

1st-4th PUBLIC HEARING, + Appendix

N. J. Commission to Study the Subject of Conflicts
in the Performance of Public Duties by Persons
holding Public Office, Position or Employment, with
their personal, business or Professional Interests.

F I R S T P U B L I C H E A R I N G

BEFORE

N.J.
THE COMMISSION TO STUDY THE SUBJECT OF CONFLICTS
IN THE PERFORMANCE OF PUBLIC DUTIES BY PERSONS
HOLDING PUBLIC OFFICE, POSITION OR EMPLOYMENT,
WITH THEIR PERSONAL, BUSINESS OR PROFESSIONAL
INTERESTS - created by Senate Concurrent Resolution
No. 18 (1956) and reconstituted by Senate Concurrent
Resolution No. 9 (1957).

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Held:
Senate Chamber, State House,
Trenton, New Jersey
September 4, 1957.

Members of Commission present:

Senator James F. Murray, Jr.
Assemblyman Benjamin Franklin, III
Louis P. Marciante
James M. Keating

Absent:

Albert A. Marks, Jr.

* * *

Counsel - John H. Yauch, Jr.
Associate Counsel - Daniel A.
Degnan, Esq.

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SENATOR JAMES F. MURRAY, JR. (THE CHAIRMAN): Gentlemen, we are about to convene the Commission for the Study of Conflict of Interest which was created by the 1956 Legislature under Senate Concurrent Resolution No. 18 and was re-constituted by Senate Concurrent Resolution No. 9, January 14, 1957.

I am pleased to present to you the members of the Commission: I am Senator James F. Murray, Jr., of Hudson, the Chairman; on my far left is Mr. Louis Marciante, and next to Mr. Marciante, on my immediate left, is Mr. James Keating; on my immediate right, Assemblyman Benjamin Franklin. III; and absent from today's session is our fifth member, Mr. Albert Marks, who may join us later but is engaged and cannot be with us at this time.

It may be of public interest to inform you of the plans which we have for future executive and public meetings. Because of the delicate nature of some of the testimony which it may be necessary for us to take, the Committee has agreed to hold several executive meetings. Our next public meeting will be Monday, September 16th, at 10:30 A.M. in this chamber.

By way of preface to our entire proceedings, I think it might be well to give a general description of what will be the operational doctrine of the Commission. We approach our task and we address ourselves to it fully conscious that we are about to handle a worrisome and difficult and delicate problem, and we intend to do this within a frame of reference that will embody neither a whitewash nor a witch hunt, that

will not agree to single out any individual category of professional activity as being more worthy of attention than any other, and that will attempt as far as humanly possible to avoid being entangled in politics or personality. We have determined that at the end of our hearings, with all the research facilities available to us and our excellent counsel, whom I will introduce in a moment, we will submit to the Legislature by the first of the year concrete recommendations for their subsequent action in the 1958 session.

Now, with those remarks I would like to touch just briefly upon our mode of procedure and then introduce our counsel. All that we say is being recorded on the machine at my left and therefore we are going to ask our witnesses if they will please, when they are testifying, use the seat at the desk on my left. Any prepared statements or annexes that you do not wish to read, or any exhibits which are too lengthy to be read, will be accepted, marked for identification, and incorporated in our record. Our record will be available in limited quantities at the end of each session. We will not tolerate anything going into the record which is not germane to our problem, and we would ask that you be as brief as you can.

With that, I would like to present our counsel, John H. Yauch, Jr., who has eminent experience, both professional and personal, to serve this Commission and the public interest involved and in presenting him to you I would like publicly to thank him for agreeing to serve as counsel to our group. I now present John H. Yauch, Jr., who in turn will introduce

our associate counsel.

MR. JOHN H. YAUCK, JR: As the Chairman has suggested, I would at the outset like to introduce my associate counsel, who has agreed to serve in this matter, Mr. Daniel Degnan of West Orange.

Now, as has been stated by the Chairman, our duty here is outlined in Senate Concurrent Resolution 18, and the Commission was reconstituted by Senate Concurrent Resolution No. 9, which was adopted during the term of the present Legislature.

Just for the purpose of giving us and those people who have been interested enough to come here today a broad outline of what the duty of this Commission is, I would like to read the meat of the Concurrent Resolution, which is paragraph 3, and I now read from that Resolution:

"It shall be the duty of the commission to make a study of the subject of conflicts in the performance of public duties by persons holding public office, position or employment, with their personal, business or professional interests. In making the said study the commission shall give consideration to any and all legislative proposals now pending before the Legislature or which may be proposed to the present Legislature before the completion of the said study and also to any Codes of Public Ethics which have been adopted in other States insofar as the said commission may ascertain the existence of such codes."

Now, as I stated, I believe that very broadly outlines the duty of this Commission and, as I read it, it covers our examination into what possible conflict may exist in either the Executive or the Legislative Branches of our state government. I do not believe that it covers our Judicial Department of the State.

I would like to point out at this time for the guidance of the Commission and those of the public who intend to present any matters before us that we are subject to a deadline in preparing and filing our report; namely, our report must be filed before the expiration of the 1957 Legislature, which I believe is the second Tuesday in January of 1958. So we are subject to that deadline unless, of course, the Legislature at its pleasure seeks to reconstitute a Committee after that date.

Now, Senator Murray, as a result of a meeting of the Commission held last week, has invited certain gentlemen to appear at this hearing, and we will of course be pleased to hear from them and any others who desire to be heard. If the testimony this morning takes us to adjournment time which I believe the Commission has set as one o'clock, we intend to reconvene at two o'clock this afternoon to complete any further testimony. If I am mistaken, Mr. Chairman, in that assumption, I wish you would correct me immediately.

SENATOR MURRAY: Counsel, the Commission feels that 12:30 would perhaps be a more practical adjournment.

MR. YAUCH: Now, we earnestly solicit the views and suggestions of any interested citizens in relation to this subject which has been assigned to the Commission. We solicit those suggestions either by way of oral statement or testimony at our various hearings or by mail, and if any citizen or anyone having anything to contribute desires to submit anything by mail, may I suggest that the material be mailed to me at 11 Commerce Street, Newark 2, New Jersey.

At the outset of this very important duty which has been delegated to this Commission, I believe I speak for the Commission when I state that we adopt the statement of a United States Senate Committee Report made in 1951, of which Senator Douglas of Illinois was Chairman, wherein it was stated, "The problem of ethical and moral standards is one which thoughtful men approach with both reluctance and humility." Broadly we should be guided by the principle stated by President Cleveland; namely, that a public office is a public trust. That's fundamental.

I believe our recommendations should deal with representatives of all professions, businesses and trades; in other words, I don't believe that it would serve the public interest to pinpoint any particular activity. But we seek information from anyone who has anything constructive to offer.

It has been stated, and this was during an investigation into the same subject, namely, conflict of interest of public officials - this was stated during a hearing in New York State:

"The public is entitled to expect from its servants a set of standards far above the morals of the marketplace. Those who exercise public and political power are trustees of the hopes and aspirations of all the people."

Now, that's very flowery language, but I think, being practical about it, that that is a basic matter and is something that we should consider throughout these hearings.

SENATOR MURRAY: Counsel, for the benefit of our Republican minority, I think it only fair to give the source of that quotation.

MR. YAUCH: I hesitated to do it in view of our Chairman, but I am very glad to state that it was Governor Dewey of New York.

Now, may I suggest that during the course of these hearings and in our deliberations and the deliberations of the Commission, we attempt to deal with substantial matters of possible conflict of interest and that we avoid straining at the knothole, because practically every act of the Legislature or of a public official affects him personally as a citizen. May I suggest that we not be unrealistic by attempting the impossible but that we should be very determined to deal with the real problems that have been referred to us. I believe, and I don't make this statement for the purpose of currying any favor, because, as the Chairman has pointed out, my experience has been, up to this point in life, as a practicing lawyer without having been honored during my career with any public office - I believe a great majority of public officers and employees are of good civic morals, and I think we should hesitate to rigidly circumscribe that great majority because of the civic immorality of a few.

During the 1954 probe in New York State that I referred to before, it was stated that government should not be deprived of the services of all but princes and paupers. In effect that means that we should not adopt such regulations or code of ethics which will prohibit the average man from serving the public in the Legislature or any other place in public office. It was stated at that probe that the problem

is to separate the unavoidable conflict of interest from the venal and the doubtful and to chart the shadowlands of conduct where men of good will may have difficulty in deciding whether a course is proper or improper. I suggest that the starting point in the work of the Commission be that government officers and employees, when on public business, stand in a fiduciary relationship to the people they serve and should be held to the standards commonly applied to fiduciaries.

We have a great body of law which deals with that subject of the duty of a fiduciary to the beneficiary. The direct result of conflict of interest often has serious consequences but beyond such direct result is the effect of conflicts of interest on public opinion, the respect which citizens have for their public officials and their government.

