. 252, adopted February 9, 1977, authorized and directed the Committee on Standards of Official Conduct to conduct a full and complete inquiry into allegations that the Government of the Republic of Korea directly or indirectly has sought or is seeking to exert influence upon Members of the House of Representatives through the conferral of anything of value on Members, their immediate families, or their associates, and to render appropriate reports; and

Whereas the Committee has legislative jurisdiction and general oversight responsibilities under clauses 1 (t) and 2 of rule X of the Rules of the House of Representatives with respect to the Code of Official Conduct of the House of Representatives, which is set forth in rule XLIII of the House of Representatives; and

Whereas clause 4 (e) (1) of rule X of the Rules of the House of Representatives entrusts the Committee with additional responsibilities: Now, therefore, be it

Resolved, That the Committee on Standards of Official Conduct promptly initiate a thorough development and examination of the facts that indicate whether or not the present Code of Official Conduct or the federal law, rules, regulations and other standards of conduct applicable to the conduct of Members of the House of Representatives in the performance of their duties and the discharge of their responsibilities are adequate (1) to protect the House of Representatives against the exertion of improper influence by or on behalf of foreign governments and (2) to prohibit Members from receiving anything of value under circumstances which conflict, or appear to conflict, with their obligations to perform their constitutional duties without regard to private gain or benefit.

Sec. 2. For purposes of making the determination referred to above, the Committee will consider allegations that Members and employees of the House of Representatives and other Federal officers and employees have received anything of value from the Government of the Republic of Korea, nonaccredited Korean government officers or agents, or any private Korean citizens, organizations, or institutions.

Sec. 3. Whenever, at any time during the course of the inquiries referred to above, or after their completion, the Committee determines that it has information indicating that any individual Member, officer, or employee of the House has violated the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of that Member, officer or employee in the discharge of his responsibilities, the Committee on its own initiative may undertake an investigation relating to the official conduct of that Member, officer or employee.

Sec. 4. The Committee shall proceed in accordance with Committee Rule 9 of the Committee's Rules of Procedure relating to the service of a statement of alleged facts and violation upon the Member, and the Member's opportunity to answer and to submit appropriate motions. All further proceedings relating to the individual Member shall be conducted in accordance with the Committee's Rules of Procedure and H. Res. 252.

Sec. 5. For the foregoing purposes, the Committee will retain outside special counsel to advise the Committee on the design and conduct of the inquires and to propose the members of a special professional staff. The special staff will be

separate and distinct from the Committee's permanent staff. In conjunction with the special staff, outside special counsel and the Staff Director of the Committee will have the following authority and responsibility: to supervise the gathering, organization, and assessment of pertinent information; to propose and participate in appropriate hearings; to represent the Committee before other departments or agencies of the government, including the courts; to prepare a report to the Committee on the basis of the information finally developed; and to suggest changes for the Committee's consideration in the Code of Official Conduct or in federal laws or regulations. In any investigation or hearings conducted pursuant to Section 4 of this Resolution and Committee Rules 9 and 10 of the Committee's Rules of Procedure, the special staff, under the direction of the outside special counsel and the Staff Director, shall exercise the responsibilities that otherwise would be performed by the Committee's permanent staff.

Sec. 6. The outside special counsel, the Staff Director and the special staff, in conducting any inquiries or investigations on behalf of the Committee pursuant to this resolution, will comprehensively and diligently pursue all information related to the subject matter of the inquiries and investigations authorized herein. The activities of both present and former Members of the House of Representatives may be included, to the extent relevant. Relevant evidence, whether testimonial or documentary, as well as information that may lead to the discovery of relevant evidence, will be sought by the outside special counsel, the Staff Director and the special staff, irrespective of the location, status, or office of the person who may be in possession of the evidence or information.

Sec. 7. Subpoenas and interrogatories may be issued, upon application by the special staff, in accordance with H. Res. 252, adopted February 9, 1977, and may be made returnable at the offices of the special staff. Depositions may be taken by any member of the committee at any place in the District of Columbia, or wherever the witness resides, transacts business, or may be found, as directed in the subpoena. No subpoena shall be issued, or deposition or interrogatory taken, unless authorized by a majority of the members voting, a majority being present.

Sec. 8. In developing information through the inquiries referred to above, the Committee will cooperate with any other Committee of either House with jurisdiction over related matters.

Sec. 9. Upon the completion of any inquiries and investigations conducted pursuant to this resolution, the Committee shall report to the House of Representatives in accordance with H. Res. 252.

Sec. 10. The Chairman, in consultation with the outside special counsel, will promulgate procedures to protect against the unauthorized disclosures of confidential information obtained by the committee and the special staff.

