86TH CONGRESS
1st Session

SENATE

REPORT
No. 40

ANNUAL REPORT

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

MADE BY ITS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

PURSUANT TO

S. Res. 223

85th Congress, 2d Session

FEBRUARY 2, 1959.—Ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
34008 WASHINGTON : 1959

COMMITTEE ON GOVERNMENT OPERATIONS

85th Congress, 2d session

JOHN L. McCLELLAN, Arkansas, *Chairman*

HENRY M. JACKSON, Washington
STUART SYMINGTON, Missouri
SAM J. ERVIN, JR., North Carolina
HUBERT H. HUMPHREY, Minnesota
STROM THURMOND, South Carolina
FRANK J. LAUSCHE, Ohio
KARL E. MUNDT, South Dakota
MARGARET CHASE SMITH, Maine
THOMAS E. MARTIN, Iowa
CARL T. CURTIS, Nebraska
CHAPMAN REVERCOMB, West Virginia
HOMER E. CAPEHART, Indiana

WALTER L. REYNOLDS, *Chief Clerk*

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

JOHN L. McCLELLAN, Arkansas, *Chairman*

HENRY M. JACKSON, Washington
STUART SYMINGTON, Missouri
SAM J. ERVIN, JR., North Carolina
KARL E. MUNDT, South Dakota
CHAPMAN REVERCOMB, West Virginia
CARL T. CURTIS, Nebraska

DONALD F. O'DONNELL, *Acting Chief Counsel*
JAMES N. JULIANA, *Chief Counsel to the Minority*

COMMITTEE ON GOVERNMENT OPERATIONS

86th Congress, 1st session

JOHN L. McCLELLAN, Arkansas, *Chairman*

HENRY M. JACKSON, Washington
SAM J. ERVIN, JR., North Carolina
HUBERT H. HUMPHREY, Minnesota
ERNEST GRUENING, Alaska
EDMUND S. MUSKIE, Maine
KARL E. MUNDT, South Dakota
CARL T. CURTIS, Nebraska
HOMER E. CAPEHART, Indiana

WALTER L. REYNOLDS, *Chief Clerk*

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

JOHN L. McCLELLAN, Arkansas, *Chairman*

HENRY M. JACKSON, Washington
SAM J. ERVIN, JR., North Carolina
EDMUND S. MUSKIE, Maine
KARL E. MUNDT, South Dakota
CARL T. CURTIS, Nebraska

DONALD F. O'DONNELL, *Acting Chief Counsel*

CONTENTS

86TH CONGRESS
1st Session

SENATE

REPORT
No. 40

ANNUAL REPORT

FEBRUARY 2, 1959.—Ordered to be printed

Mr. MCCLELLAN, from the Committee on Government Operations, submitted the following

REPORT

INTRODUCTION

Pursuant to the Legislative Reorganization Act of 1946 and rule XXV of the Standing Rules of the Senate, the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations is given the duty of studying the operation of Government activities at all levels, with a view to determining its efficiency and economy.[1] The executive branch of the Government of the United States today represents the largest business enterprise in the country. The several hundred departments, agencies, and independent offices of this mammoth organization are composed of 4,955,000 employees. For the fiscal year 1959, beginning July 1, 1958, Congress appropriated $76 billion for the operation of this executive branch. Obviously, the efficiency and economy of the operations of the Government on such a vast and multileveled scale are not only of great interest to, but directly or indirectly affect the welfare of each of its citizens and of American enterprise generally.

[1] Legislative Reorganization Act, 1946, Public Law 601, 79th Cong., 2d sess., subsec. (g) of rule XXV of the Standing Rules of the Senate:

"(g)(1) Committee on Government Operations [1] to consist of 13 Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"(A) Budget and accounting measures, other than appropriations.

"(B) Reorganizations in the executive branch of the Government.

"(2) Such committee shall have the duty of—

"(A) Receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

"(B) Studying the operation of Government activities at all levels with a view to determining its economy and efficiency;

"(C) Evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government;

"(D) Studying the intergovernmental relationships between the United States and municipalities, and between the United States and international organizations of which the United States is a member."

[1] S. Res. 280, 82d Cong., 2d sess., agreed to Mar. 3, 1952, changed name from Committee on Expenditures in the Executive Departments.

The Congress, by virtue of its function of appropriating funds for the operation and management of this enormous and complex enterprise, has the additional responsibility of determining whether or not the various agencies of the executive branch are being operated in accordance with congressional intent and in keeping with budgetary representations. This involves the necessity of being kept advised as to the consistent exercise of good judgment in each of the various departments, to assure intelligent and efficient continuity of operation.

Periodically the need arises for new legislation to correct various inadequacies or for appropriations necessary to implement or modify various programs initiated within the several agencies. It is, of course, a virtual impossibility for any Member of the Senate or his staff to undertake independent inquiry in the various areas involved in each such instance, due to the complexity, the size, and the scope of the executive branch of the Government.

This subcommittee, whose jurisdiction and responsibility in effect make it a watchdog over the executive branch of the Government, was established for the purpose of making specific inquiries of this nature for the Congress, with a staff of able investigators. Through its investigations, the subcommittee strives to attain constructive results, and its activities are not directed toward exposing irregularities or mismanagement in the executive branch of the Government for publicity purposes. The paramount consideration is always to further assure efficiency and economy of operation. In carrying out its duties the subcommittee holds many hearings in executive session, particularly where the national security is involved. Public hearings are held, of course, in those instances where it is deemed that such hearings can be profitably utilized as a medium for enlightening the general public as to the subject matter involved in such proceedings. It should be pointed out that congressional investigations are not trials. Rules of law or evidence followed by the courts are not applicable to congressional hearings, although in attempting to protect the rights of witnesses, this subcommittee has formally adopted various rules of procedure which it feels go as far as possible in that direction. These rules are as follows:

(1) No major investigation shall be initiated without approval of either a majority of the subcommittee or a majority of the full Committee on Government Operations. However, preliminary inquiries may be initiated by the subcommittee staff with the approval of the chairman of the subcommittee.

(2) Subpenas for attendance of witnesses and the production of memorandums, documents, and records shall be issued by the subcommittee chairman or by any other member of the subcommittee designated by him.

(3) The chairman shall have the authority to call meetings of the subcommittee. This authority may be delegated by the chairman to any other member of the subcommittee when necessary. The chairman shall not schedule any hearings or series of hearings outside the District of Columbia without giving at least 48 hours' notice thereof to the members of the subcommittee.

No public hearing shall be held if the minority members unanimously object, unless the full Committee on Government Operations by a majority vote approve of such public hearing.