Fortunately, this Commission has available the materials and work on the subject of conflict of interest which has been prepared in the course of investigations on this same subject both in the federal field and the state field. We have already provided, since my return and the taking up of my duties as counsel, to the members of the Commission some of that material, and I would like to refer briefly to what is available so that it may be of some aid to those who may appear before this Commission. We have available to this Commission, Number 1 - and I don't specify these in the order of their importance - two reports of the State Bar Committee on Conflict of Interest and suggested legislation, which indicate, in my opinion, careful and thorough

consideration. Then, Number 2, the record of the hearings and the report of the New York Legislative Committee on Integrity and Ethical Standards in Government, which was made on March 9, 1954 - so it's quite current; then, thirdly, the report on Proposals for Improvement of Ethical Standards in the Federal Government, made in 1951, as I stated before, under the auspices or chairmanship of Senator Douglas of Illinois; next, is a report of the Texas Legislative Council on Study of a Code of Ethics, and Code. Since that report, our research has disclosed that the State of Texas has adopted that Code. Then there is a draft of a copy of legislative ethics which has been introduced into the Legislature in New Mexico as of May 1952, but nothing has happened with reference to that up to this date. Then we have a report that has been a matter of record for several years; namely, the Hinds Report, which recommended that legislators and state employees be barred from representing private interests in condemnation and other matters. Then we have the benefit of a bill which has been introduced at several sessions of the Legislature by Senator Waddington, the present bill being Senate 38.

SENATOR MURRAY: That is Senator John Waddington of Salem County.

MR. YAUCH: Right, Senator.

Our research up to this time, which I don't pretend has covered the field, indicates that much has been said and reported on in connection with this subject. But, as Will Rogers said about the weather, "Very little has been done

about it. We may have to resign ourselves to the weather but I know we will earnestly strive to avoid the conclusion that we can do nothing about the subject of conflict of interest. I suggest as a very broad outline for our objective in this matter a clear definition of ethical conduct of officials which not only provides a basis for condemnation of unethical officials but also a guide to the conscientious officials.

Mr. Chairman, that completes my preliminary remarks and it will be in order to call the first witness.

SENATOR MURRAY: Thank you, Counsel.

MR. YAUCH: Oh, Mr. Chairman, you stated inside before we came out that if there are any persons present who have not informed the Commission formally that they wish to be heard, will those people kindly go up to Mr. Degnan here on my right and give him your name and address so that we may have a record of who is present and would like to be heard, and then we will call you in order.

SENATOR MURRAY: That is correct, Counsel.

Our first witness has requested that he be permitted to appear before the Commission, and I will ask Mr. Joel Jacobson to appear before us and identify himself to Counsel. For the record, Mr. Jacobson, will you identify yourself?

JOEL R. JACOBSON: My name is Joel R. Jacobson and I am Executive Vice President of the New Jersey State CIO Council.

At the outset I want to say that I am afforded a unique opportunity here today, an opportunity I waited for over many, many years; that is, to be able to proselytize a certain member of your Commission. On many occasions I have tried to get him to listen to me but he never has, and now that Mr. Marciante is a member of this Commission he is my captive audience - I will have a chance to tell him several things that I have been trying to tell him over the years.

Secondly, I must say that there was a very appropriate setting on the desk over there as I walked into the Senate Chamber this morning, and as I hastily looked at this particular piece of paper I thought it was titled "Morals in the Senate Chamber". As I looked a little closer it turned out to be "Murals in the Senate Chamber". I thought this was an appropriate setting for this particular hearing. I am sure that the report of this Commission will be a "Mural in Morals".

SENATOR MURRAY: You can be sure, Mr. Jacobson, that we will not reach the point of examining the morals of murals, however.

MR. JACOBSON: At the outset I would like to say I am very happy for the opportunity to present the viewpoint of the State CIO Council and to indicate that much of the testimony we are about to present has been culled from our organizational experience as well as things which are in the public knowledge.

I would like to commend the Commission for the idea of holding public hearings. It certainly is a public problem,

this conflict of interest, and in having the public present you are discharging your obligations to the public for the purpose which you have been comprised.

Secondly, as a trade unionist I am grateful for the opportunity to be present here today. As you may have determined from reading the headlines in the past few weeks, we have more than an academic interest in the elimination of conflict of interests within our own ranks. Certainly crooks have not been confined to any one segment of society and we find that wherever dishonest individuals can ply their trade, they do emerge. And government and labor, and business too, have an obligation to adopt codes of procedure that will permit the elimination of conflict of interests. And in the pursuing of our common objectives it is certainly appropriate that each segment should help the other in obtaining these particular objectives.

The labor movement has involved itself in a rather intricate series of procedures which I will discuss very briefly a little later. I have an idea that some of these procedures may be of help to your Commission in its work.

First, if I may engage myself in a truism, I suppose it is appropriate to say that the moral climate of a society certainly establishes its rules of conduct, and our present-day rules have been laid down for an acquisitive society and the mores of our times are those of a business mentality and a business morality. Now, I don't want to sound like Roger Taney or Thorstein Veblen but I think it is a fairly well established fact that in many cases the end alone - the end in this case being the attainment of material wealth - the

end alone is what is being considered and far too frequently the means - often corruption, collusion and/or gentlemanly thievery - are rarely considered. We must lament, I'm sure, the fact that respectability, fame and power, are all too often geared to the measure of a man's total wealth; that very often a man's status in the community is measured not by his contributions to society but rather the make and size of his automobile, the size of his TV screen, and the jewels which he may bestow upon his wife. Unfortunately, too many leaders in industry judge a man only by his income. Our schools teach success and the essses are dollar signs instead of essses. Too many newspapers record achievement in terms of personal acquisition, and far too frequently a man's worth is measured in direct proportion to his total wealth.

In such a society the individuals who seek a fortune and their corresponding respectability and status find they ply their trade for personal profit wherever they can. And government, business and labor is rightly on its guard to prevent such activities.

Now here in our own State there have in the past occurred several instances that may or may not have been brought to the attention of this Commission, which we would like to in summary do now. First, the situation with regard to county prosecutors in the past has been just replete with instances of conflict of interests; for instance, I can cite these cases:

While on a public payroll allegedly serving all the people, I know of a county prosecutor who has represented a private firm in an Unemployment Compensation Case designed to

deprive a worker of his unemployment compensation benefits;

While on the public payroll, allegedly serving in the public interest, I know of a prosecutor who represented a private firm in a strike situation and got an injunction against the Union restricting its freedom of action;

While on the public payroll, allegedly serving all the people, I know of a county prosecutor who represented a private firm in a strike situation, who proceeded to secure indictments against the members of the Union organizing this particular firm which he represented for their actions during the conduct of that strike;

Finally, I know of a county prosecutor who was allegedly serving all the people and whose law partner represented a private firm in the filing of criminal complaints against the Union and its members and the prosecutor himself tried those cases when they ultimately reached court.

Certainly, one suggestion we would make to this Commission is that you consider the possibility that county prosecutors be barred from certain types of private practice, and perhaps as a compensation for this that their salaries be increased. Now, I know that the suggestion has been made that county prosecutors be barred from all private practice. I think this is a little too harsh. The fact of the matter is that he is appointed for five years and he has no tenure. To expect him to give up his total practice during that time, I think is unrealistic. Yet at the same time there certainly are types of practice in which a county prosecutor, to avoid conflict of interest, should not be involved. And I have a suggestion to

make a little later that may possibly enable us to handle this particular situation.

Secondly, there are other instances in this State where State Legislators have appeared on behalf of clients, for a fee, before State agencies. There have been instances where State Legislators have represented clients doing business with the State, for a fee. There have been examples where the State Medical Examiners in the Workmen's Compensation Bureau, who are supposed to render impartial medical decisions, have been on the payroll of some of the private insurance companies in this State. And certainly one of the most recent examples of a conflict of interest was the case where the Director of the Engineering Bureau of the State of New Jersey was using State employees and charging and receiving a private fee for an engineering service that he was supposed to have done in the course of his job.

As I say, this is not a problem for government alone. Certainly the Labor Movement itself has been plagued with this problem and we have been trying to do what we think will be an intelligent method of ridding our ranks of conflict of interest.

In this respect, while Mr. Yauch cited several sources of information, you may be interested in learning, as I am sure you will from Mr. Marciante, about the AF of L-CIO code of ethical practices which covers the activity of trade union leaders. And in a very brief summary - I am sure you can get copies of this, if you desire --

MR. YAUCH: I might say, Mr. Jacobson, that I anticipated that you would refer to it and that's why I didn't refer to it.

MR. JACOBSON: Well I am very grateful to you for giving me the first crack at it.

MR. YAUCH: I have a copy of it here.

MR. JACOBSON: Fine. Thank you very much.

In one section there are five or six codes and one section dealing with investments. The codes of ethical practices make these recommendations:

1. That a trade union leader shall have no personal financial interest which conflicts with the performance of his duty as a trade union leader.

2. That he shall have no financial interest in a business with which his union negotiates.

3. That he shall have no financial interest in a business which deals with a company which has been organized by his union.

4. Under no condition is he to receive kickbacks, under-the-table payments, or gifts or any other pay from an employer with whom the union has a minority contract.

5. Finally, they make the point that this includes the use of third persons as blinds to conceal real interest of the particular trade union leader.

I am sure that Mr. Marciante will be able to provide you with all the copies of this that you may require for your own use.