APPENDIX C

Department of State Regulations Implementing Foreign Gifts and Decorations Act of 1966, as Amended

(22 C.F.R. PART 3)

Part 3—Acceptance of Gifts and Decorations from Foreign Governments

§ 3.1 Purpose

The purpose of this part is to establish uniform basic standards for the acceptance of gifts and decorations from foreign governments by U.S. Government officers and employees, including members of the armed forces, and members of their families.

§ 3.2 Application of this part

This part applies to all persons occupying an office or a position in the Executive, Legislative and Judicial branches of the Government of the United States.

§ 3.3 Definitions

As used in this part—

(a) The term "person" includes every person who occupies an office or a position in the Government of the United States, its territories and possessions, the Canal Zone Government, and the Government of the District of Columbia, or is a member of the Armed Forces of the United States, or a member of the family and household of any such person. For the purpose of this part, "member of the family and household" means a relative by blood, marriage or adoption who is a resident of the household.

(b) The term "foreign government" includes every foreign government and every official, agent, or representative thereof.

(c) The term "gift" includes any present or thing, other than a decoration, tendered by or received from a foreign government.

(d) The term "decoration" includes any order, device, medal, badge, insignia, or emblem tendered by or received from a foreign government.

(e) The term "gift of minimal value" includes any present or other thing, other than a decoration, which has a retail value not in excess of $50 in the United States.

(f) The term "outstanding or unusually meritorious performance" includes performance of duty by a person determined by the appropriate agency to have contributed to an unusually significant degree to the furtherance of good relations between the United States and the foreign government tendering the decoration.

(g) The term "special or unusual circumstances" includes any circumstances which would appear to make it improper for the donee to receive a gift or decoration, and also includes, in some instances, the very nature of the gift itself.

(h) The term "appropriate agency" means the department, agency, office, or other entity in which a person is employed or enlisted, or to which he has been appointed or elected. If the donee is not so serving, but is a member of the family and household of such a person, then the "appropriate agency" is that in which the head of the household is serving.

(i) The term "approval by the appropriate agency" includes approval by such person or persons as are duly authorized by such agency to give the approval required by these regulations.

(j) The term "Chief of Protocol" means the Chief of Protocol of the Department of State.

§ 3.4 Release of gifts and decorations on deposit in the Department of State through October 14, 1966

Any gift or decoration on deposit with the Department of State on the effective date of this part shall, following written application to the Chief of Protocol and subsequent approval by the Chief of Protocol and the appropriate agency, be released through the appropriate agency to the donee or his legal representative. Such donee may also, if authorized by the appropriate agency, wear any decoration so released. Approval for release will normally be given unless, from the special or unusual circumstances involved, it would appear to the Chief of Protocol to be improper to release the item. Any gifts or decorations not approved for release will become the property of the U.S. Government and will be used or disposed of in accordance with the provisions of § 3.6.

§ 3.5 Gifts and decorations received by any person after October 14, 1966

(a) *General policy.* No person shall request or otherwise encourage the tender of a gift or decoration.

(b) *Gifts of minimal value.* Subject to individual agency regulations, table favors, mementos, remembrances, or other tokens bestowed at official functions, and other gifts of minimal value received as souvenirs or marks of courtesy from a foreign government may be accepted and retained by the donee. The burden of proof is upon the donee to establish that the gift is of minimal value as defined by this part.

(c) *Gifts of more than minimal value.* Where a gift of more than minimal value is tendered, the donor should be advised that it is contrary to the policy of the United States for persons in the service thereof to accept substantial gifts. If, however, the refusal of such a gift would be likely to cause offense or embarrassment to the donor, or would adversely affect the foreign relations of the United States, the gift may be accepted and shall be deposited with the Chief of Protocol for disposal in accordance with the provisions of § 3.6.

(d) *Decorations.* Decorations received which have been tendered in recognition of active field service in connection with combat operations, or which have been awarded for outstanding or unusually meritorious performance, may be accepted and worn by the donee with (1) the approval by the appropriate agency and (2) the concurrence of the Chief of Protocol. Within the Department of State, the decision as to whether a decoration has been awarded for outstanding or unusually meritorious performance will be the responsibility of the supervising Assistant Secretary of State or comparable officer for the person involved. In the absence of approval and concurrence under this paragraph, the decoration shall become the property of the United States and shall be deposited by the donee with the Chief of Protocol for use or disposal in accordance with the provisions of § 3.6. Notwithstanding the foregoing, decorations tendered to U.S. military personnel for service in Viet-Nam may be accepted and worn as provided by the Act of October 19, 1965, Public Law 89–257, 79 Stat. 982.

