Remarks of

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About a month ago my colleagues and I prepared a draft of a document entitled "Canons of Ethics for Members of the Securities and Exchange Commission." I believe my most appropriate contribution to the more formal part of this discussion will be a brief discourse on how and why this came about.

For many years the SEC, both members and staff, operated under a number of memoranda, opinions and minutes governing individual conduct. For example, there was an office memorandum on employees securities transactions and an office memorandum relating to outside or private employment by members of the staff. Negotiation for private employment was governed by a policy statement contained in a Commission minute, the principles governing practice before the Commission by former members and employees were enumerated in two press releases, and the statute creating the agency contained a prohibition against outside employment by the members of the Commission.

In the early 1950's there was much Congressional and public attention directed at the conduct of Government employees, and our Conduct Regulation dates from that period, having been adopted early in 1953. In announcing this comprehensive regulation, the Commission pointed out that it was a restatement of the ethical principles which it believes should govern and have governed the conduct of members and employees and former members and employees.

At that time the aspect of greatest concern was the practice before an agency such as ours of recent employees or members. There was a proposal much discussed to adopt legislation prohibiting members or employees from practicing before that agency of the Government with which they had served for two years after termination of the connection. Our 1953 rules therefore went to especial pains to prohibit the immediate reappearance in cases where it was thought undesirable while avoiding a flat two-year prohibition which the Commission thought too harsh.

These rules drew high praise from Senator Douglas of Illinois who had been most active in these matters.

The Rules of Conduct were revised and rewritten in their present form in 1956. We think that they are a fine set of rules and that they have served their purpose very well.

This past winter and spring, however, have brought a revival of interest in the whole question of conduct and ethics, especially with relation to members as distinct from staff. The more we observed events in the Congress and read comment in newspapers and elsewhere, the more there seemed to be a need for a restatement of guiding principles in a form of sufficient dignity to attract widespread attention and respect. Our aim was to state openly and in appropriate style the ethical principles which we have in fact regarded as applicable.

The canons, in their present draft form, are obviously patterned in large measure on the American Bar Association's Canons of Judicial Ethics. In not simply affirming adherence to the latter we do not mean to imply criticism. We think, rather, that the problems of members of administrative agencies differ sufficiently from those of judges in certain important respects as to justify and really require a different set of canons. Unlike judges a large part of our job is rule-making and enforcement or other administrative work which must be taken into realistic consideration.

We have sent our draft to other independent agencies with an invitation to consider the desirability of constructing a single set of canons to be adopted by all of us jointly. We still hope that progress can be made in that direction.

In the meantime certain suggestions have been made for further legislation governing these matters. It is our opinion that such legislation is not necessary and not desirable to govern the conduct of members and staff. We have suggested that the conduct of persons outside the Commission is less subject to our control and that some legislation aimed at preventing improper advances to members by others might be helpful. Care must be taken, however, not to make the law so restrictive as to close the door to free communication between us and members of the public in areas where it is most beneficial to intelligent administration of complex statutes.

Those canons in our draft dealing most directly with the subject of our panel discussion are numbers 6 and 9. Number 6 is entitled, "Relationship with Persons Subject to Agency Regulation," and reads as follows:

> "In all matters before him, a member should administer the law without regard to any personality involved. His attention should be directed only to the issues. Members should not become indebted in any way to persons who are or may become subject to their jurisdiction. No member should accept the loan of anything of value or accept presents or favors from persons who are regulated or who represent those who are regulated. In performing their judicial functions, members should avoid discussion of a matter with any person outside the Agency while that matter is pending. In the performance of their rule-making and administrative functions, a member has a duty to solicit the views of interested persons. Care must be taken by a member in his relationship with persons outside of the Agency to separate the judicial and the rule-making functions and to observe the liberties of discussion respectively appropriate. Insofar as it is consistent with the dignity of his official position, he should maintain such contact with the persons who may be affected by his rule-making functions as is necessary for him fully to understand their problems, but he should not accept unreasonable or lavish hospitality in so doing."

Number 9, entitled, "Ex Parte Communications," reads as follows:

> "Matters of a quasi-judicial nature should be determined by a member solely upon the record made in the proceeding and the arguments of the parties or their counsel properly made in the regular course of such proceeding. All communications by parties or their counsel to a member in a quasi-judicial proceeding which are intended or calculated to influence action

> by the member should at once be made known by him to all parties concerned. A member should not at any time permit ex parte interviews, arguments or communications designed to influence his action in such a matter."

I suppose it is to be expected that the SEC, which spends much of its efforts in forcing full disclosure of relevant corporate information, should look to full disclosure as a remedy to the evil of ex parte communications. We do think that such disclosure will go a long way toward removing whatever harmful influence they might otherwise have.