Now, I would like to make a few additional suggestions, using these codes as a basis, and also the report referred to by Mr. Yauch, by Senator Douglas - Ethics in Government. These are not necessarily original ideas, they are mainly incorporated

in Senator Douglas' book, but I would like to urge that this Commission consider the recommendation that as a condition of eligibility to serve in an official public capacity, every high-ranking, elective and appointive official should be required annually to disclose his income, his source of income, and his total net worth. Now the spotlight of public disclosure on financial activities will serve as a powerful antiseptic on the immoral bacteria which has infested certain areas of public life.

SENATOR MURRAY: Mr. Jacobson, wouldn't that violate the Constitution of the United States?

MR. JACOBSON: Well, I have a very quick answer. I am not a lawyer, I don't know. I would concede this, Senator, that I certainly think it's an invasion of a man's privacy. I concede that immediately. But to repeat what Mr. Yauch said earlier, certainly public office is a public trust and I think that men should be willing to make a small sacrifice in order to maintain the high level of integrity that Americans have come to expect from a democratic system of government.

SENATOR MURRAY: Would you apply that to elective and appointive offices?

MR. JACOBSON: I would apply that to elective and appointive officials above a certain rank. I just can't arbitrarily say what the dividing point should be. I certainly don't think a clerk in an office should be compelled to do this, but I think a man in a high position, with opportunities for establishing policy and with incentives to commit improper activities dangled before him, certainly should be asked to

disclose such a statement.

MR. YAUCH: Mr. Jacobson, just as a matter of thinking out loud on this subject which you brought up, wouldn't you think that the matter of disclosing personal finances would be that the matter could be taken care of in a realistic way by requiring a disclosure of any financial interest in any organization that was conducting business with the State, or with whom the State official or State employee might have some contact in an official capacity? In other words, instead of requiring -- I am not prejudging this. Please get me right. I am soliciting your broad thinking on this subject. But to require complete disclosure of all personal finances which a man might have by his industry acquired years before he became a public official, would seem to be somewhat irrelevant, and I earnestly ask your view on that subject.

MR. JACOBSON: I can envision many instances where such would be precisely the case, and yet I do think, if a man were required to disclose his total income and past source of income, it would be possible to discover certain conflicts of interest. Now I can only think of one situation on a national level. Certainly former Secretary of Defense, Charles Wilson, as an official of the General Motors Company, in his capacity as Secretary of Defense could be expected to lean toward the General Motors Corporation, and he did. The total disclosure would highlight such instances which might not ordinarily be brought to public view.

MR. MARCIANTE: May I ask a question, Joel? What about campaign contributions? It seems to me that would enter pretty prominently there.

MR. JACOBSON: That's my next point, Lou.

ASSEMBLYMAN FRANKLIN: Mr. Chairman, I would like to ask a question. One of the problems, of course, that I think we face in government is getting well qualified people to serve in governmental positions, and one comment that I have previously heard about this suggestion of yours is that such a complete disclosure might cause great reluctance among well qualified people, for perfectly good reasons. They simply don't want to disclose everything about their financial life, although there may be absolutely nothing wrong with it or have no connection with the State. I just wondered if you would comment on that.

MR. JACOBSON: I suppose that could also exist, although I must admit now that I have no doubt there are any number of well qualified, well intentioned, capable people who have no desire to run for public office because of the fact that they must subject themselves to so many smears during a campaign, and I think perhaps this might be an additional deterrent. I do think, though, that the total advantages, if you weigh them on a scale, would certainly be beneficial to the object which we have outlined here.

SENATOR MURRAY: Mr. Jacobson, have you thought through, in your analysis, the problem of a suggested penalty for a public official who, for example, would not make a full disclosure, in accordance with your suggestion?

MR. JACOBSON: No, I haven't. Frankly, I haven't. I can see many, many difficulties arising out of this but I submit it as a suggestion for consideration by this Commission.

I have just one or two more points on this and then I will move on. I think it is fairly well established that most people will commit shady acts only when they are reasonably sure that the public will not view these particular acts. Full disclosure will serve as a strong deterrent to improper conduct.

Another point that Mr. Yauch made - certainly the overwhelming majority of public officials are sincere, honest and dedicated. And I think, if public disclosure were to be invoked, no longer would the misdeeds of a handful smear this overwhelming majority of honest public officials, many of whom are working for wages far below that which they should be receiving. This might even act as an incentive for the public to demand that its public officials receive higher wages. Of course, if they had real insight, Lou, they would join our Unions and get this, but sometimes we have to help people even though they don't want it.

The second recommendation is that it shall be considered improper for any public official to engage in any personal business transaction or private arrangement for personal profit, which was based upon his official position or confidential information available to him as the result of his official status.

Now, I think it should be accepted that no Legislator, no Legislator, should accept money for representing constituents or anyone else before a governmental department, and that whatever service he renders shall be considered part of his duties. If any Legislator receives or accepts money or entertainment or expensive gifts, he is using his public office for his private

in. If he is a lawyer, and I speak with great respect and
reference for the legal profession - I don't intend to be
negotious - if he is a lawyer, he should not salve his conscience
on the ground that he is receiving legal fees for this particu-
lar function.

With regard to political contributions, certainly this
is an error.

MR. YAUCH: Mr. Jacobson, on that subject you just
referred to, you said "should not accept any money". Now,
wouldn't you think there are many situations where even though
money was not accepted, the public official should not be
representing a person?

MR. JACOBSON: Absolutely. I think his activities
should be circumscribed for appearing before a State agency or
a State department.

With regard to political contributions, I dare say that
this is one area where the line cannot be drawn very firmly but
certainly where many instances of conflict of interest lie.

SENATOR MURRAY: Mr. Jacobson, just a moment on that
point. Would you go as far as to advocate a drastic reduction
in the amount of money permitted a candidate for office to
expend, such as they have in Great Britain, for example?

MR. JACOBSON: Yes, sir, I would do that, and one
additional recommendation that I am going to make that has
been made by some of our national officers. The point is,
of course, that very often a political contribution is rendered
as a payment for service. Now, you don't actually buy the man,
but when he runs for office again you contribute to him a

very healthy political contribution. We have had proposed by some national officers that no single individual should be able to contribute more than \$15.00 to any political candidate, and they arbitrarily have selected \$5,00 for a federal candidate, \$5.00 for a state candidate, and \$5.00 for a municipal candidate. And if each individual knew that he was circumscribed in the amount of his contributions to this nominal amount, there might be greater participation by the total citizenry in contributions to a political candidate, and you would eliminate the situation where a man could contribute \$4,000 to a candidate and obviously expect some quid pro quo in consideration for this particular contribution.

The other points are contained in Senator Douglas' report and I will just whip through them very quickly.

"It shall be considered improper for any public official to accept any valuable gift, favor or service, directly or indirectly, from any person or organization with which the official has increased business for the government.

"4. It shall be considered improper for any public official to discuss future employment outside the government with persons or organizations with which there is pending official business."

I know of one situation where there is an unusually high mortality rate for a certain level of job, - the public officials who invariably find themselves after their tenure has ended, being employed by one of the three big "P's" in New Jersey. I think you know the firms I am referring to.

"5. It shall be improper to divulge valuable commercial economic information of a confidential character to unauthorized persons or to release such information in advance of the authorized release date. "

MR. YAUCH: Mr. Jacobson, on the point that you made just a moment ago about State officers or employees entering private employment, would you bar that forever or what is your view on that?

MR. JACOBSON: No, I don't suppose you could bar it forever. I think one of the recommendations made by Senator Douglas - he arbitrarily picked the time of two years before an official government employee shall be permitted to practice before a particular group that he served as a member of. I suppose the idea was that a normal period of time would lessen his particular influence within that particular agency. I suppose the same thing might be applied to the barring of future employment. But certainly, if a man is in a position to render service to a private firm and in return for this he is to be given a highly lucrative job, the conflict of interest there is rather obvious.

MR. MARCIANTE: Joel, just a minute, before you go any further. You talked about confidential information not being revealed. Do you think there should be confidential information in government?

MR. JACOBSON: I don't see how you can avoid it, Lou. For instance, if a particular - just to cite an example, if the State were to decide to build a plant or a highway and certain lands were involved, the officials involved in the decision know where the land is. It would be very easy to tip somebody off

to buy it and then sell it back to the state at double the amount.

MR. MARCIANTE: I can see that but how far would it go, if you permit this thing by law - confidential information. I'm thinking of a case in which I went to a State official for information about insurance companies and was told I couldn't have it because it was confidential. Now, I told them that I didn't think there was any such thing as confidential information in government. I still don't believe there should be. I can see where it could be abused very easily.

MR. JACOBSON: Well I must say, as a former newspaper reporter, I myself would look askance at any public official declaring any piece of information as confidential. I certainly would like to see access by the public to public records of public activities. Yet I can envision certain instances, certainly in condemnation, where this information should not be made public because riot would run rampant if it were known.

Just one last point and then I will stop. It is perfectly obvious that we cannot legislate moral climate and that business ethics of "buy low and sell high" unfortunately prevail too much in our society. I, as a representative of labor, can be very bitter and vigorous in my condemnation of some business activities which are excused under the title of "Well, it's good business." I have no doubt that it's good business and I also have no doubt that some of them are legal, but they are certainly unethical.

We can, however, legislate deterrents against improper conduct and improper activities. And, as incentives for moral

and ethical behavior, certainly the codes of ethical practices and some of the other recommendations made by Senator Douglas I think would permit us to achieve this goal.