§ 3.6 Use or disposal of gifts and decorations which become the property of the United States

Any gift or decoration which becomes the property of the United States under this part may be retained for official use by the appropriate agency with the approval of the Chief of Protocol. Gifts and decorations not so retained shall be forwarded to the General Services Administration by the Chief of Protocol for transfer, donation, or other disposal in accordance with such instruction as may be furnished by that officer. In the absence of such instructions, such property will be transferred or disposed of by the General Services Administration in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, and the Federal Property Management Regulations (41 CFR Ch. 101, Subchapter H). Standard Form 120, Report of Excess Personal Property, and Standard Form 120A, Continuation Sheet, shall be used in reporting such property, and the Foreign Gifts and Decorations Act of 1966 shall be cited on the reporting document. Such reports shall be submitted to General Services Administration, Region 3, Attention: Property Management and Disposal Service, Seventh and D Streets SW., Washington, D.C. 20407.

§ 3.7 Revocation of previous regulations

The regulations in this part shall supersede all regulations heretofore in effect concerning the acceptance of gifts and decorations from foreign governments to persons in the service of the United States or to members of their families.

APPENDIX D

Constitutional Provision

Article 1, Section 9, clause 8 of the Constitution of the United States provides that:

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

APPENDIX E

Statutory Provisions

The Federal Election Campaign Act after the 1976 amendments, 2 U.S.C. §§ 431(e), 441e, 441f, and 441j, provides that:

§ 431 Definitions

(e) "contribution"—

(1) means a gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of—

(A) influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party, or

(B) influencing the result of an election held for the expression of a preference for the nomination of persons for election to the office of President of the United States;

(2) means a written contract, promise, or agreement, whether or not legally enforceable, to make a contribution for such purposes;

(3) means funds received by a political committee which are transferred to such committee from another political committee or other source;

(4) means the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose, except that this paragraph shall not apply in the case of legal or accounting services rendered to or on behalf of the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), other than services attributable to activities which directly further the election of a designated candidate or candidates to Federal office, nor shall this paragraph apply in the case of legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of insuring compliance with the provisions of this Act or chapter 95 or chapter 96 of Title 26 (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), but amounts paid or incurred for such legal or accounting services shall be reported in accordance with the requirements of section 434(b) of this title; but

(5) does not include—

(A) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(B) the use of real personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;

(C) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor;

(D) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate;

(E) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or

sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;

(F) any payment made or obligation incurred by a corporation or a labor organization which, under the provisions of section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization;

(G) a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business, but such loans—

(i) shall be reported in accordance with the requirements of section 434(b) of this title; and

(ii) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance thereof that each endorser or guarantor bears to the total number of endorsers or guarantors; or

(H) a gift, subscription, loan, advance, or deposit of money or anything of value to a national committee of a political party or a State committee of a political party which is specifically designated for the purpose of defraying any cost incurred with respect to the construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office, except that any such gift, subscription, loan, advance, or deposit of money or anything of value, and any such cost, shall be reported in accordance with section 434(b) of this title; or

(I) any honorarium (within the meaning of section 441i of this title); to the extent that the cumulative value of activities by any person on behalf of any candidate under each of clauses (B), (C), and (D) does not exceed $500 with respect to any election.

2 U.S.C. Section 441e

§ 441e. Contributions by foreign nationals.

(a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

(b) As used in this section, the term "foreign national" means—

(1) a foreign principal, as such term is defined by section 611(b) of Title 22, except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of Title 8.

Pub.L. 92-225, Title III, § 324, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 493.

2 U.S.C. Section 441f

§ 441f. Contributions in name of another prohibited.

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

Pub. L. 92-225, Title III, § 325, as added Pub. L. 94-283, Title 1, § 112(2), May 11, 1976, 90 Stat. 494.

2 U.S.C. Section 441j

§ 441j. Penalties

(a) Any person, following May 11, 1976, who knowingly and willfully commits a violation of any provision or provisions of this Act which involves the making, receiving, or reporting of any contribution or expenditure having a value in the aggregate of $1,000 or more during a calendar year shall be fined in an amount

which does not exceed the greater of $25,000 or 300 percent of the amount of any contribution or expenditure involved in such violation, imprisoned for not more than 1 year, or both. In the case of a knowing and willful violation of the section 441b(b)(3) of this title, including such a violation of the provisions of such section as applicable through section 441c(b) of this title, of section 441f of this title, or of section 441g of this title, the penalties set forth in this section shall apply to a violation involving an amount having a value in the aggregate of $250 or more during a calendar year. In the case of a knowing and willful violation of section 441h of this title, the penalties set forth in this section shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of $1,000 or more is involved.