(4) Should a majority of the membership of the subcommittee request the chairman in writing to call a meeting of the subcommittee, then in the event the chairman should fail, neglect, or refuse to call such meeting within 10 days thereafter, such majority of the subcommittee may call such meeting by filing a written notice thereof with the clerk of the subcommittee, who shall promptly notify in writing each member of the subcommittee.

(5) Any two members of the subcommittee shall constitute a quorum for the purpose of taking testimony under oath in any given case or subject matter before this subcommittee, as authorized by Senate Resolution 180, 81st Congress, 2d session.

(6) All witnesses at public or executive hearings who testify to matters of fact shall be sworn.

(7) Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing, and to advise such witness, while he is testifying, of his legal rights. Provided, however, that any Government officer or employee being interrogated by the staff or testifying before the committee and electing to have his personal counsel present shall not be permitted to select such counsel from the employees or officers of any governmental agency. This rule shall not be construed to excuse a witness from testifying in the event his counsel is ejected for contumacy or disorderly conduct; nor shall this rule be construed as authorizing counsel to coach the witness, answer for the witness, or put words in the witness' mouth. The failure of any witness to secure counsel shall not excuse such witness from attendance in response to subpena.

(8) Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the counsel or chairman of the subcommittee 24 hours in advance of the hearings at which the statement is to be presented. The subcommittee shall determine whether such statement may be read or placed in the record of the hearing.

(9) A witness may request, on grounds of distraction, harassment, or physical discomfort, that during his testimony television, motion picture, and other cameras and lights shall not be directed at him, such request to be ruled on by the subcommittee members present at the hearing.

(10) An accurate stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his own testimony whether in public or executive session shall be made available for inspection by witness or his counsel under committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness at his expense if he so requests.

(11) Interrogation of witnesses at subcommittee hearings shall be conducted on behalf of the subcommittee by members and authorized subcommittee staff personnel only.

(12) Any person who is the subject of an investigation in public hearings may submit to the chairman of the subcommittee questions in writing for the cross-examination of other witnesses called by the subcommittee. With the consent of a majority of the members of the subcommittee present and voting, these questions shall be put to

the witness by the chairman, by a member of the subcommittee, or by counsel of the subcommittee.

(13) Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a subcommittee member or counsel, tends to defame him or otherwise adversely affect his reputation, may (*a*) request to appear personally before the subcommittee to testify in his own behalf, or, in the alternative, (*b*) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the subcommittee for its consideration and action.

(14) All testimony taken in executive session shall be kept secret and will not be released for public information without the approval of a majority of the subcommittee.

(15) No subcommittee report shall be released to the public without the approval of a majority of the subcommittee.

(16) All staff members shall be confirmed by a majority of the subcommittee. After confirmation, the chairman shall certify staff appointments to the financial clerk of the Senate in writing.

(17) The minority shall select for appointment to the subcommittee staff a chief counsel for the minority who shall, upon being confirmed, work under their supervision and direction; who shall be kept fully informed as to investigations and hearings, have access to all material in the files of the subcommittee, and when not otherwise engaged, shall do other subcommittee work.

One clerk on the subcommittee staff, acceptable to it, shall be assigned to the minority. When not otherwise engaged, such clerk shall be assigned other duties for the subcommittee.

During the past year, the subcommittee's investigations and hearings concerned the operations of many governmental agencies including the Department of Defense, the Department of the Army, the Department of the Air Force, Department of State, the Department of the Post Office, the Federal Trade Commission, and the International Cooperation Administration. Many of the hearings which are briefly summarized in this report were held in executive session and no Senate report was ever made. In several cases various deficiencies administrative in nature were brought to the attention of the executive branch involved for corrective action without hearings.

On January 30, 1957, the Select Committee on Improper Activities in the Labor or Management Field was created by the Senate under the chairmanship of Senator John L. McClellan pursuant to Senate Resolution 74, and it was continued pursuant to Senate Resolution 221, dated January 29, 1958. Six professional members of the staff of the Senate Permanent Subcommittee on Investigations have been, and still are on loan, to the select committee. In addition, one clerk from this subcommittee was loaned to the select committee and two clerks worked jointly for both committees. Thus approximately $98,000 of the $200,000 which was appropriated to the Senate Permanent Subcommittee on Investigations has been expended for purposes connected with the Select Committee on Improper Activities in the Labor or Management Field.

The subcommittee wishes to extend its sincere appreciation to Joseph Campbell, Comptroller General of the United States, for the excellent cooperation which he and members of his staff have rendered.

We are particularly grateful for the many investigations and reports which that agency made at the request of the subcommittee, and for the investigator who was loaned to assist the subcommittee staff.

ARMED SERVICES TECHNICAL INFORMATION AGENCY (ASTIA)

On April 26, 1958, newspaper publicity revealed that John W. Dukeminier, a 24-year-old employee at the Library of Congress, over a period of several months had taken, without authorization, several hundred classified documents from the Technical Information Division, Library of Congress, which also operated as the ASTIA Reference Center (ARC) under an agreement with the Armed Services Technical Information Agency. On April 24, 1958, he notified the National Security Council that he had these documents which he thereafter, upon request, gave to representatives of the Office of Special Investigations of the Air Force. As a result of this publicity, the subcommittee conducted a preliminary inquiry into the security measures of ASTIA which resulted in executive sessions before this subcommittee on June 6 and 12, 1958, under the acting chairmanship of Senator Henry M. Jackson. ASTIA is an executive agency administratively operated by the Air Force for the purpose of providing an effective flow of scientific information to holders of contracts with the Department of Defense. It is a triservice organization, having hundreds of thousands of classified documents in its possession which must be cataloged and then disseminated.

From 1953 to 1958 the Library of Congress performed cataloging and other technical services for ASTIA. In this work it operated under Air Force security regulations and not those of the Library. It reported various security violations to ASTIA. Its employees, however, who were cleared by ASTIA, were actually paid by the Library of Congress on a reimbursable basis from the Air Force.

Dukeminier entered on duty with the Library of Congress in February of 1957 in the Science and Technological Information Division. He was not authorized to receive classified information in any form. On several occasions he was dispatched to the ASTIA reference center section of the Library, which was the restricted area, in order to pick up unclassified material for his division. On several occasions he was permitted to roam without escort. On these occasions, he selected certain classified documents which he surreptitiously removed.

During the course of his employment, Dukeminier found or took a total of 548 classified documents. He testified that his actions were motivated by a desire to expose the weak security system and to reveal to the public the ready access that unauthorized persons have to classified defense information. He had placed most of these documents in a closet in the room where he lived, which room was cleaned by a maid and which was accessible to other individuals in the building. He has been dismissed by the Library of Congress.