Now, I have a statement here that I will not burden you by reading, although it is a brief statement, but with your permission, Mr. Chairman, I would like to submit it as part of the record. It is by Sol Stetin who is Regional Director of the Textile Workers' Union of America, and in this statement he outlines certain activities that his particular international union has adopted for many, many years now, which would serve as a basis for elimination of conflict of interests.

SENATOR MURRAY: Counsel, will you accept that as an exhibit?

MR. YAUCH: Yes.

SENATOR MURRAY: Exhibit #1, and we will have it spread upon the minutes of the record.

MR. JACOBSON: Thank you very much for this opportunity to testify.

SENATOR MURRAY: Thank you very much, Mr. Jacobson. We appreciate your having given us this time and I know you are in a hurry to make a train or plane.

MR. YAUCH: May I ask Mr. Jacobson just one question? and I realize that there are other witnesses here, particularly one who wants to get away to make a train.

Referring to the code of ethics adopted by AFofL-CIO and then generally to the views that you have given us here, you stated what you thought the ethics of the situation should be and what should be done by way of adopting possibly a code of

ethics. What is your view with reference to enforcement of a code of ethics? Reading the code of ethics of the AFofL-CIO, I don't find any method of enforcement by way of any penalty or forfeit of office, and so on. Will you let me have your views on that?

MR. JACOBSON: It is my understanding, as far as the codes of ethical practices are concerned in the labor movement, that the only enforcement we present in the labor movement, of course, is the suspension and expulsion from our ranks. Now, what would be a corresponding penalty in government, I honestly don't know, but we have this one police practice or one police principle of being able to rid our ranks of anybody involved in conflicts of interest as defined by our codes.

MR. YAUCH: Thank you.

SENATOR MURRAY: Thank you, Mr. Jacobson.

Counsel, we will take a five minute intermission, please.

(Recess)

EXHIBIT NO. 1

My name is Sol Stetin and I am the Regional Director of the Textile Workers' Union of America, AFL-CIO.

I am particularly interested in the study being undertaken by this Commission and would like to present to you, for whatever value it may possess, a trade unionist's view of this problem of "conflict of interest" which cuts across every phase of our social, economic and political life.

There can be no doubt that the standards of people and the moral climate of the day will prevail and influence politicians more than they can influence politics.

It is axiomatic that for every politician who takes a bribe -- in whatever form he accepts it -- there are a dozen who offer. As long as the world we live in remains a jungle world, where money is the god we worship, and profit is the motivating reason for existence, the politicians will find it just as difficult to rise above that environment as the rest of us.

This is as true of public officials, as it is of dishonest men who find it profitable to masquerade as trade union leaders.

However, I am certain that the members of this commission agree with me that you and I are not going to be able to change a moral climate through the medium of one public hearing.

This is a matter that the entire nation must meet a matter of raising the level of integrity in every layer of society.

However, while moral climate cannot be legislated, there are procedures which can be adopted which will make it more difficult, if not impossible for individuals to pursue their profiteering, at the expense of the general public.

I am particularly proud of the record of my union in adopting procedures which guarantee proper moral and ethical conduct in the administration of our affairs.

I want to place as much emphasis as possible on the fact that these procedures have been in effect for many, many years, primarily because of the role the recent TV hearings have in presenting a distorted view of what the labor movement is really like.

We are proud of the role of our unions in pursuing moral and ethical goals and the program I am about to present to you is typical of the labor movement, not the shenanigans of a Dave Beck or Johnny Dio, individuals, as I stated earlier, who are not labor leaders, but rather individuals of varying degrees of honesty or dishonesty who are masquerading as trade unionists.

And let me emphasize that what I say about trade union leaders should apply with equal force and vigor to public officials.

The labor movement brings about greater democracy and greater dignity for man. The trade union movement is a rejection of the ethical code underlying the business system which allows man to exploit society for personal profit. For, it is in the nature of the business system that a man advances at the personal expense of the total group. In fact, you have businessmen who think absolutely nothing about closing a mill and throwing hundreds of workers out of a job, if the move will serve to make money for the businessman.

The TWUA, rejects the commercial and business outlook. We have adopted a code of service, a code of personal devotion to our membership, a code of honesty and responsible activity.

I want to outline in detail, the codes of procedures under which our union operates and under which we have been eminently successful in eliminating "dual remuneration", or "conflict of interest", in many instances, one and the same.

1. We have notified every employer in the textile industry that we do not sanction the publishing of so-called "good-will" advertising in any labor newspaper or journal. We do not condone "shake-down" by whatever sugar-coated name it is called.

2. In 1944, we placed severe restriction on the acceptances of gifts by any union official. Under no circumstances, was a union official to agree to any sort of a gift from an employer.

3. In 1945, when many of our leaders were serving the government in official capacities on the War Labor Board, the Wage Stabilization Board, etc., etc., our union ruled that no official could draw dual remuneration from a governmental agency.

4. In 1955, this rule was strengthened to ban dual remuneration from any source whatsoever. In our union, no one can run a business on the side.

5. In 1956, rules were established in our union preventing the investment of any welfare funds in common or preferred stocks.

In addition, our union makes public its complete financial reports, which account for the expenditure of every penny, with complete disclosure on the income and expenses of all officials of the union. I, personally favor, a requirement that every union leader disclose his total income every year.

It is my suggestion that this committee employ these rules, as well as the Codes of Ethical Practices of the AFL-CIO, as the basis upon which to approach any legislation which would rule out conflict of interest in government in our state.

I respectfully submit that the practices of the labor movement -- not the distortion presented in the press or on TV -- can well serve as a model for ethical moral practices at all levels of our federal, state or local governments.

(After recess)

SENATOR MURRAY: Our next witness, gentlemen, is Mr. Joseph J. Eley of the Effective Citizens Organization who has requested that he be permitted to testify. For the record, Mr. Eley, will you introduce yourself?

MR. JOSEPH J. ELEY: Thank you, Mr. Chairman, gentlemen of the Commission, and ladies and gentlemen: I should like first to express my personal appreciation and that of the officers and directors of Effective Citizens Organization for the opportunity to submit our views to this Commission.

My name is Joseph J. Eley, 124 East 40th Street, New York City; I am Executive Vice President of Effective Citizens Organization, whose objective is good government at all levels and, since the studies of this Commission are aimed generally in that direction, we applaud the Commission's proposal to give thoughtful, comprehensive consideration to the intricate matters inherent in the conflict of interests concept.

I shall not labor you with a lengthy statement but, since I have an additional copy, will attempt to high point some of the thoughts that we have on this matter. For your information, it might be wise for me to give you a little background on Effective Citizens Organization in order that you might understand our interest. I will refer to it, if you don't mind, by the simpler title of ECO. Sometimes we ring in a little history and say that what we are trying to do in this organization is to re-echo some of the ideas upon which this nation was founded.

ECO was founded several years ago by a group of businessmen, among them a distinguished citizen of the

State of New Jersey, Mr. H. Bruce Palmer, President of Mutual Benefit Life Insurance Company; and another one of its founders was Mr. Thomas R. Reid, Director of Civic Affairs of the Ford Motor Company, whose name is significant to these hearings because Mr. Reid was Chairman of a task force of the Hoover Commission which gave considerable thought and time to the conflict of interest in the Defense Department. Another of ECO's directors today is Mr. F. Clifton White, who was a member of the official family of Governor Dewey at the time the New York State Code of Ethical Practices was adopted by New York. And, finally, another is Mr. William H. Baumer, Assistant to the President of Johnson and Johnson, a company native to New Jersey and a company which has been very free in making personnel available to the State of New Jersey in advisory and other positions.

The objective of ECO I have described as good government. I should expand that to "better government through better politics." Our function is to attempt to tap the vast reservoir of middle management people in business, men who, according to all surveys, have the benefit of educational background and comprehensive experience in a wide range of activities; in a word, men who have a meaningful and very definite contribution to make to the public service.

This aim is implemented by a series of practical politics workshops held on college campuses, through which we attempt to provide the motivation for these men to serve in the political parties and in the public service and to instruct the conferees in some of the technical aspects of

politics.

I should like to point out that we do not concern ourselves with philosophies or ideologies but purely with the operational details of the electoral system and with the parties themselves.

The ECO program, incidentally, has won the praise of New Jersey political leaders of both parties - Archibald Alexander and Sam Bodine being among them - and the praise of the political leaders of many other States. And, finally, ECO is a New Jersey corporation and operated from Newark for the first two years of its life. We have just, over this week end, completed a move to New York City, so I feel not out of place because of the great many friends we have here, but a little less qualified as a resident of New Jersey.

I emphasize that while we in ECO concentrate our teaching activities on the business community, it is a matter of policy with us that we believe that every segment of our society should be represented in the political and governmental sphere.

In contemplating the conflict of interest concept, there are some fundamental considerations that it seems ought to be examined.

In the face of unprecedented economic opportunities available today, it is extremely difficult to attract a sufficient number of capable people to serve in elective and appointive offices. This is a simple statement of fact that seems universally agreed upon. I think it is equally recognized that government cannot function efficiently with mediocre personnel.