(b) A defendant in any criminal action brought for the violation of a provision of this Act, or of a provision of chapter 95 or chapter 96 of Title 26, may introduce as evidence of his lack of knowledge of or intent to commit the offense for which the action was brought a conciliation agreement entered into between the defendant and the Commission under section 437g of this title which specifically deals with the act or failure to act constituting such offense and which is still in effect.

(c) In any criminal action brought for a violation of a provision of this Act, or of a provision of chapter 95 or chapter 96 of Title 26, the court before which such action is brought shall take into account, in weighing the seriousness of the offense and in considering the appropriateness of the penalty to be imposed if the defendant is found guilty, whether—

(1) the specific act or failure to act which constitutes the offense for which the action was brought is the subject of a conciliation agreement entered into between the defendant and the Commission under section 437g of this title;

(2) the conciliation agreement is in effect; and

(3) the defendant is, with respect to the violation involved, in compliance with the conciliation agreement.

Pub. L. 92-225, Title III, § 329, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 494.

The Foreign Gifts and Decorations Act of 1966, 5 U.S.C. § 7342, provides that:

(a) For the purpose of this section—

(1) "employee" means—

(A) an employee as defined by section 2105 of this title;

(B) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or of the District of Columbia;

(C) a member of a uniformed service;

(D) the President;

(E) a Member of Congress as defined by section 2106 of this title; and

(F) a member of the family and household of an individual described in subparagraphs (A)–(E) of this paragraph;

(2) "foreign government" means a foreign government and an official agent or representative thereof;

(3) "gift" means a present or thing, other than a decoration, tendered by or received from a foreign government; and

(4) "decoration" means an order, device, medal, badge, insignia, or emblem tendered by or received from a foreign government.

(b) An employee may not request or otherwise encourage the tender of a gift or decoration.

(c) Congress consents to—

(1) the accepting and retaining by an employee of a gift of minimal value tendered or received as a souvenir or mark of courtesy; and

(2) the accepting by an employee of a gift of more than minimal value when it appears that to refuse the gift would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. However, a gift of more than minimal value is deemed to have been accepted on behalf of the United States and shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(d) Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of

combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the agency, office or other entity in which the employee is employed and the concurrence of the Secretary of State. Without this approval and concurrence, the decoration shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(e) The President may prescribe regulations to carry out the purpose of this section. Added Pub.L. 90-83 § 1(45)(C), Sept. 11, 1967, 81 Stat. 208.

The bribery, graft, and conflicts of interest statutes, 18 U.S.C. §§ 201 and 203, provide that:

§ 201. Bribery of public officials and witnesses

(a) For the purpose of this section—

"public official" means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror; and

"person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that that he will be so nominated or appointed; and

"official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

(b) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(1) to influence any official act; or

(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty, or

(c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:

(1) being influenced in his performance of any official act; or

(2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) being induced to do or omit to do any act in violation of his official duty; or

(d) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom; or

(e) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom—

Shall be fined not more than $20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(f) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him; or

(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom—

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

(j) Subsection (d), (e), (h), and (i) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(k) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

Added Pub.L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1119.

18 U.S.C. Section 203

§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both, and shall be incapable of holding any office of honor, trust, or profit under the United States.

(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or

otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1121.

The Foreign Agent Registration Act Amendments of 1966, 18 U.S.C. § 219, provides that:

§ 219. Officers and employees acting as agents of foreign principals

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended.

Added Pub. L. 89-486, § 8(b), July 4, 1966, 80 Stat. 249.

The conspiracy to defraud the United States statute, 18 U.S.C. § 371, provides that:

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

The Federal Election Campaign Act prior to 1974, 18 U.S.C. §§ 613 and 614, provided that:

"§ 613. Contributions by agents of foreign principals

"Whoever, being an agent of a foreign principal, directly or through any other person, either for or on behalf of such foreign principal or otherwise in his capacity as agent of such foreign principal, knowingly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or

"Whoever knowingly solicits, accepts, or receives any such contribution from any such agent of a foreign principal or from such foreign principal—

"Shall be fined not more than $5,000 or imprisoned not more than five years or both.

"As used in this section—

"(1) The term 'foreign principal' has the same meaning as when used in the Foreign Agents Registration Act of 1938, as amended, except that such term does not include any person who is a citizen of the United States.