In the spring of 1958, the agreement with the Library was mutually terminated by the Library and ASTIA. This termination caused to be removed to Arlington Hall, Va., all of the documents in the possession of the Library. The vast majority of the Library employees on the ASTIA project now became employees of ASTIA as such. After the move had been completed, Dukeminier found 136 negatives,

classified as "secret," in the area formerly used by the ASTIA reference center in the Library of Congress.

Testimony revealed that the guard system at ASTIA was totally inadequate. As a practical matter, three guards were on duty until midnight. No guards were on duty from midnight until early the next morning. No guards were on duty on weekends. There was no alarm system at ASTIA. This, despite the fact that there were hundreds of thousands of classified documents in ASTIA's possession. There was, however, a barbed wire fence with perimeter guards protecting the building on its outside.

Testimony also revealed that there was no system of intra-accountability of documents at ASTIA, and hence there was no way of knowing which documents were actually in the agency at any given time. The commander of ASTIA gave an estimate of the number of classified documents, stating that it might be accurate within two or three hundred thousand. Testimony disclosed that on the basis of the information developed, any document in ASTIA could be compromised by an individual without it ever being known. Thus, if an individual would steal documents and destroy them, and subsequently admit his wrongdoing, ASTIA would be unable to advise what documents had been taken.

The subcommittee was greatly concerned about these inadequacies and insisted that action be taken immediately to correct these delinquencies in this highly classified agency. A short time after the hearings, the subcommittee was advised that the guard system had been increased from 3 to 21, and that plans had been formulated for an intraaccountability system of all classified documents.

RELATIONSHIP OF AIR FORCE TO CIVIL AIR PATROL

In May 1958 stories appeared in the public press that the New York Wing of the Civil Air Patrol had solicited donations of pleasure yachts from wealthy taxpayers throughout the country. The news articles stated that the yachts had thereafter been sold by the organization and part of the proceeds invested in private enterprises. As a result of these articles, this subcommittee commenced a preliminary inquiry into the matter.

The Civil Air Patrol was created on December 1, 1941, within the establishment of the Office of Civilian Defense. During World War II, the organization was active in antisubmarine warfare along the eastern and southeastern shorelines. In April 1943 by Executive Order 9339 command jurisdiction was transferred to the War Department from the Office of Civilian Defense. The responsibility for supervising and directing operations of the organization was assigned to the Army Air Force. On July 1, 1946, Public Law 476 of the 79th Congress incorporated the Civil Air Patrol as a benevolent nonprofit organization. It ceased to receive financial assistance from the Government. After the Air Force was established as a separate arm of the Defense Department in October 1947, legislation was passed in 1948 creating the Civil Air Patrol as an Air Force auxiliary (Public Law 447, 80th Cong., 2d sess.).

While, by legislation, the Civil Air Patrol is officially an auxiliary of the U.S. Air Force, it is actually no more than a private corporation chartered by an act of Congress. It functions without the

benefit of any appropriated Federal funds. It secures the necessary funds for its operations from private individuals and organizations.

Our inquiry revealed, however, that the Department of the Air Force, under appropriate legislation, is presently donating on a preferential basis to the Civil Air Patrol, property, including aircraft, in excess of its needs, at a cost value of about $6 million per year. Additionally, it was ascertained that approximately 400 military and civil service Air Force employees are currently engaged solely in Civil Air Patrol activities. Included in this group are a major general, 7 colonels, 82 lieutenant colonels and majors, and 15 subordinate officers. There are a total of 197 enlisted personnel, the majority of whom are in the top 2 pay grades. Space in Federal buildings and at numerous Air Force facilities throughout the United States and Territories is available to and utilized by the Civil Air Patrol.

By regulations promulgated by the Secretary of the Air Force, with concurrence of the principal officers of the corporation, the senior Air Force officer assigned to the Civil Air Patrol, a major general, is automatically designated the national commander of that organization. In this capacity he has been described as "wearing two hats." As senior Air Force officer he is commanding officer of all military personnel assigned to the Civil Air Patrol program, and, as such, performs all the necessary duties as head of any organization within the military. As national commander of the Civil Air Patrol, he wears his "other hat," and acts in a civilian capacity as a member ex officio of the national executive board, a member of the board of directors of the corporation, and does the administrative housekeeping. All civilian promotions, demotions, and administrative matters are done in his name.

The national headquarters of the Civil Air Patrol is located at Bolling Air Force Base in Washington, D.C. It is completely staffed by Air Force personnel, both military and civilian. Liaison offices are maintained at 60 locations throughout the United States and its Territories. Each of these 60 offices is staffed by 1 or 2 officers, enlisted personnel, and civilian Air Force employees. Additionally, each has a U.S. Air Force aircraft available which can be utilized by the various civilian commanders on official Civil Air Patrol business, piloted by qualified Air Force personnel.

Under the acting chairmanship of Senator Henry M. Jackson, the subcommittee met in executive session on July 30 and 31, 1958, and heard testimony of several witnesses, including officers in the Civil Air Patrol; Gen. Carl Spaatz, USAF (retired), chairman of the board of the corporation; and Maj. Gen. Walter Agee, the Air Force officer who acts in the dual capacity as the national commander of the organization. At these hearings evidence was introduced showing that during the period June 1954 through March 1957 eight large yachts and certain smaller vessels were donated to the New York Wing of the Civil Air Patrol and that the donors took credit on their income tax returns for charitable contributions in an amount of approximately $500,000. However, upon the sale of these boats by the organization, which generally took place shortly after the donation was completed, less than one-half of this amount was realized.

The entire scheme of soliciting these donations, operating the boats while they were held by the organization, and ultimately disposing of them, was done through one man, the air inspector of the New

York Wing of the Civil Air Patrol, Lt. Col. Hugh M. Pierce, Jr., a civilian. Without the knowledge of his commanding officer or those Air Force officers at national headquarters in Washington, D.C., who administer the corporation, he opened two bank accounts and improperly used part of these funds for personal purchases. During the operation, a small amount of the proceeds was actually given to and used by the New York Wing. Pierce invested the remainder in his own name in a friend's business, and purchased personal aircraft, an antique Rolls Royce, and a Duryea automobile.

The donation operation continued to grow and in 1956 came to the attention of officials of the Miami, Fla., group of the Civil Air Patrol. Prior to this, the Miami group had no knowledge of what the air inspector of the New York wing was doing. They made inquiries at national headquarters. The national commander, acting in his civilian capacity, directed the acting commander of the New York wing, Lt. Col. Alfred W. Sutter, a civilian, to conduct an investigation and report the facts to him. After a cursory investigation, Sutter determined that Pierce had misused at least $34,350 of Civil Air Patrol money and Sutter demanded the return of this sum early in June 1957. Pierce complied and immediately presented a bank draft to Sutter for the full amount demanded, and, in accordance with Sutter's request, made it payable to Sutter. Instead of properly accounting for this money, Sutter placed it in his personal bank account and dissipated it in the ensuing 90 days by paying a number of outstanding personal and business obligations.