There is much more to government than the simple process of governing. The Federal Government is a tremendous business of almost inconceivable proportions. We might say the same of a great many of our States. The gentlemen who acted on the budget of the State of New Jersey recognize that this is big business indeed.

In government today there are intricate problems of economics and finance, of proper conservation of the natural resources, utilization of natural resources, of education, of proper maintenance of the public welfare - all of which require the attention of specialized skills and intelligence. In order to formulate the most effective legislation and to provide the efficiency necessary to administer the laws, we need the ultimate in wisdom, experience, and integrity.

Thus, in formulating any code designed to meet the challenge of so-called conflicts of interest, it behooves us to exercise care lest, through unrealistic statutes, we drive competent and experienced and desirable people from the public service.

There are some lessons to be gained from the Federal Government's experience in the conflict of interest field. President Eisenhower, as you know, has experienced tremendous difficulty in attracting capable and competent people to the public service. President Truman before him had similar difficulties. The same is true in our experience as we have talked with people in state governments around the country.

An article entitled, "WHY MEN HATE TO LEAVE HOME" in the August 10 issue of Business Week, blames the dearth of top-flight, top-caliber manpower on the stringent interpretations by Senate Committees particularly, of conflict of interest statutes. According to the Hoover Commission Task Force on Special Personnel Problems in the Defense Department, there are seven federal statutes which have been and could be applied to conflict of interest matters. I won't review those for you. They are in the statement which I would like to file with you and treat notably Title 18 - USC 281.

The conflict of interest idea drew its greatest amount of publicity, of course, when Charles E. Wilson, President of General Motors, appeared before the Senate Committee on Armed Services. About this time, and I believe this is the significant point, someone seemed to get the idea that it was not enough to have legal provisions which provided punishment for violations of the public trust. There sprang up the reasoning that steps must be taken so that an appointee will have less temptation and less opportunity to violate the law.

Referring to the aforementioned article in Business Week, a "Senate Staffer" identified, is quoted thus: "It all depends on the makeup and mood of the Committee concerned. We are interested in appearances. We try to avoid any situation that even looks shady or where there are opportunities for criticism later. We feel that we have to assure confidence in appointees."

If this represents the thinking behind the Senate interpretations of conflict of interest, it appears to me unreasonably shallow.

First, the confession that in administrative appointee-confirmation matters, much depends on the "mood and makeup of the committee" illustrates the truism that a degree of partisanship sometimes, and perhaps frequently, enters into the consideration. This frequently occurs in cases, and I think you know something about this in New Jersey, where the Administration is of one political party and the confirming legislative committees of another, the majority of those committees. The inclination, I am afraid to say, is to make some political hay out of appointment hearings, to attempt to harass the Administration. Such tactics are definitely not in the public interest in most cases. If the electorate entrusts the Administration to a man, he should have reasonable ease with which to select the personnel that constitutes his team. He and his party will have to face the electorate on the basis of the Administration's record, and that obviously includes integrity. I don't say that the power of confirmation should be denied the Senate - certainly not. I do say that the Senate, and this includes the federal government as well as the state government, should refrain from making political ping-pong balls out of administrative appointee hearings.

The second element of the "Senate Staffer's" quotation, which seems to have some significance, at least to me, had to do with appearances. It dealt with anticipated criticism and with assuring "confidence in appointments."

Again it would appear that the confirming committee might overstep its bounds by this reasoning, if this is a true

statement of the motivation behind the thinking on conflict of interest laws. It appears to me somewhat presumptuous for the Senate confirming committee to undertake to create the Administration's complexion for it. Under our concepts of government in this country, the three branches - and again this applies to States as well as to the national level - are expected to have a certain degree of independence of each other. Confirming committees and the statutes that guide them should not dictate to an administration as to the general qualifications of its appointees no more than the President or any Governor should attempt to purge a legislature.

So stringent has been the Senate Committees' interpretation of the statutes that the President, in a news conference several weeks ago, asked Congress to review the entire federal conflict of interest laws structure. He said that current interpretations reach "into such detail of a man's life and business that if you want to get a younger, effective executive from out of business to do one of the jobs here, you are practically ruining his business career and his future."

Now, of course, there seems to be an element in this country that is inclined not to want businessmen to serve in government. Parenthetically, I have never been able to understand why, unless there is some hope in the minds of these people to change the basic economic system.

In this reference I would submit to your attention the hearings and statements of Congressman Emanuel Celler upon the opening of the hearings on the WOC's (without compensation business advisers) and government advisory groups by the Anti-

trust Subcommittee of the Committee on the Judiciary. These statements were made on Monday, July 25, 1955. Congressman Celler at one point said, "at all times it must be remembered that the WOC is in the awkward, if not embarrassing position, of possessing dual loyalties to the Government to which he has sworn allegiance and to the private employer to whom he looks for his salary." Parenthetically, I should note that while Mr. Celler was referring to short-term advisory jobs, the basic principles as enunciated would cover all business-oriented people in any type of governmental job.

Now, continuing the Congressman's statement - "WOC's in policy-making positions are able to influence or direct governmental lines of thought in a manner favorable to their own companies or toward particular segments of the economy."

The Celler Committee hearings were at least in part responsible for the dissolution of the WOC's in the Department of Commerce, which included the largest concentration of business advisers to the Federal Government.

During the course of the hearings, Congressman Kenneth Keating of New York remarked - and I think you might recall the same quotations in the newspapers - "I have read quite a lot of editorial comment about the fact that this committee and others ought not to drive away these businessmen that give their time to politics."

There was and still is, as a result of that, a conviction among many business people that there is a movement afloat, illustrated by (1) the campaign that appears aimed at the termination of all business-government advisory groups, and

(2) the growing drive for conflict of interest laws to discourage businessmen from entering government.

Now, it seems to me that there are a number of fundamental fallacies in Congressman Celler's statement and in a great deal of the reasoning on the conflict of interest concept.

There is no question really of "dual loyalties," as Mr. Celler puts it; the fact is that all of us have multiple loyalties. I have never met a man in business who did not have the common sense to recognize that a strong, secure nation is a prerequisite to good business. In the framework of New Jersey, the businessmen whom I know would be willing to serve in government, knowing that a solvent, sound New Jersey is in the interest of each business. I don't believe that I need to prove this point. You might survey Newark, where a great many businessmen are interested in the rehabilitation of the community and work at great length to modernize the government of the City of Newark.

I have presumed upon your attention with this rather lengthy background to establish that there are two general areas in government administration in which conflict of interest potential has been alleged: (1) that of full-time cabinet and sub-cabinet staff positions, and (2) the advisory committees and similar bodies. Certainly, the State of New Jersey employs personnel in both categories.

There are additional points to be recognized as a result of the national consideration of this matter: (1) Conflict of interest interpretations have made a "mess in Washington"

of recruitment procedures to get personnel to serve; (2) there exist individuals who feel that business-minded individuals should have no policy-making power in government and no influence.

May I sincerely and urgently recommend to this Commission that it recognize the latter point and that it exercise great care to avoid being tricked or led into adopting codes or statutes that might have the effect of discouraging business-oriented people from serving in the government of New Jersey.

I make this request first because I do not believe that it is in the public interest to keep business influence out of government. Government should be representative of all elements of our society. I assume that you will join me in condemning the divisiveness that sometimes clouds our collective minds, the divisiveness that sets this nation into classes, to set working people against business management, to set consumers against sellers. In the face of the challenges before us, we need to reject the voices that hawk class warfare.

If the reasoning of some of the proponents of conflict of interest legislation is carried to its ultimate, especially that reflected by Congressman Celler, we shall have to disqualify every successful American from serving in Government. Recall that Congressman Celler was fearful lest WOC's influence government to favor a particular segment of the economy - meaning, I presume, in this case, business. Isn't it true that farmers serving in government are inclined to think of issues in the context of what's good for the farm

community? Isn't it also true that a representative of labor, again serving in government, is inclined to consider matters in the light of their effect on the labor community?

If we are to begin disqualifying people from government service because of orientation, our destination will have to be a class of professional rulers. This smacks too much of totalitarian forms of government to my taste. It means government of philosophic nonentities or government of people whose only orientation is to rule.

Such a ruling class, incidentally, would probably have to be made up of rejects and misfits, people who had failed to achieve success in other areas of endeavor.

Isn't it much better to have government made up of people who have been successful in their various fields, who have thus proved their competency? I believe the people want to see successful men and women in public office, regardless of their professional background, so long as the candidate or appointee is morally and ethically sound and has a record of competency, experience and integrity.

The real problem, gentlemen, in government today is not the so-called conflict of interest. In reality, we have had an infinitesimal number of violations of the public trust in relation to the number of public servants at all levels of government and over the period since the inception of our governments. The real problem is to get the best kind of government, again at all levels, by attracting the most capable people to serve. Certainly, to get the younger element to serve we need to set up attractions, not deterrents.

Stringent statutes or interpretations of statutes designed to anticipate conflicts of interests by asking a man to divest himself of stock holdings or other interests in business constitute detereents - discourage men from serving.