"(2) The term 'agent of a foreign principal' means any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any substantial portion of whose activities are directly or indirectly supervised, directed, or controlled by a foreign principal."

"§ 614. Prohibition of contributions in name of another

"(a) No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

"(b) Any person who violates this section shall be fined not more than $25,000 or imprisoned not more than one year, or both.

The Logan Act, 18 U.S.C. § 953, provides that:

§ 953. Private correspondence with foreign governments

Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

June 25, 1948, c. 645, 62 Stat. 744.

The False Statements Act, 18 U.S.C. § 1001, provides that:

§ 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

June 25, 1948, c. 645, 62 Stat. 749.

The statute prohibiting the obstruction of Congressional committees, 18 U.S.C. § 1505, provides that:

§ 1505. Obstruction of proceedings before departments, agencies, and committees

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress, or

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

As amended Oct. 15, 1970, Pub. L. 91-452, Title IX, § 903, 84 Stat. 947; Sept. 30, 1976, Pub. L. 94-435, Title I, § 105, 90 Stat. 1389.

The Foreign Agents Registration Act of 1938, as amended, 22 U.S.C §§ 611-614, provides that:

§ *611. Definitions*

As used in and for the purposes of this subchapter—

(a) The term "person" includes an individual, partnership, association, corporation, organization, or any other combination of individuals;

(b) The term "foreign principal" includes—

(1) a government of a foreign country and a foreign political party;

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

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

(c) Expect as provided in subsection (d) of this section, the term "agent of a foreign principal" means—

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

(i) engages within the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

(d) The term "agent of a foreign principal" does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611[1] of Title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in subsection (b) of this section, or by any agent of a foreign principal required to register under this subchapter;

(e) The term "government of a foreign country" includes any person or groups of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States;

(f) The term "foreign political party" includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof;

[1] So in original. Reference should be to section "3685" and not to "3611."

(g) The term "public-relations counsel" includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal;

(h) The term "publicity agent" includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise;

(i) The term "information-service employee" includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country;

(j) The term "political propaganda" includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence. As used in this subsection the term "disseminating" includes transmitting or causing to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce or offering or causing to be offered in the United States mails;

(k) The term "registration statement" means the registration statement required to be filed with the Attorney General under section 612(a) of this title, and any supplements thereto required to be filed under section 612(b) of this title, and includes all documents and papers required to be filed therewith or amendatory thereof or supplemental thereto, whether attached thereto or incorporated therein by reference;

(l) The term "American republic" includes any of the states which were signatory to the Final Act of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana, Cuba, July 30, 1940;

(m) The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States;

(n) The term "prints" means newspapers and periodicals, books, pamphlets, sheet music, visiting cards, address cards, printing proofs, engravings, photographs, pictures, drawings, plans, maps, patterns to be cut out, catalogs, prospectuses, advertisements, and printed, engraved, lithographed, or autographed notices of various kinds, and, in general, all impressions or reproductions obtained on paper or other material assimilable to paper, on parchment or on cardboard, by means of printing, engraving, lithography, autography, or any other easily recognizable mechanical process, with the exception of the copying press, stamps with movable or immovable type, and the typewriter;

(o) The term "political activities" means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to

formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party;

(p) The term "political consultant" means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party;

(q) For the purpose of section 613(d) of this title, activities in furtherance of the bona fide commercial, industrial or financial interests of a domestic person engaged in substantial commercial, industrial or financial operations in the United States shall not be deemed to serve predominantly a foreign interest because such activities also benefit the interests of a foreign person engaged in bona fide trade or commerce which is owned or controlled by, or which owns or controls, such domestic person: *Provided*, That (i) such foreign person is not, and such activities are not directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in substantial part by a government of a foreign country or a foreign political party, (ii) the identity of such foreign person is disclosed to the agency or official of the United States with whom such activities are conducted, and (iii) whenever such foreign person owns or controls such domestic person, such activities are substantially in furtherance of the bona fide commercial, industrial or financial interests of such domestic person. As amended July 4, 1956, Pub. L. 89–486, § 1, 80 Stat. 244; Aug. 12, 1970, Pub. L. 91–375, § 6(k) 84 Stat. 782.