After a more detailed examination, Sutter determined that an additional $23,175 was due from Pierce. This sum was demanded in December 1957 and immediate restitution was made. The checks were payable to the New York wing and deposited in the wing's account. Through complicated manipulations of the New York wing's bank accounts, Sutter was successful in misleading national officers of the organization as to the amount recovered. It appears that he would have been successful in his attempts to misappropriate the original $34,350 had our investigation not been made. Upon uncovering these facts, demands were made by this subcommittee and by national officers of the organization for the return of the misappropriated money. A few days before he testified, which was 13 months after he had received the $34,350 from Pierce, Sutter returned approximately $20,000 of that amount. When he appeared as a witness he testified that he had the additional $14,350 in cash in his safe in New York where, he said, it had been for the past 13 months. Significantly, while testifying under oath, he persistently refused to permit a staff member or General Agee or even General Spaatz to accompany him to New York and see the money. Two weeks after the hearing, he returned the $14,350 to the Civil Air Patrol.

A few days prior to the subcommittee's hearings, Generals Spaatz and Agee were advised by the subcommittee staff members of Pierce's and Sutter's actions. The latter were both immediately suspended from the Civil Air Patrol. In August 1958 they were dismissed by action of the national executive board of that organization.

The hearings revealed further that Colonel Sutter and Lieutenant Colonel Pierce both had previous criminal convictions for felonies and that Sutter was, and is, presently on probation from the Court of

General Sessions in New York County. In 1955 he had presented forged notes totaling approximately $25,000 to a bank for discounting. He pleaded guilty to grand larceny and received a 6-year suspended sentence to expire in 1961. He has been making restitution through his probation officer. In 1946, Pierce, while an officer in the Army Air Corps, stole a car. Later that year, after his release from the Army, while attending college, he broke into an electronics store in Ann Arbor, Mich., and stole considerable equipment. He was still driving the stolen car. He pleaded guilty to breaking and entering in the nighttime and received a suspended sentence and 6 months' probation. Four years later, in 1950, he was involved in the theft of a new Cadillac in Scarsdale, N.Y., but there was no prosecution.

It had originally been the policy of the Civil Air Patrol to submit to the Federal Bureau of Investigation the fingerprints of all applicants to the organization. This policy had been dropped for a period of time, but has been reinstated as a result of our investigation. It is interesting to note that the required check had been made on Pierce. His criminal record and conviction were submitted to the Civil Air Patrol but apparently no action whatever was taken on it. There is no evidence that Sutter's fingerprints had ever been submitted, and even if they had been, they would not have barred Sutter from membership, since he had not been convicted of any felony until he had been a member of the organization for a number of years and had risen to a position that placed him on the national board, the supreme governing body of the Civil Air Patrol.

At these executive sessions, the subcommittee heard testimony from Carl Spaatz, chairman of the board of the Civil Air Patrol, who is a retired general and former Chief of Staff of the U.S. Air Force, and also from Major General Agee, USAF, the national commander. It was ascertained that the authority and responsibility for investigative work is vested in the civilian component of the group which, because of its voluntary nature, does not have, nor could it be expected to have, a functioning investigative force. On the other hand, while the Air Force performs many administrative functions for the group, it has no authority or responsibility in the investigative field. However, the Air Force has a readymade organization which could perform this necessary function. It maintains at National Civil Air Patrol Headquarters an Office of Inspector General, staffed by two senior officers and enlisted men trained in investigative work.

By regulation, the rank structure of the civilian members of the Civil Air Patrol is identical with the Air Force. Senior members are commissioned in various grades from warrant officer through colonel. Its official letterhead, quite similar to that of the Air Force, clearly identifies the organization as an "auxiliary of the U.S. Air Force." The addresses of a good number of the field organizations are active Air Force bases. The civilian officers wear a uniform identical in cut, color, and rank insignia. While there are some slight differences, such as modified button design and a small patch worn on the breast, it is almost impossible to distinguish between a Civil Air Patrol officer and an Air Force officer. A great number of the Civil Air Patrol officers have never seen any active military service.

The subcommittee was deeply concerned that the Air Force found itself in a position whereby its name, equipment, facilities, and prestige were fully used by an organization over which the Air Force could

exercise no real authority. There is no question that the Civil Air Patrol is a needed organization. Its principal aim is to instill air consciousness in the youth of our country. Additionally, it serves a most important function in assisting the Air Force in a great number of search and rescue missions. It is an important segment of our civil defense program and maintains an extensive network of shortwave radio stations throughout the country. It is not the desire of the subcommittee to detract, in any way, from these important functions, nor to change the necessary "voluntary" character of the group. In an organization of its size, there are bound to be instances when a member is motivated more by personal gain than by the aims of the organization.

As a result of the executive session, it was decided that certain administrative changes could be made by the Civil Air Patrol which would do much to prevent the reoccurrence of similar instances, but which would not require new legislation. These proposed changes were discussed informally with the Bureau of the Budget, the General Accounting Office, and the Department of Defense. No objections were received. Consequently, at meetings of the national executive board of the Civil Air Patrol on August 5 and 6, 1958, resolutions were adopted to allow the Air Force to audit the corporate accounts and to make such inspections of Civil Air Patrol activities as the Air Force may deem necessary to insure that assistance furnished to the corporation by it is being properly utilized.

Throughout the investigation of this matter, the subcommittee staff kept the Internal Revenue Service and the district attorney's office in New York County advised of developments. All appropriate documentary evidence was made available to each agency for whatever action it may deem necessary.

The subcommittee has been informally advised by Internal Revenue that action will be taken to attempt to lessen the tax deduction taken by each donor of a yacht, so that it will bear a realistic relationship to the actual value of the yacht, as is best evidenced by its sale price. Additionally, during the course of the investigation it appeared that the commander of the New York wing, Colonel Sutter, had failed to file any personal or business income tax returns for at least the past 5 years. The Internal Revenue Service will pursue this matter further.

The district attorney's office of New York County is presently engaged in an investigation of Pierce and Sutter, looking toward possible indictments.

The certified public accountant retained by the national headquarters of the Civil Air Patrol has utilized the documents in our file for the dual purpose of ascertaining possible other fund manipulations of the New York group and to assist him in framing a set of regulations and accounting practices for the national organization. These proposals have been prepared, and, when adopted as an official regulation, will be promulgated to all subordinate groups as a standard accounting procedure.