I won't labor you with the next part because it deals with things that counsel has covered, including quotations which he used from Governor Dewey's statement in New York, and covers the code of ethical standards in New York State. I will simply go over to the close of this statement and to the recommendations which we are privileged to submit to you:

1. That it be called to the attention of the people and the Legislature of New Jersey that the morals and ethics of the individual under consideration for public office, along with public interest and attention to matters of government, are the best guarantees of protection of the public interest. I would like to emphasize that because it seems that sometimes those of us in government do not sufficiently communicate to the electorate ourselves. The divestment by a candidate for public office of financial interests seems unnecessary, fruitless and, in reality, constitutes a deterrent to many who might enter public service. This, incidentally, is in line with recommendations to the Federal Government by the Hoover Commission Task Force on Special Personnel Problems, as is, incidentally, the following recommendation:

2. That any appointee to state office should take an oath as part of his regular oath of office that he will disqualify himself from participation in any matter which involves his company, organization or direct or indirect

financial interest.

3. That a code of ethics be established to provide guideposts for the conduct of public servants, legislative as well as administrative - elective as well as appointive.

4. That it be recommended to the confirmation committees of the Legislature that in confirmation proceedings, judgment be rendered without regard for partisan political consideration.

5. That ways and means be sought to remove other deterrents which are in conflict with the public interest - deterrents which keep some competent and qualified individuals from the public service. Thought might be given to devising attractions to encourage people, particularly young people, to enter government service. In addition, any statute or interpretations of statutes which deter the members of any element of society from participating in government should be reviewed.

6. That the government of the State of New Jersey embark upon a program of public enlightenment, giving new stature to public service, and encouraging every citizen to participate actively in the affairs of politics and government.

I said a little earlier that I have a copy of this statement which I should like to submit to you. I am grateful for the privilege of appearing before this Commission. I hope that your work will be rewarded by a full measure of success. Thank you, gentlemen.

SENATOR MURRAY: Mr. Eley, on behalf of the Commission, I would like to thank you most sincerely for an excellent and very, very thoughtful statement. I know that each member

here has been taking notes and has questions to ask you.

I would just like to say for the record that I am personally acquainted with the excellent work that you are doing and the Effective Citizens Organization is doing. It has been my privilege at times to participate in some of these fine work shops which you have set up in the various universities throughout the United States. We are, I know, going to profit from your suggestions, and I would now take, beginning with counsel, some of the questions which your thoughtful comments have provoked.

MR. YAUCH: Mr. Eley, with reference to your point as to whether it is inadvisable to require divestment of interest in securities, what would be your thinking as to requiring a disclosure by a public officer or employee, say some businessman who enters state government and performs a duty which you say we should encourage him to do - what would you think about the disclosure of his interests, first generally, as has been stated by the prior witness, Mr. Jacobson, and then with reference to a limited disclosure just as to those companies in which he holds securities which the state may be doing business with and which he may have something to say about as a public official?

MR. ELEY: I think I concur with the previous witness in this. It would seem reasonable that any administrative appointee, legislative appointee, be asked to reveal those things which are likely to provide problems in his tenure in public service. However, I think there is a philosophic point in this thing, and, referring again to the case of

Charles E. Wilson, it has always been my feeling that Mr. Wilson would not have been likely in any case to have shown favoritism to the General Motors Corporation. At this point, as you recognize, I am in direct conflict with the previous witness. First, I think that men of this stature are of too great integrity. Number 2, it's just plain smart not to show favoritism. I think a man would be inclined to lean over backward not to show favoritism. Finally, there is the point that if a man like Mr. Wilson serves with a corporation - and I think you can bring this into the state framework - for a period of 34 years, as Charlie Wilson did, he must have a great deal of faith in the products of that corporation, and so on. And I think that whatever purchases he makes, whatever business he does, will be guided by that rather than the desire to add to the value of his stock.

A point that has always disturbed me in the whole conflict of interest thing is that I think it violates a fundamental judicial concept we have had in this country. I think that some of the interpretations of conflict of interest laws are saying: "We presume that you're a crook," before any thinking has been done on this or any action has been taken. It does seem to me pretty presumptuous. But I would agree that there should be certain revelations of holdings in those companies which do business with the State.

MR. KEATING: Mr. Eley, in the absence of Mr. Marks, the other member of the Commission, I think it is safe to assume that I represent the viewpoint of business, although in no way do I intend to say that I represent industry or

business here today. And, naturally, I am very much interested in your talk and that is without any disrespect to Mr. Joel Jacobson who preceded you and represented another viewpoint and did, I thought, a most moderate and an excellent job, having heard him many times before.

Now, am I misquoting you when I say that I feel that your organization is definitely of the opinion there is enough statutory law on conflict of interest?

MR. ELEY: I think so, yes. That is the viewpoint of my organization.

MR. KEATING: Now, would you go further and agree with me when I say that it is my thinking now, and I am certainly going to hear out all the witnesses - but it is my thinking now that a lot of policing can be done right within the Legislatures and in all the governmental agencies and in many places, and it is unnecessary to enact any more legislation, as housecleaning can be done by the Legislature, itself. It can be done by the Bar Associations, and I have also given thought to the canons of the American Bar Association. I am sure that any lawyer in the Legislature, who is familiar with and who lives up to the canons of the American Bar Association, will have no trouble determining in his conscience whether he is violating good ethics or whether there is a conflict of interest. I don't want to put the words in your mouth, but I say I must go along with your organization at this time to the extent that I personally feel that we have all the legislation on conflict of interest that we want; in fact, we may have too much of it.

We may have so much it gives Emanuel Celler a springboard for a lot of his, what I would consider, raving and ranting. And, consequently, at this point I agree with everything you said. I can't take umbrage at anything you have said, and, for your organization, I compliment you on the job that you have done.

MR. ELEY: Thank you, sir.

ASSEMBLYMAN FRANKLIN: Mr. Eley, I also want to thank you for a very thoughtful presentation. I think this is a most difficult problem and the Commission is very much interested in obtaining all possible information, because we feel that if legislation is necessary, and it may well be, whatever legislation we recommend will be most carefully thought out.

One of the aspects of this problem which you raise, which seems to me very important, is the problem of not discouraging too much getting qualified people in public office. Now, Mr. Jacobson, the previous witness, in his testimony made the suggestion that there be a complete disclosure of the financial holdings of any applicant for legislative or important appointive office. Is it the opinion of your organization - or what is your comment as to what the opinion of your organization is as to the effect that such a requirement might have upon securing qualified people in public office?

MR. ELEY: Well, we take the positive position, of course, at the outset and that is that more competency,

more integrity, more people of qualifications are needed in public office and in the political parties, incidentally; I might add that point. So we think that asking a man to disclose his entire book of financial holdings is an invasion of his privacy, and we do not think that it is germane to this thing, necessarily.

I will go back to my answer to counsel's question: There are specific instances, and I think that confirming committees and those who interview for various types of state jobs should determine whether or not there are holdings simply by asking that question: "Do you have any holdings which would interfere with your proper deliberations?" Let's assume that the man is going into a purchasing position or into a cabinet position where he is responsible for purchasing: It's a fair question to ask, "Do you have any holdings that would interfere with your proper judgment?"

But to ask him what his full financial holdings are, I think is a total inequity.

MR. KEATING: Mr. Eley, Counsel for the Committee raised a point - I think with the previous speaker - that the requirement for the disclosure of his private means was a violation of the guarantees of the Constitution. What would you think of a business man who was going into government and was called upon to answer the question: "Do you or do you not have any holdings which might present a conflict of interest?" What would you think of the business man who invoked the so-called Fifth Amendment on that one?

MR. ELEY: Well, I don't think he is fit to serve public office, in that case. He recognizes the problem.

SENATOR MURRAY: Would it be your suggestion, Mr. Eley, that these questions be asked under oath of a prospective cabinet holder or government appointee or employee?

MR. ELEY: I would say so, yes. I believe Senate Confirmation Committees questioned Mr. Wilson and all subsequent Cabinet appointees.

SENATOR MURRAY: For the purpose of the record, I asked that question because, as far as I know, the Senate Judiciary Committee of this State, of which this year I have been a member, has never asked the questions of nominees and potential office holders under oath, and I was interested in your view on that.

Lou, you had a question.

MR. MARCIANTE: Yes. The whole theme of your presentation seemed to be, as I understand it, that business men who are called into government be not hampered by conflict of interest laws. Does that apply likewise to elected officials

or appointed officials in government? For instance, the previous witness testified as to county prosecutors, representing the people supposedly, who were also representing business firms which were in conflict with unions. Would you say that there should be no legislation with respect to that type of act?

MR. ELEY: In reply to your question - first, it is my impression that any man who stands for public office needs a certain amount of integrity and runs on the basis of integrity.

MR. MARCIANTE: Suppose he has no integrity?

MR. ELEY: Well then the electorate should be prepared to take care of him. Now, in a minor office - and I say minor advisedly - like county prosecutor, I think that these things reflect back on the administration of the State, most certainly. But I do think that you have to bank on the integrity of people in public office.

MR. MARCIANTE: Just a minute, now. Just a minute. You say that you have got to bank on their integrity and that later on they can maybe be defeated for public office. What about the equity of the fellow who got hurt?

MR. ELEY: I am afraid that this is a matter that needs to be taken case by case. I would take a similar position of being opposed to a candidate --

MR. MARCIANTE: Well, I think you generalized pretty well there in your statement.