22 U.S.C. Section 612

§ 612. Registration statement; filing; contents

(a) No person shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement and supplements thereto as required by this section and subsection (b) of this section or unless he is exempt from registration under the provisions of this subchapter. Except as hereinafter provided, every person who becomes an agent of a foreign principal shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath on a form prescribed by the Attorney General. The obligation of an agent of a foreign principal to file a registration statement shall, after the tenth day of his becoming such agent, continue from day to day, and termination of such status shall not relieve such agent from his obligation to file a registration statement for the period during which he was an agent of a foreign principal. The registration statement shall include the following, which shall be regarded as material for the purposes of this subchapter:

(1) Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

(2) Status of the registrant; if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner and a true and complete copy of its articles of copartnership; if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer, and of each person performing the functions of a director or officer and a true and complete copy of its charter, articles of incorporation, association, constitution, and bylaws, and amendments thereto; a copy of every other instrument or document and a statement of the terms and conditions of every oral agreement relating to its organization, powers, and purposes; and a statement of its ownership and control;

(3) A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each; the name and address of every foreign principal for whom the registrant is acting, assuming, or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party, or by any other foreign principal;

(4) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal, including a detailed statement of any such activity which is a political activity;

(5) The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each such foreign principal, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(6) A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder including a detailed statement of any such activity which is a political activity;

(7) The name, business and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal; and the nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received during the preceding sixty days from each such person in connection with any of the activties referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(8) A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in connection with activities which require his registration hereunder and which have been undertaken by him either as an agent of a foreign principal or for himself or any other person or in conection with any activities relating to his becoming an agent of such principal, and a detailed statement of any contributions of money or other things of value made by him during the proceding sixty days (other than contributions the making of which is prohibited under the terms of section 613 of Title 18) in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office;

(9) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder;

(10) Such other statements, information, or documents pertinent to the purposes of this subchapter as the Attorney General, having due regard for the national security and the public interest, may from time to time require;

(11) Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(b) Every agent of a foreign principal who has filed a registration statement required by subsection (a) of this section shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the Attorney General a supplement thereto under oath, on a form prescribed by the Attorney General, which shall set forth with respect to such preceding six months' period such facts as the Attorney General, having due regard for the

[1] So in original.

national security and the public interest, may deem necessary to make the information required under this section accurate, complete, and current with respect to such period. In connection with the information furnished under clauses (3), (4), (6), and (9) of subsection (a) of this section, the registrant shall give notice to the Attorney General of any changes therein within ten days after such changes occur. If the Attorney General, having due regard for the national security and the public interest, determines that it is necessary to carry out the purposes of this subchapter, he may, in any particular case, require supplements to the registration statement to be filed at more frequent intervals in respect to all or particular items of information to be furnished.

(c) The registration statement and supplements thereto shall be executed under oath as follows: If the registrant is an individual, by him; if the registrant is a partnership, by the majority of the members thereof; if the registrant is a person other than an individual or a partnership, by a majority of the officers thereof or persons performing the functions of officers, or by a majority of the board of directors thereof or persons performing the functions of directors, if any.

(d) The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this subchapter and the regulations thereunder on the part of the registrant; nor shall it indicate that the Attorney General has in any way passed upon the merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this subchapter, for willful failure to file a registration statement or supplement thereto when due or for a willful false statement of a material fact therein or the willful omission of a material fact required to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(e) If any agent of a foreign principal, required to register under the provisions of this subchapter, has previously thereto registered with the Attorney General under the provisions of sections 14–17 of Title 18, the Attorney General, in order to eliminate inappropriate duplication, may permit the incorporation by reference in the registration statement or supplements thereto filed hereunder of any information or documents previously filed by such agent of a foreign principal under the provisions of said sections. June 8, 1938, c. 327, § 2, 52 Stat. 632; Apr. 29, 1942, c. 263, § 2, 56 Stat. 251; Aug. 3, 1950, c. 524, § 1, 64 Stat. 399.

(f) The Attorney General may, by regulation, provide for the exemption—

(1) from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a partner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this subchapter, and

(2) from the requirement of furnishing any of the information required by this section of any agent of a foreign principal,

where by reason of the nature of the functions or activities of such person the Attorney General, having due regard for the national security and the public interest, determines that such registration, or the furnishing of such information, as the case may be, is not necessary to carry out the purposes of this subchapter. As amended July 4, 1966, Pub.L. 89–486, § 2, 80 Stat. 245.