We wish to extend our many thanks to Chet Holifield, chairman of the House Subcommittee on Military Operations of the Committee on Government Operations, and to members of his staff for assistance rendered to us during the course of this inquiry.

RECEIPT OF GIFTS FROM FOREIGN GOVERNMENTS BY U.S. GOVERNMENT EMPLOYEES

In the fall of 1957, the subcommittee conducted an inquiry concerning the receipt of gifts by U.S. Government officials from foreign governments. There is a constitutional provision prohibiting the receipt of such gifts without the consent of Congress, which is article 1, section 9, clause 8, and reads as follows:

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

Implementing this constitutional provision is title 5, United States Code, section 115, which reads as follows:

> (a) Any present, decoration, or other thing, which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress.

On September 8, 1902, Acting Attorney General Henry M. Hoyt issued a ruling to the Secretary of State which said that the constitutional provision must be interpreted very strictly. In his ruling he stated:

> As this remark suggests generally the character of the gift, whether a present or some title of honor (although you do not suggest this point), it must be observed that even a simple remembrance of courtesy, which from motives of delicacy recognizes our policy, like the *photographs* in this case, falls under the inclusion of "any present * * * of any kind whatever." [Emphasis supplied.]

In 1952 the Attorney General made another ruling which was for the guidance of the Department of Justice and which was not issued to the various executive branches of the Government. This ruling was in connection with a recent visit to the United States of the grandson of the King of Saudi Arabia who had presented certain gifts to various officials and employees of the U.S. Government. This ruling of the Attorney General reaffirms his previous ruling of 1902, and states that the gifts fall within the constitutional provision and cannot be accepted by the donees.

On November 13, 1957, the Department of State issued a circular on the question of gifts from foreign governments to U.S. Government employees in which it was stated that the rule "de minimus non curat lex," meaning the law does not concern itself with trifles, was to be applied to gifts proffered to State Department employees, and if the gift had only minor intrinsic value, such as a photograph or other like memento or souvenir, it may be retained by the employee. In case of any question or doubt, a ruling should be obtained from the

Office of Protocol. This circular gave to State Department employees the right to make individual decisions on the value of a gift.

At an executive session conducted by the subcommittee, on March 1, 1958, testimony was received from the Department of State official who prepared the circular that this was the first written instruction on this particular subject. He had issued the instruction because he felt that it was practical even though he knew that it was in opposition to the ruling of the Attorney General, which he claimed was advisory only. He had also issued this instruction despite the fact that he was cognizant the Office of the Solicitor of the Department of State has a memorandum, dated December 24, 1913, which expresses the opinion that the constitutional provision of article 1, section 9, clause 8, applies to a sword which was proffered as a gift to a commander in the Navy, and held the sword could not be accepted by the commander. He was also cognizant of a legal memorandum in the same office, under date of January 4, 1919, which concerns photographs of the King and Queen of Rumania which were to be delivered to various Army personnel in this country. This memorandum concludes that the case clearly comes within the constitutional provision, and the Department of State should not transmit the photographs to the intended donees.

A memorandum, under date of February 7, 1957, was introduced into the hearings indicating that a State Department stenographer phoned a State Department official and advised that the Administrator, Bureau of Security and Consular Affairs, desired that the following information which was received from the Office of Protocol be passed on to employees in his division:

> A policy has been determined that all gifts received by State Department employees from the Saud or officials of the Saud Government should be turned over to Protocol.

Officials from other executive branches of the Government testified that they followed the rulings of the Attorney General's office and not the circular which had been issued by the Department of State.

It became apparent that there were two different rules of conduct: (1) that of an executive agency, wherein an employee could not receive any gift whatsoever, and (2) that of the Department of State, wherein its employees could receive gifts and could be the sole judge as to the intrinsic value of the gift. Under the Department of State circular, that agency would have no knowledge of the various gifts which had been tendered to its employees. Both the intrinsic and sentimental value of the gift could not be evaluated by the Department of State. As was pointed out in the hearings, the economic status of an individual would have an enormous bearing on the value of a gift. Thus, a $500 present to a millionaire might be considered of no intrinsic value, while the same gift to a poor man would be of great value. In addition, the sentimental value of the gift is also important. The gift of a small rug, which might have no intrinsic value, could be very important in the eyes of the Department of State employee.

This lack of uniformity in the application of the principle of the constitutional provision gave the subcommittee a great deal of concern, and, on March 7, 1958, we asked the President of the United States to issue an Executive directive clarifying this situation. In a letter of December 12, 1958, the subcommittee was advised by the

White House that a careful and thorough study was being made within the executive branch and it was anticipated that legislative proposals would be submitted to the Congress in this session.

MISREPRESENTATIONS IN THE ADVERTISING OF PROPERTIES

On May 22, 1958, Senator Karl E. Mundt introduced Senate bill S. 3889 in the 85th Congress, 2d session, which was cosponsored by Senator John L. McClellan, and which was directed at the elimination of a vicious racket by which some 70 firms in the United States have been fleecing small businessmen of an estimated $50 million annually. These firms enter into contracts with businessmen to *advertise* for the possible sale of the business on a national scale when, in fact, the salesman has represented to the owner that the business will be *sold* in a short period of time at inflated prices. The bill is aimed only at those firms which are engaged in false and fraudulent misrepresentations to the businessman in connection with advertising his property for sale.

Public hearings were held on July 16 and 17, 1958, with Senator Henry M. Jackson as acting chairman.[2] Testimony disclosed that the firms which are engaged in this alleged scheme have their salesmen approach owners of commercial properties, farms, and even homes, promising fast sales at unrealistic prices through a farflung, coast-to-coast service. The salesmen make use of flashy catalogs, fancily engraved performance bonds, letters of endorsement, and many imaginative sales gimmicks in their attempts to persuade the property owners to engage their services.

The operators are able to talk the victims into parting with anywhere from $125 to $3,000, and in most cases the sum is obtained in advance. The fee is usually based on 1 percent of the estimated selling price. A close examination of the contract signed by the victim usually discloses that the organization guarantees only to advertise the property. If the victim hears from the firm at all, it is generally to notify him of one or two classified ads in newspapers or of a mere listing in a catalog put out by the company. Sales resulting from the advertising are less than one-half of 1 percent.

Some of the misrepresentations orally made to induce the victim to sign the contract are: That the property will definitely be sold within a certain period of time; that the firm has qualified buyers on hand at the very moment; that the firm is associated with some 2,000 or more licensed real estate brokers; that the victim is asking too low a selling price, and the firm has on hand buyers who will pay much more than the original asking price for the business; that a guaranteed service bond protects the seller; that Governors and other influential people are connected with their business operations; that they are able to provide financial assistance to a prospective purchaser for the sale of the property; and that people who have had previous listings with the firm sold their property in a short period of time. In the usual case, the salesman receives an advance fee which he orally states will be returned if the property is not sold. Rarely are refunds made.