MR. ELEY: I do generalize, of course.

MR. MARCIANTE: Sure you generalize but when we get down to specifics, how do you cure these things?

MR. ELEY: You have to cure them through the electoral process.

MR. MARCIANTE: Not through the legislative process.

MR. ELEY: I would say not. I would say not.

MR. MARCIANTE: Well, I don't agree with you entirely.

I agree with a great deal you say and I certainly am no socialist or believer in centralized government of any sort, in fact my reputation proves that I am not, but I can't agree with you when you say hands off entirely, no laws, because they are business men they are automatically free from venality. I just can't go along with you on that.

MR. ELEY: I believe I have said very clearly that our position is that all elements of society should be represented in government and in politics. Now, you are dealing with a profession in the case of county prosecutors, of course. We are as anxious to have good lawyers in politics and in government as we are business men, farmers and even laboring people.

In the adoption of a code of ethical standards, I think you are putting the issue squarely up to the man's integrity. I think that if the governor of a state, or those responsible for the appointment of county prosecutors, makes too many mistakes they are going to have to answer to the electorate. Now, you can dwell on isolated cases like this all day but you will find that they are very definitely in the minority. Unfortunately, life is like that. There are some things that happen.

MR. MARCIANTE: I agree with you about them being in the minority but it's the minority that we have to be concerned about.

MR. ELEY: Of course.

MR. KEATING: Mr. Eley, may I just say this, that if it is true, and the statement was not made here, that a prosecutor in the State of New Jersey represented a private client against the State, I think that is a very, very questionable service for a lawyer. However, we are tilting with windmills here because at no time has the statement been made that a prosecutor in the State of New Jersey did such a thing.

MR. MARCIANTE: But it is conceivable.

MR. KEATING: Well, if we are going to get down to examples, Lou, we could be here for months.

MR. MARCIANTE: No, I don't want to get down to examples.

MR. KEATING: Consequently, I think that the greatest deterrent to the actions of a lawyer who is also an appointed official, as apparently this prosecutor was, is pitiless publicity, and I am sure that if such a thing happened in New Jersey and publicity was given to it, the matter would have righted itself very, very quickly.

SENATOR MURRAY: May I just interject, however, - what do you do about the publicity media which itself may have a conflict of interest in the matter?

MR. ELEY: Senator Murray, may I answer that? I think the press in the United States is very badly belabored. Very frequently the position is taken by one political party or the other that we have a one-party press. It is my experience that the press of the United States is generally fair-minded in these things. The editorial page, obviously, is not, but the front page and the proper kind of publicity given to cases like this, I am sure would result in a man being driven from public office.

MR. MARCIANTE: Well, I think so too, but the very establishment of this Commission proves that there must be some need. The very establishment of committees in other states and the adoption of laws by other states prove that there must have been some need. Legislators certainly weigh these things very carefully. A conflict of interest law can't be adopted very easily. There must be some crying need for it.

MR. YAUCH: Mr. Eley, perhaps this question will help clear up what is in the mind of Mr. Marciante, I am sure. I take it that - and if I am wrong, of course, you will say so - you favor a code of ethics which lays down principles which could not only act as a deterrent to those that might have the temptation to be venal but also would act as a source of information to conscientious public officials where you have shadowland transactions and duties, so that he could determine from a code as to whether the contemplated conduct would be within the code. So I ask you the direct question - Based on this fine comprehensive report that you have given us, would you say that there is in this report, whether expressly stated or not, the thought that a proper, realistic code of ethics, laying down general principles of good public conduct, would be advisable? or are you against laying down any such principle even by way of a code of ethics? I have in mind distinguishing now between what I termed a code of ethics and statutory law, which would carry with it the stigma of jail sentence and so on and so forth.

MR. ELEY: I don't remember what recommendation it is but I did recommend here that you consider a code of ethics, not

a statutory code but a code of ethics which would provide the guidepost for anyone seeking public office, seeking an appointment or with an appointment offered to him. Now, this seems to me to be the obvious answer. Let's not presume that people are crooks before they have had a thorough trial.

MR. MARCIANTE: Let me ask you one more question. Would you be in favor of the establishment of an Ethical Practices Committee to advise, not just a committee for punitive action but a committee where State employees, whether they are elected or appointed, could go if they had a shadowland area in which they were dealing and about which they were doubtful, where they could go to the committee and secure advice as to whether their representation of a client or their action might be ethical or not ethical?

MR. ELEY: Absolutely.

MR. MARCIANTE: You would be in favor of that?

MR. ELEY: Absolutely, as a watchdog over the code of ethical standards.

ASSEMBLYMAN FRANKLIN: Mr. Eley, I have one other question on this code of ethics which I wanted to raise. Did you have in mind any sort of enforcement procedure or penalties which would put teeth into this code of ethics or was it just simply to be a code of ethics?

MR. ELEY: I think the answer is in the watchdog committee. I don't think that the code of ethics should be a statutory code, nor should any penalties for violation of the code be attached.

ASSEMBLYMAN FRANKLIN: What would you contemplate that the watchdog committee could do or what powers would it have, to be able to make such a code effective?

MR. ELEY: The greatest power in the world - going to the people of the State of New Jersey and telling them the story.

ASSEMBLYMAN FRANKLIN: In other words, it would be your recommendation that the watchdog committee or the ethics commission, whatever you want to call it, would rely upon publicity, primarily?

MR. ELEY: Yes.

MR. YAUCH: Would you have in mind, Mr. Eley, also that as a result of the disclosures that may be made by such a watchdog committee, the appropriate division of the State government - let's say, for example, it might have to do with the Legislature - each House has the authority to deal with its own members and if information is brought out as a result of this watchdog committee, that information would then be available for the Senate or the Assembly or whatever division of State government would have jurisdiction over the particular individual?

MR. ELEY: Yes.

MR. YAUCH: Now, Mr. Degnan, had a question and in view of the fact that he thought about it, I suggest that he ask it.

MR. DEGNAN: Mr. Eley, I wanted to ask you about statutory enforcement in certain clear cases. For instance, in New York State the eventual enactment by the Legislature was a combination of criminal statutes and the code of ethics. Don't you think there might be some clear cases, at least,

where criminal statutes would not be too harsh on public officials? for instance, contracts with the State?

MR. ELEY: Well this is a question of personal opinion, of course, and I can only go back and say that in the case of the federal government and the interpretation of Title 18 of the U. S. Code the finding seems to be now that the interpretations of confirming committees have been somewhat stringent. These things always depend on interpretations, of course. I would say that, yes, there is probably the need for something similar to the federal statute for such obvious cases.

MR. DEGNAN: What is the federal statute?

MR. ELEY: Title 18 U.S. Code, Chapter 281, sets a \$2,000 fine or imprisonment of not more than two years punishment for any individual who as an officer or agent of the United States transacts business with any corporation, joint stock company, partnership or any business entity in which he is directly or indirectly interested, for financial profit.

Now this seems to me, and I would say to most non-lawyers, an entirely reasonable piece of legislation. But as the difficulties of the federal government have evolved it has been a matter of what was originally the Saltonstall Committee's interpretation of this, and I tried to point out in my statement that no where in the law does it say that you are supposed to anticipate conflicts of interest. It simply lays down a very precise piece of legislation saying that if a man who owns stock in a company does business with that company when an agent or officer of the federal government, he is to be fined \$2,000 and imprisoned for not more than two

years. That's a reasonable piece of legislation but I think the interpretation of it has been wrong. Now, I had assumed that you had something similar to this on the books of New Jersey. There was in New York, I believe, prior to the writing of the code up there. And I should like to also point out that in New York it was not a matter of one piece of legislative activity. There was, first, the adoption of two or three laws which applied to this thing, one of them almost identical with the federal legislation. Then, in Chapter 696 of the Code of the State of New York -- Chapter 695 is the statutory act which prohibits certain activities by state officers and employees and party officers concerning possible conflicts of interest. That is the law which is generally taken from the federal law. Chapter 696, however, is the one that deals with the code of ethical standards. It has no teeth in the sense of statutory teeth where you can be sent to jail because you do something which someone - and I don't think they set up a watchdog commission - thinks is in the conflict of interest concept.

SENATOR MURRAY: With respect to that watchdog commission, how would you suggest that such a commission might come into being and who would appoint its members?

MR. ELEY: Senator, you know that my political senses have to come to the front. I recognize that this thing is fraught with political implication, but again I say that if people in government, in legislatures and in administrations, are as interested in good government as they should be, then they will stop some of the petty political playing around that

they do, on both sides of the fence, incidentally, and in both the legislative and the administrative branches. I think that such a thing would have to be set up with a full understanding between the administration and the legislature that this was in the interest of the best kind of government for the State of New Jersey. Then I think that it should be a matter of joint appointment between the legislature and the administration, with probably even the judiciary being called in to act as a sort of balance wheel in the whole picture. I recognize very clearly the political implications.

SENATOR MURRAY: Well, I may point out that, of course, you bring the judiciary into it almost apologetically but in the State of New Jersey with the realities which we must face, it is very difficult for the legislature to agree to the establishment of a new office of importance without having the veto power, as it were, of the judiciary or the Senate. Anent that, I wonder if you would clarify for us whether you would wish us to construe your entire presentation as limited only to appointed officers or if you would include elected officials as well.