22 U.S.C. Section 613

§ 613. Exemptions

The requirements of section 612(a) of this title shall not apply to the following agents of foreign principals:

(a) A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer;

(b) Any official of a foreign government, if such government is recognized by the United States, who is not a public-relations counsel, publicity agent, information-service employee, or a citizen of the United States, whose name and status and the character of whose duties as such official are of public record in the Department of State, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official;

(c) Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel, publicity agent, or information-service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee;

(d) Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest; or (3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of sections 441, 444, 445 and 447–457 of this title, and such rules and regulations as may be prescribed thereunder;

(e) Any person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts;

(f) Any person, or employee of such person, whose foreign principal is a government of a foreign country the defense of which the President deems vital to the defense of the United States while, (1) such person or employee engages only in activities which are in furtherance of the policies, public interest, or national defense both of such government and of the Government of the United States, and are not intended to conflict with any of the domestic or foreign policies of the Government of the United States, (2) each communication or expression by such person or employee which he intends to, or has reason to believe will, be published, disseminated, or circulated among any section of the public, or portion thereof, within the United States, is a part of such activities and is believed by such person to be truthful and accurate and the identity of such person as an agent of such foreign principal is disclosed therein, and (3) such government of a foreign country furnishes to the Secretary of State for transmittal to, and retention for the duration of this subchapter by, the Attorney General such information as to the identity and activities of such person or employee at such times as the Attorney General may require. Upon notice to the Government of which such person is an agent or to such person or employee, the Attorney General, having due regard for the public interest and national defense, may, with the approval of the Secretary of State, and shall, at the request of the Secretary of State, terminate in whole or in part the exemption herein of any such person or employee;

(g) Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: *Provided*, That for the purposes of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of established agency proceedings, whether formal or informal. As amended July 4, 1966, Pub.L. 89–486, § 3, 80 Stat. 246.

22 U.S.C. Section 614

§ 614. Filing and labeling of political propaganda

(a) Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this subchapter and who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons shall, not later than forty-eight hours after the beginning of the transmittal thereof, file with the Attorney General two copies thereof and a statement, duly signed by or on behalf of such agent, setting forth full information as to the places, times, and extent of such transmittal.

(b) It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this subchapter to transmit or cause to be transmitted in the United States mails or

by any means or instrumentality of interstate or foreign commerce any political propaganda for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be or which he intends to be, disseminated or circulated among two or more persons, unless such political propaganda is conspicuously marked at its beginning with, or prefaced or accompanied by, a true and accurate statement in the language or languages used in such political propaganda, setting forth the relationship or connection between the person transmitting the political propaganda or causing it to be transmitted and such propaganda; that the person transmitting such political propaganda or causing it to be transmitted is registered under this subchapter with the Department of Justice, Washington, District of Columbia, as an agent of a foreign principal, together with the name and address of such agent of a foreign principal and of such foreign principal; that, as required by this subchapter, his registration statement is available for inspection at and copies of such political propaganda are being filed with the Department of Justice; and that registration of agents of foreign principals required by the subchapter does not indicate approval by the United States Government of the contents of their political propaganda. The Attorney General, having due regard for the national security and the public interest, may by regulation prescribe the language or languages and the manner and form in which such statement shall be made and require the inclusion of such other information contained in the registration statement identifying such agent of a foreign principal and such political propaganda and its sources as may be appropriate.

(c) The copies of political propaganda required by this subchapter to be filed with the Attorney General shall be available for public inspection under such regulations as he may prescribe.

(d) For purposes of the Library of Congress, other than for public distribution, the Secretary of the Treasury and the Postmaster General are authorized, upon the request of the Librarian of Congress, to forward to the Library of Congress fifty copies, or as many fewer thereof as are available, of all foreign prints determined to be prohibited entry under the provisions of section 1305 of Title 19 and of all foreign prints excluded from the mails under authority of section 343 of Title 18.

Notwithstanding the provisions of section 1305 of Title 19 and of section 343 of Title 18, the Secretary of the Treasury is authorized to permit the entry and the Postmaster General is authorized to permit the transmittal in the mails of foreign prints imported for governmental purposes by authority or for the use of the United States or for the use of the Library of Congress.

(e) It shall be unlawful for any person within the United States who is an agent of a foreign principal required to register under the provisions of this subchapter to transmit, convey, or otherwise furnish to any agency or official of the Government (including a Member or committee of either House of Congress) for or in the interests of such foreign principal any political propaganda or to request from any such agency or official for or in the interests of such foreign principal any information or advice with respect to any matter pertaining to the political or public interests, policies or relations of a foreign country or of a political party or pertaining to the foreign or domestic policies of the United States unless the propaganda or the request is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as an agent of such foreign principal under this subchapter.

(f) Whenever any agent of a foreign principal required to register under this subchapter appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the Department of Justice as an agent of such foreign principal for inclusion in the records of the committee as part of his testimony. As amended July 4, 1966, Pub.L. 89-486, § 4, 80 Stat. 246.