In other cases the companies, which operate in many States, do not receive an advance fee, but accept the contract at its home office.

[2] Hearings, "Misrepresentations in the Advertising of Properties," July 16 and 17, 1958.

The contract, which usually contains a disclaimer clause, is a valid contract. The firm can bring court action on the contract to collect the fee in the State of its home office, oftentimes many hundred miles from the scene of the property, and a judgment will be rendered for the firm, as the victim does not contest this suit in view of the expense involved. This judgment is then entered in the home State of the victim, where it is enforced. The victim cannot legally challenge this judgment and must pay.

The racketeer salesmen do not hesitate to enter into a contract with anyone, regardless of his circumstances. A few cases involving the more pathetic types of victims are typified by the following examples: In Connecticut there was an elderly couple who owned a hotel which had practically no economic value. The husband was in the hospital, dying of cancer. The wife, desperately anxious to dispose of the business, fell prey to the racket. In a New York case an elderly farmer, who was so infirm that he was unable to shave, was victimized for $150. The farm which he owned had little economic value. A blind farmer in the State of Michigan was victimized, as was a blind, small businessman in the State of Wisconsin. The record is replete with such cases.

During recent years various States have attempted to combat these operators without success. In Connecticut, for example, specific advance fee legislation was held unconstitutional by the supreme court of that State on the ground that advance fee firms were in the business of advertising and therefore did not come within the purview of the real estate regulations. In California one of the advance fee firms has been successful in enjoining, for the past 3 years, the real estate commissioner and attorney general from initiating criminal prosecution for unlicensed activities until the constitutionality of the law is settled. Many States claim that their existing real estate laws cover this type of operation and have tried to regulate the firms, without success.

The National Association of Licensing Law Officials, the National Association of Real Estate Boards, better business bureaus, and various State attorneys general are uniformly in agreement that Federal legislation is needed to control this type of operation. Testimony from the groups disclosed they all felt that this type of advance fee is detrimental to the best interests of the people of the United States.

The Federal Trade Commission under its jurisdiction is responsible for preventing false and misleading advertisements in interstate commerce. It is spending much time and money in its efforts to combat the advance fee racket. The Commission has been successful in issuing cease and desist orders; however, it has been its experience that when a firm is put out of business a new firm will spring up in its place. In many cases, when a firm terminates, a number of the salesmen for the now defunct firm will go into business for themselves, as only a nominal sum of money is needed to get started. This places the Federal Trade Commission in the position of putting one firm out of business only to have a mushrooming effect take place and several other firms come into existence.

The Postal Inspection Service, which is charged with the responsibility of investigating the use of the mails in furtherance of schemes to defraud, has jurisdiction in this type of case under section 1341, title 18, United States Code. As of July 1958, only 19 cases had been

presented to United States attorneys for prosecutive action. Prosecution was declined in 9 of these cases and 10 are still pending. Testimony from the Post Office Department disclosed that the primary difficulty in these cases is proving that the salesmen actually misrepresented the services which could be furnished and that the firm had actual knowledge thereof. The postal authorities felt that Senate bill 3889, 85th Congress, 2d session, may not overcome these difficulties inherent in obtaining successful prosecution.

The Department of Justice has advised the subcommittee it is of the opinion that existing Federal statutes cover fraud of the general type contemplated by Senate bill 3889, and that this bill would be unnecessary.

The subcommittee reached the following conclusions:

(1) A substantial number of businessmen are being defrauded of millions of dollars annually by advance fee firms which enter into contracts with them to *advertise* the sale of their businesses on a national scale. The salesmen for these firms make use of all types of oral deception, and are able to convince the victim that if he signs the contract his business will be *sold* in a very short period of time.

(2) The Federal Trade Commission is spending much time and money in its efforts to combat the advance fee racket. The Commission has been doing an excellent job and has been successful in issuing cease and desist orders. However, its effectiveness is limited because its civil remedy may eliminate one company only to have five others come into existence. The Federal Trade Commission does not have criminal jurisdiction.

(3) State agencies have had little success in combating the racket and feel that strong Federal legislation is needed.

(4) The Postal Inspection Service, under 18 U.S.C. 1341 (mail fraud), has conducted numerous investigations into the advance fee field but has not been able to obtain convictions because of the extreme difficulty of obtaining proof. The Post Office Department feels that the same inherent difficulty of proof may be present in S. 3889.

(5) The Department of Justice is of the opinion that the existing Federal statutes covering fraud of the general type contemplated by the bill are adequate and that there is no need for S. 3889.

It is recommended that—

(1) The Federal Trade Commission continue its efforts in combating the fraudulent advance fee operators.

(2) The Post Office Department put into effect a prime program under the mail fraud statute with the objective of eliminating the advance fee racket. The subcommittee recognizes the difficulty of obtaining proof in this type of fraud. It feels that special emphasis in this field by the Post Office Department and the Department of Justice may result in an extermination of the racket.

(3) The subcommittee feels that legislation is necessary to control the operations of advance fee firms. In view of the opinion of the Department of Justice that existing Federal fraud statutes are adequate, future hearings should be held to determine the effectiveness of the present statutes with a view to formulating new legislation. It is felt that some type of stronger Federal control, such as Federal licensing of such firms, perhaps is needed.

NIKE EXPLOSION AT MIDDLETOWN, N.J.

On May 22, 1958, an explosion occurred at Battery B of the 526th AAA (Nike) Missile Battalion at Middletown, N.J. It caused the death of six Army enlisted men of the battery, and four Department of Army Ordnance civilians. One warrant officer of the battery and one civilian of the Department of Army Ordnance were seriously injured, but have since recovered. The launching equipment of one of the three sections was damaged, and eight missiles were destroyed.

On July 30, 1958, this subcommittee held an executive session, with Senator Henry M. Jackson as the acting chairman. Maj. Gen. D. E. Beach, U.S. Army, Office of the Deputy Chief of Staff for Military Operations, and members of his staff were present. The purpose of the hearings was to ascertain the cause of the accident and to review the existing procedures in connection with safety precautions at the various missile bases.

Testimony revealed that immediately after the explosion, the Department of the Army dispatched teams to the site to investigate the cause of the accident. It was disclosed that there were three separate activities taking place in the vicinity of section A at the time of the explosion.

The first activity was that the battery personnel were checking missiles in preparation for going on a higher state of alert. This check is known as command calibration, and is an operation performed routinely at least once a week.