MR. ELEY: I am inclined to include elective officers a little less, and perhaps this isn't a satisfactory answer. But I am always satisfied that people who have to go before the electorate are going to pay for their crimes. I recognize that certain appointive officers are somewhat hidden, their activities are not made so much a matter of public record and, to reduce myself to the vernacular, they can get away with things, at times; where a man who has to stand for the Senate is a lot less likely to get away with it.

SENATOR MURRAY: On that point, would you care to give the Commission the benefit of your thinking with respect to the previous suggestion that some control or limitation should be made on campaign contributions, either by the person giving them or the person receiving them.

MR. ELEY: This is something that we have examined from New Jersey to California and probably the most difficult problem, politically, in the Country today. I am opposed to - and I say this personally and I think it would reflect the position of my Board, although we have no policy statement, - I am opposed to placing stringent regulations on campaign contributions. When you talk about giving \$5.00 to each of three candidates, you are talking unrealistically because, first of all, the political parties could't survive on this kind of contribution.

MR. MARCIANTE: Do you know who would survive under that system? The thieves and the racket men. They wouldn't care about laws or anything else. They would make the big contributions and they would be the favorite boys.

MR. ELEY: I am inclined to agree. You and I know, gentlemen, that there are ways to spread dollars around.

SENATOR MURRAY: Mr. Eley, I know that it has been axiomatic that those running for public office do instill in their constituents the doctrine that it is more blessed to give than to receive, and for that reason I have very seriously considered and would like your views, or at least your opinion, as to whether or not the opposite approach might be more effective. If you cannot control, as Mr. Marciante points out, the giving, may not we examine with some fruitful result

the system, for example, in Great Britain where they control the receiving and it is very stringently controlled, it is very stringently limited and the penalties are most severe up to the point, I believe, of deprivation of office.

MR. ELEY: Well, Mr. Chairman, I am opposed to as much or -- let me put it this way - the less regulation of our political process, the better. I don't like to see codes set down that are going to limit the political activities of any group of people.

On this question of campaign contributions, I am all for widening the base of our political party contributions as much as possible, but I don't think that we can do it through law. I don't think we can adopt codes that will do it. I think it is up to the parties themselves who have been notoriously poor fund raisers.

MR. KEATING: Mr. Eley, while you are at the microphone may I address a question to our Counsel. Mr. Yauch, in the case where a prosecutor in New Jersey is alleged to have represented a private company, as is claimed, in obtaining an injunction against a picket line, what would the position of the Bar Association - the Grievance Committee of the Bar Association - be in a matter like that? Don't we already have machinery for handling that with the individual lawyer?

SENATOR MURRAY: Counsel, couldn't we perhaps more properly address that question to the Chairman of the Ethics Committee of the Bar when he appears? We are going to invite him.

MR. YAUCH: Yes.

MR. KEATING: Mr. Chairman, I will reserve it for that.

MR. YAUCH: I think Mr. Keating has brought up a subject which can be answered. I believe there is provision in the Code of Ethics of the State Bar Association.

MR. KEATING: I am withdrawing my question at this time, Counsel.

MR. YAUCH: It probably would be better. May I say, though, Senator Murray, with reference to your question directed to Mr. Eley as to what his thought would be as to the manner of appointment of this so-called permanent ethics committee or watchdog committee, as has been referred to, - may I say that as a result of the hearings in New York and the report of the Commission in New York, a concurrent resolution of the Senate and the Assembly in New York was adopted which provides for this permanent commission, which has been functioning for the last three years and has made reports from time to time and has given advice to legislators and also to State employees. And under that resolution, Senator, it was provided that the permanent commission should be made up of four representatives appointed by the temporary President of the Senate and four by the Speaker of the Assembly. That was the way they dealt with it over there. Then also, there was a bill enacted which dealt with the matter of a permanent commission having to do with a code of ethics in the executive department, and there the Attorney General was authorized to appoint the members of the commission to deal in that field.

SENATOR MURRAY: I wouldn't comment on the political realities which such a suggestion might engender here, and Mr. Eley has already touched upon that.

MR. YAUCH: I don't recommend it, I merely gave it to you as an instance.

SENATOR MURRAY: Yes. Mr. Eley, I have one, perhaps final question. It has been my impression that both in your testimony and that of your predecessor today, there has been perhaps undue emphasis given to the supposition that conflict of interest essentially involves financial remuneration to someone. Now, have you examined the other areas in which conflict of interest could very likely be of importance to this Commission? It occurs to me, for example, that it would be very hard to draw the line once you leave financial. You might have sheer political power. You might have such problems as social or relationship, a kinship between beneficiaries and the man holding public office. It occurs to me that there is even a very desperate conflict of interest against public interests where a public officeholder is a member of the Communist Party or an agent of the Soviet Union. Have you given any thought, and could you give us the benefit of it if you have, to other areas where conflict of interest may exist that exclude sheer financial remuneration to someone?

MR. ELEY: First, I think that New York has a law which precludes any member of the Communist Party or any Facist Party from serving in the government. That seems to me to be reasonable legislation, if that can be included in the conflict of interest concept. So far as political "conflicts of interest" are concerned, I think, in order to eliminate these entirely, you are going to have to eliminate the entire electoral process.

I think maybe I touched on this when I talked about confirming committees and harassment of administrative employees.

And while I certainly believe in the electoral process and I believe in the party, I think there comes a point, a delineation between your responsibility to your party and your responsibility to the total population of the state or whatever the political entity is that you represent.

I couldn't comment on the, let's call them, personality conflicts of interest because I just haven't thought about it enough. There is a certain amount of nepotism in business and politics and so on. I don't think it is very widespread, frankly, in politics.

SENATOR MURRAY: Is this now by way of saying that you think this Commission might perhaps limit its main emphasis to financial factors involving conflict of interest or criminal factors?

MR. ELEY: I think that's the big bone of contention.

MR. YAUCH: You wouldn't foreclose our considering the other areas though, would you?

MR. ELEY: Now, if you don't have a statute on the books that treats the matter of those subversive organizations --

MR. YAUCH: No, outside of that I mean.

MR. ELEY: Outside of that? No. I would say by all means examine them, but again you are going into politics and family affairs and I am not sure that these are easy matters to consider.

SENATOR MURRAY: Are there any other questions, gentlemen?

ASSEMBLYMAN FRANKLIN: I just have one other question, Mr. Eley. Going back to this idea of a watchdog commission, do

you think that sort of a commission might have as one of its functions the authority and the power to review from time to time your ethics code and whatever legislation was in effect regarding conflict of interest, and make recommendations as to changes?

MR. ELEY: I would say so, and your Counsel tells me that New York did it, and I would say that hearings, periodically, would be in the public interest.

SENATOR MURRAY: Well again, Mr. Eley, on behalf of the Commission, our sincere thanks for your time and the obvious extent of the time that went into your presentation.

MR. ELEY: May I add just one last word, Mr. Chairman. Gentlemen, I deliberately in my final recommendations made reference to the conflict of the public interest in not attracting a sufficient number of capable and competent people. I would submit to you that perhaps the greatest public service you can do is to look at this positive side of the coin and see what can be done in the way of setting up some sort of program in the State of New Jersey to, first, enlighten the people on what public office is, what stature it has, what the requirements of the various jobs are, etc. I think this is one direction in which we have got to go in this country if we are going to get competent people. And I thank you again for the privilege of appearing before you.

SENATOR MURRAY: Thank you, Mr. Eley.

Counsel, the Commission would like to know whether any voluntary witnesses have requested to appear this morning?

MR. YAUCH: Following my request that if any persons were present who would like to be heard, no one has registered with Mr. Degnan and I again inquire as to whether there is anyone present who would like to be heard. No one has registered.

SENATOR MURRAY: If not, I would like to announce that Attorney General Richman, who was to have appeared before us this morning, due to the length of the other presentations and due to a previous engagement by the Attorney General outside the City of Trenton, this afternoon, has asked that his appearance be deferred. Therefore, if there are no other persons who wish this morning to present themselves, then I would recommend Counsel and fellow members of the Commission that, instead of taking a luncheon recess, we adjourn until Monday, September 16th, if that is agreeable.

MR. YAUCH: May I, before we adjourn, again emphasize what I stated before, that I can appreciate that some citizens in the State may not care to come down here and express themselves orally and if they have any suggestions that they would like to submit, written suggestions, I would appreciate it if the press would make it known that they may be sent to me at 11 Commerce Street, Newark 2, New Jersey.

SENATOR MURRAY: In conclusion, ladies and gentlemen, may I announce that our next meeting will be in this Chamber at 10:30 A. M., Monday, September 16th. Also, that the Commission is extending invitations for its future meeting to representatives of the State Chamber of Commerce, the State Bar, Members of the Political Science Divisions of the faculties of leading

colleges and universities throughout the State, Deans of our law schools throughout the State, present and past Members of the Legislature; as well as certain Cabinet Officers, including the Attorney General and others whose views may help us in our public hearings. Moreover, in our private hearings, from time to time in executive session, we will welcome other experts who feel that they cannot for one valid reason or another appear at a public hearing.

If there is nothing further, then this Commission stands adjourned.

(Hearing adjourned)