The Foreign Relations Act, 22 U.S.C. § 2458a, provides that:

§ 2458a. Federal employee participation in cultural exchange programs—Grants and other foreign government assistance; family or household expense assistance prohibited; "Federal employee" defined

(a)(1) Congress consents to the acceptance by a Federal employee of grants and other forms of assistance provided by a foreign government to facilitate the participation of such Federal employee in a cultural exchange—

(A) which is of the type described in section 2452(a)(2)(i) of this title,

(B) which is conducted for a purpose comparable to the purpose stated in section 2451 of this title, and

(C) which is specifically approved by the Secretary of State for purposes of this section;

but the Congress does not consent to the acceptance by any Federal employee of any portion of any such grant or other form of assistance which provides assistance with respect to any expenses incurred by or for any member of the family or household of such Federal employee.

(2) For purposes of this section, the term "Federal employee" means any employee as defined in subparagraphs (A) through (E) of section 7342(a)(1) of Title 5, but does not include a person described in subparagraph (F) of such section.

FOREIGN GRANTS AND OTHER ASSISTANCE NOT GIFTS FOR PURPOSES OF SECTION 7342 OF TITLE 5

(b) The grants and other forms of assistance with respect to which the consent of Congress is given in subsection (a) of this section shall not constitute gifts for purposes of section 7342 of Title 5.

REGULATIONS

(c) The Secretary of State is authorized to promulgate regulations for purposes of this section.

Pub.L. 87-256, § 108A, as added July 12, 1976, Pub.L. 94-350, Title I, § 111, 90 Stat. 825.

APPENDIX F

House of Representatives Code of Official Conduct

The House of Representatives Code of Official Conduct, House Rule XLIII, adopted in 1968 by House Resolution 1099, provides that:

(1) A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.

(2) A Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof.

(3) A Member, officer, or employee of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

(4) A Member, officer, or employee of the House of Representatives shall accept no gift of substantial value, directly or indirectly, from any person, organization or corporation having a direct interest in legislation before the Congress.

(5) A Member, officer, or employee of the House of Representatives shall accept no honorarium for a speech, writing for publication, or other similar activity, from any person, organization or corporation in excess of the usual and customary value for such services.

(6) A Member of the House of Representatives shall keep his campaign funds separate from his personal funds. He shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable prior campaign expenditures. He shall expend no funds from his campaign account not attributable to bona fide campaign purposes.

(7) A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fund raising events if the sponsors of such affairs do not give clear notice in advance to the donors or participants that the proceeds are intended for other purposes.

(8) A Member of the House of Representatives shall retain no one from his clerk hire allowance who does not perform duties commensurate with the compensation he receives.

The House of Representatives Code of Official Conduct, House Rule XLIII, as amended, provides that:

1. A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.

2. A Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof.

3. A Member, officer, or employee of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

4. A Member, officer, or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of $35 or less) in any calendar year aggregating $100 or more in value, directly or indirectly, from any person (other than from a relative of his) having a direct interest in legislation before the Congress or who is a foreign national (or agent of a foreign national). Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any

successor statute), any officer or director of such registered person, and any person retained by such registered person for the purpose of influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.

5. A Member, officer, or employee of the House of Representatives shall accept no honorarium for a speech, writing for publication, or other similar activity, from any person, organization, or corporation in excess of the usual and customary value for such services.

6. A Member of the House of Representatives shall keep his campaign funds separate from his personal funds. He shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable prior campaign expenditures and he shall expend no funds from his campaign account not attributable to bona fide campaign purposes.

7. A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fund raising events.

8. A Member of the House of Representatives shall retain no one from his clerk hire allowance who does not perform duties commensurate with the compensation he receives.

9. A Member, officer, or employee of the House of Representatives shall not discharge or refuse to hire any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

10. A Member of the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction.

As used in this Code of Official Conduct of the House of Representatives—

(a) the terms "Member" and "Member of the House of Representatives" include the Resident Commissioner from Puerto Rico and each Delegate to the House and (b) the term "officer or employee of the House of Representatives" means any individual whose compensation is disbursed by the Clerk of the House of Representatives.

For the purposes of clause 4 of this Code of Official Conduct—

(1) The term "relative" means, with respect to any Member, officer, or employee of the House of Representatives, an individual who is related as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the person reporting.

(2) The term "foreign national" means an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence.

APPENDIX G

CODE OF ETHICS FOR GOVERNMENT SERVICE

The Code of Ethics for Government Service adopted by House Concurrent Resolution 175, 72 Stats. pt. 2, p. B12, provides that:

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone whether for remuneration or not; *and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his government duties.* [Emphasis added.]
6. Make no private promises of any kind binding on the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means of making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that a public office is a public trust.