The second activity involved repair of launcher No. 3 in section A by an Ordnance team composed of two civilians. This operation consisted of unbolting the hydraulic erecting arm piston assembly and replacing it with a new one. This is a simple operation and requires no electrical tools, welding tools, or other heat-producing agents. There was no missile on the launcher being repaired.

The third activity was an authorized field modification to the missiles of the battery by another Ordnance team of three civilian employees. This modification had already been performed on about 1,000 missiles throughout the country.

The Army concluded, after careful consideration of all the evidence, that the most probable cause of the explosion was the crushing or rupturing of a detonating cap. There was no evidence of gross carelessness, smoking, inattention to the operations, or any other possible cause, such as sabotage.

The commanding general of the U.S. Army Air Defense Command has, since the explosion, issued a revision of his "Tactical Standing Operating Procedures Guide." This revision contains instructions with regard to missile movement and locations for various operations to include practice alerts, inspections, demonstrations, modifications, testing, and maintenance. The procedures to be outlined in detail in the revised guide provides for—

(1) Limitations on the number of missiles which may be above ground at any one time when conducting section training, training evaluation, or command calibration.

(2) Upon receiving notice of an impending engagement, sufficient missiles to meet the immediate threat would be brought above ground.

(3) There will be only one missile above ground if operations other than as specified above are performed on a live missile.

Immediately after the explosion occurred, the Department of the Army also sent teams to Middletown to assist in processing all claims for damages to civilian property resulting from the explosion. It was found that all serious damage resulting from the explosion was confined to the area immediately adjacent to the point of the explosion and within the battery boundaries. Damage outside the battery was limited to broken glass and cracked plaster. As of June 25, 1958, there were 98 claims submitted by the residents of the Middletown area. Of these 98 claims, 95 had been approved and 3 are pending. The total amount of damage for the 98 claims is $13,711.05.

Testimony disclosed that at the present time the Ajax missile is being replaced by the Hercules missile which has a capability of carrying either a higher explosive or an atomic warhead. The missile bases provide air defense protection to a large number of American cities. Testimony also disclosed that the Army, among its safety precautions, has a safety committee, composed of military experts in the guided missile field, to insure that every precaution is taken to prevent the probability of an accident.

Although this safety committee does exist, the subcommittee suggested that the Army should consider the advisability of establishing an independent safeguard committee, composed of civilian experts, to serve as a double check on the entire operation. The very nature of the weapons involved demand that every safety precaution that is humanly possible be put into effect on a continuing basis.

Wilber M. Brucker, Secretary of the Army, heartily agreed with the subcommittee's recommendation, and on August 20, 1958, formally established such a committee, composed of five distinguished civilian experts representing science and industry. Mr. Brucker charged the committee with reviewing the adequacy of safety, not only for the Nike-Hercules, but for all Army air defense systems in the United States, both presently deployed and those to be deployed in the future. The findings and recommendations of the committee are to include, but not to be limited to—

(1) Safety features of the warheads.
(2) Standard operating procedures.
(3) Procedures employed during transit of missiles and warheads.
(4) Safety features of the missile systems.
(5) Command controls.

PROJECT SEA WEED (U.S. AIR FORCE)

In March 1958 a subcommittee staff member visited the 314th Air Division in Korea and became aware of the condition of Sea Weed stockage at U.S. Air Force bases in Korea. Sea Weed is an Air Force term applied to the acquisition of war-readiness materiel at Air Force bases overseas. Project Sea Weed was conceived to preposition essential equipment so as to avoid the necessity for moving it by air or surface means in event of deployment of Air Force tactical or strategic elements to other than their home bases overseas. Under the new concept of nuclear warfare, the supplies and equipment necessary for immediate defense and retaliation strikes must be in place at wartime operating bases and ready for immediate use on D-day.

The Sea Weed program was applied to Air Force bases in Korea in the fall of 1956. Under this program certain pieces of war-readiness materiel were to be positioned at specific air bases for a theoretical D-date of July 1, 1957. Thus, the Air Force in Korea had approximately 9 months in which to acquire the required Sea Weed stocks for that D-date.

Under the acting chairmanship of Senator Henry M. Jackson, the subcommittee met in executive session on June 6, 1958, at which time testimony was taken from representatives of the 314th Air Division in Korea and the 5th Air Force Headquarters, U.S. Air Force.

Testimony disclosed that a major Air Force base in Korea did not requisition stocks required under the Sea Weed program until August 1957, approximately 10 months after the start of the Sea Weed program in that area. The officer responsible for the Sea Weed program at that base prior to June 1957 had not established an account on which Sea Weed stocks could be requisitioned through base supply. His successor, who was unfamiliar with the Sea Weed program, was assigned the responsibility for the Sea Weed program in addition to many other responsibilities. This officer received no briefing from 5th Air Force officers concerning the Sea Weed program until February 1958, although the 5th Air Force in Japan had the responsibility for this program.

Testimony disclosed that very little had been accomplished on the Sea Weed project in Korea until January 1958. This was attributed to the lack of concern for the project at all levels, coupled with the shortage of personnel.

The conditions existing at the base supply depot had an additional effect on Sea Weed stockage. In the early part of 1957, the three Air Force supply bases in Korea were consolidated into one overall base supply. Prior to that time, this base supply account was having troubles of its own in that record cards were only partially accurate and much of the materiel within its warehouses was not on record. The consolidation of three base supply units into one compounded the deficiencies already existing within this base supply account, rendering it almost completely useless by September 1957. At that time the stock record cards within that account were determined to be only 10 percent accurate. As a consequence, Sea Weed stocks arriving from prime depots which were to have been segregated were commingled with other stocks in the warehouse unknown to the Sea Weed officer. During the complete wall-to-wall inventory taken at this base supply from January until June 1958, 31 pieces of absolutely essential Sea Weed equipment were found within the warehouses.

In March 1958 the responsibility for monitoring the existence and condition of all Sea Weed stocks at U.S. Air Force bases in Korea was assigned to a lieutenant with 19 months' active military experience. In addition to this responsibility, the lieutenant was serving as a squadron adjutant and squadron supply officer. He testified that in spite of the importance of the Sea Weed program he considered his primary responsibility to be that of squadron supply officer, inasmuch as he was financially liable for any shortages developing within the squadron supply account.

The Air Force unit manning documentation pertaining to the Sea Weed program called for the assignment of one officer, nine enlisted men, and two civilians. At one of the bases only one officer and two

enlisted men were assigned the responsibility for the program, which assignment was in addition to other duties. The officer and his men devoted approximately one-third of their time to Sea Weed. After the staff visit in March of 1958, 1 officer and 12 men were allocated for this work at this base. At the time of the executive session in June, substantial progress had been made in improving Sea Weed, and the percentages of stock had risen tremendously. It is appreciated that some of the Sea Weed items are in critical short supply on a worldwide basis and could not have been obtained under any circumstances. It is also appreciated that the airbases in Korea had a very low priority in the program.

ROBERT A. MCDONALD, DEPUTY ASSISTANT SECRETARY OF DEFENSE (P. & I.)

The subcommittee made inquiry into absences of Robert A. McDonald from his position as Deputy Assistant Secretary of Defense (Properties and Installations). Mr. McDonald took office on July 6, 1956, and was receiving a salary of $16,000 annually. He resigned on February 1, 1958.

McDonald advised that prior to his governmental appointment, he resigned on May 16, 1956, as chairman of the board of a firm in New York City because he could not continue actively to run this company and at the same time accept a position with the Government. This firm did not have any Government contracts, and therefore there was no conflict of interest. However, he continued to maintain his position as majority stockholder in the company.

Shortly after going to work for the Government, he commenced to go to New York in connection with the affairs of this firm on an average of three times per month on workdays, his visits averaging about 1½ days. During this period of time he did not take any official leave from his position with the Department of Defense. He continued operating in this fashion until about May of 1957, when he took leave without pay. McDonald explained that he was of the impression that because of his position it was not necessary to make formal application for leave. The subcommittee has no evidence of any attempt to defraud the Government.

The Comptroller General has submitted rulings to the subcommittee, one of which holds as follows:

> An employee who holds a position subject to the Classification Act of 1949, as amended, such as that held by the Deputy Assistant Secretary of Defense, is entitled to compensation only during periods he is in a duty status or an authorized leave-with-pay status. The impropriety of such an employee's absenting himself from his position without authority is beyond question. Not only would he be liable for the compensation received during such periods but also his action might constitute the basis for disciplinary proceedings against him.

An audit conducted by the General Accounting Office showed there had been an overpayment to Mr. McDonald of $1,171.20 for having taken leave without being charged for it. This amount has been paid to the Government by Mr. McDonald.

INTERNATIONAL COOPERATION ADMINISTRATION—SHIHMEN DAM PROJECT

In September 1958 the subcommittee initiated a preliminary inquiry into alleged International Cooperation Administration (ICA) irregularities in the selection of a contractor to provide construction advisory services in connection with the erection of an $80 million multiple-purpose dam in Taiwan (Formosa).

The United States, in assisting the Republic of China in this venture, provided grant financing of nearly $8 million to cover the cost of equipment, engineering, and construction advisory services, and agreed to a loan of $21,500,000 from the Development Loan Fund.

Invitations to bid, issued by ICA to nine qualified construction firms in June 1957, called for cost-plus-fixed-fee proposals for the construction advisory services, and eight firms responded. On March 28, 1958, the eight firms were requested to reevaluate or revise their proposals. A negotiated contract was then to be undertaken by ICA on the basis of all information furnished by the various contractors in their proposals.

The J. A. Jones Co., of Charlotte, N.C., generally regarded as one of the 10 outstanding construction firms in the world having considerable dam construction experience, submitted the lowest cost and fee proposal in this instance. Their proposal specified an amount of $1,715,250, including a fee of $309,000. The Contract Relations Office of ICA decided that negotiations should be conducted with the J. A. Jones Co. and stated:

> It is, therefore, the recommendation of the Office of Contract Relations to award the contract to the J. A. Jones Co. provided that this firm (*a*) can demonstrate conclusively that the individuals proposed for the positions of general superintendent and excavation superintendent are qualified for this project or (*b*) will assign other qualified personnel to these positions. These factors will be taken into consideration during negotiations. I would agree if Jones were unable to provide personnel qualified to undertake this assignment, then consideration should be given to the other firms suggested by S/IND.

The Industrial Engineering Division of ICA, however, favored the Morrison-Knudsen Co., a Panamanian corporation, whose fee exceeded that of the J. A. Jones Co. by $501,000. Their decision was based primarily on a study conducted by Tudor Engineering Co., a consultant firm to ICA. It is interesting to note that, prior to the Tudor Engineering Co.'s study, two other evaluations, unsolicited—namely, that of the Shihmen Development Commission and that of the project engineers, Tibbits, Abbott, McCarthy & Stratton—were made, which also favored the Morrison-Knudsen Co. Mr. Edwin Arnold, Deputy Director of ICA, on the basis of these four evaluations, instructed that the Contract Relations Office begin negotiations with the Morrison-Knudsen Co. He indicated that a provision permitting the J. A. Jones Co. to qualify its personnel or assign others to this project was "unacceptable."

From the procedural point of view, the actions taken by ICA in this instance appear highly irregular. The ICA invitation to bid on a

cost-plus-fixed-fee basis for advisory services is an innovation not previously utilized by ICA and is not a matter of general practice engaged in by other Government agencies. As a practical matter, negotiated contracts are not handled as they were in this case, as the Government agency interested in letting the contract usually picks three qualified bidders and then begins negotiations with all three. It appears that ICA's actions were responsible for the needless expenditure of significant sums by the bidding firms. As a direct result of the controversy occasioned by this action, ICA issued a policy directive under date of August 1, 1958, changing its procedures in contracts of this type, and issued instructions for negotiations with selected contractors. It thereby admitted that its procedures in this instance were not sound.

Preliminary inquiry also disclosed that the Tudor Engineering Co., the consultant engineering firm for ICA, had a contract in existence whereby the Lynch-Wilde Engineering Co. would handle its administrative affairs. The Lynch-Wilde Engineering Co. is the Washington, D.C., representative of the Morrison-Knudsen Co., and its president is also a stockholder in the Morrison-Knudsen Co. The contract which had existed between the Tudor Engineering Co. and the Lynch-Wilde Co. was terminated at the suggestion of ICA when this matter was brought to their attention, despite general denials of any conflict of interest appearing in this situation. This appears highly irregular, because, if the Lynch-Wilde Engineering Co. was not involved in any conflict of interest, it is difficult to understand why its contract was canceled.

In view of the procedures disclosed in the selection of a contractor by ICA in this instance, the subject matter of the subcommittee's inquiry was brought to the attention of the House International Operations Subcommittee of the House Committee on Government Operations for whatever action appears indicated. That subcommittee, which is chaired by Congressman Porter Hardy, Jr., had previously held extensive hearings in November 1957, March, April, May, and June 1958 concerning contract procedures at ICA, and issued a report in the 85th Congress, 2d session, being No. 2012, captioned "Foreign Aid Construction Projects."

The members of the Committee on Government Operations, except those who are members of the Senate Permanent Subcommittee on Investigations, did not sit in on the hearings and executive sessions on which the above report was prepared. Under these circumstances, they have taken no part in the preparation and submission of the report, except to authorize its filing as a report made by the subcommittee.

○