

ADDRESS

of

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Before

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INVESTMENT BANKERS ASSOCIATION

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I don't plan to announce any startling new Commission policies today. Nor do I plan to discuss the technicalities of questions we have under consideration.

Instead I want to speak briefly about a subject that has always seemed to me to be more important than the passing interest that attaches to particular rules or regulations —about the desirability of a more cordial understanding among different groups within the securities business and a more complete appreciation by the members of your business of the character and objectives of the Securities and Exchange Commission. I want especially to emphasize the desirability and the utility of wider and more effective collaboration by representatives of the industry as a whole with the Commission and its staff in working out the best ways of dealing with problems which are plainly common problems.

It is notorious that in the past the view has been widely accepted, and to some extent cultivated, within the securities business, that the viewpoint of the Commission and the viewpoint of the industry are antagonistic. There has been substantial evidence within the last two or three years that that attitude is on the wane. But you know, and we know, that there still widely persists among you the idea that "the Government" is something separate and apart from the rest of the people and that the SEC is a sort of brooding omnipresence that looks with an impersonal baleful eye upon all activities, however legitimate, of those who deal in securities.

Because the persistence of that wholly unrealistic attitude continues to impair the Commission's opportunities to be as helpful to your business as it might be, it seems to me more important to point out its falsity than to take your time on this delightful occasion to discuss any of the innumerable technical problems which might be of momentary interest but which to my mind are of only spot significance as compared with the consummate

desirability of establishing and maintaining between your business and the Commission and understanding of our common interests and objectives.

After all, you know, people who work for the Government are not substantially different from people who do other kinds of work. It would be difficult to distinguish them when you meet them on the street, or in the crowd at a football game, or on the golf course, or at any of the other places where people congregate. Yet, it has become common practice to place them in arbitrary categories and set them off against each other as presumably antagonistic entities.

One group is often referred to as "the Government" or "those bureaucrats" (frequently with various qualifying adjectives) or by any of numerous other descriptive titles, (some of which may reflect whimsical disparagement of the character of their ancestry).

The others are variously referred to, depending upon the occasion, as "private citizens", as "taxpayers" (usually "poor"), as "business" (big or little, depending often upon who makes the statement, and why) or by other designations calculated to set them off, sometimes to their advantage, sometimes to their disadvantage, against the individual people who work for the Government.

Strangely, these classifications do not denote any rigidly immutable caste system. Government employees, in all substantial respects, are private citizens just like most everybody else. As far as I know, all of them are taxpayers, just like everyone else. Nor is government employment an hereditary misfortune. It is a status usually acquired by voluntary choice, although occasionally there is talk about someone being drafted for a job he especially wants to have. Very frequently people who have been working for the Government flow back and merge again into the group of "private citizens".

Sometimes these changes happen in quadrennial cycles. Sometimes people merely get tired of being regarded as pariahs. Or perhaps they just run out of money trying to live on a Government salary. Whatever the immediate motive, Government employees frequently do go back to private life again. And when they do it is just as hard to tell them from other private citizens as it was when they were working for the Government. Usually all is forgiven and they are taken back. After a decent interval they are not unlikely to be ranged opposite their former colleagues ardently representing other "private citizens" against alleged unjust encroachments of "the Government."

I have always had a great deal of trouble with this whole idea of segregating the government from the people. It has never seemed to me that those who choose to devote their energies and talents for a time to carrying out laws enacted by representatives of the people of the United States become noticeably different as individuals from those who engage in advancing the particular interests of particular individuals or associations of individuals.

There may be a few exceptions, but I don't believe that many people in Government service feel very differently from this, even though the idea is constantly pressed upon them from the outside. Aside from certain vague personal dissatisfactions created by these arbitrary distinctions, my main trouble with them is that they are drastically detrimental to the effective functioning of the Government. They destroy the relationship of mutual confidence and understanding that should exist between the people in Government agencies and the people concerned with questions within the jurisdiction of those agencies. I think it is essential to practical and fully effective administration of regulatory statutes like those we administer at the Commission that we constantly get direct and candid advice from the industry on practical aspects of the questions with which we deal. Carping, intemperate criticism does us no good. Special pleading and biased self seeking representations we can usually distinguish and appraise for whatever they

may be worth. But broad gauged, objective advice and honest factual information are invaluable in devising practical and effective methods of regulation.

The SEC has done its best to dispel the attitude of public shyness towards Government officials as far as that attitude affects our relations with the people whose business most directly concerns us. That effort has had a substantial degree of success — by no means complete success, but success to an extent that has brought us substantial benefit from candid consultation on many problems with people who have had full opportunity to observe and critically to appraise the operation of the laws we administer and the rules we issue under those laws. That practice has substantially increased the effectiveness of some of our operations and the practicality of some of our rules and practices. I hope it will do so even more in the future as the practice of exchanging criticisms and suggestions freely, objectively and with a minimum of prejudicial rancor becomes more widely established.

This sort of thing, of course, has its limits. Our function is to administer the laws that Congress has passed. We cannot forego that responsibility, either in the interest of maintaining good fellowship and pleasant relations or for any other reason. Nor would it be reasonable for us to expect people who feel that rules we issue unnecessarily restrict operations they believe to be wholly legitimate to acquiesce without objection in actions of ours that have that consequence merely because we have learned to adopt a civil attitude towards one another as people. Occasionally it may be necessary to fight through some points of fundamental difference without deference to the amenities. That is what the courts are for, and we welcome court review where fundamental differences develop. And where the trouble is thought to lie in the legislation itself, Congress is available to review the question. But far more often it is quite possible, once we get beyond the point where artificial antagonisms blur the perspective and distort the facts, to find large areas of

agreement, to define precisely and rationally, the points of differences and frequently to work out mutually acceptable solutions.

In many of the things with which we deal, complex as they are, there is probably one best way to do each particular job. We are much more likely to find that way if we can get the facts free of the distortions caused by irrational prejudices and animosities. That possibility is still substantially impeded by the widely prevalent feeling that "the Government" is something aloof and inimical to the individual interests of individual citizens. That attitude I especially deplore. Perhaps in due time it will be wholly dispelled.

The fact is we are really very human individuals who have constantly to make very specific decisions about very specific problems. In doing so we have to keep in mind the interests of a great many very human individual people. Almost invariably those interests conflict. It is impossible completely to please everybody. And when the rights or interests of some override, in our judgment, the rights or interests of others on some particular point, then it is that this fictional entity "the Government" is blamed by the losers, frequently not because it made an allegedly wrong choice of alternatives, but blamed as an oppressive, impersonal and dictatorial force.

I hope personally that the technique we have tried to follow at the Commission of adjusting the affairs of the securities industry to the requirements of the securities acts through collaborative exploration of feasible and practical courses of action can be developed to a point of far greater effectiveness than we have yet developed it. I hope that practice may lead to a much more general appreciation of common problems between those who administer the laws and those to whom the laws apply than has yet been achieved.

I think that those who have dealt directly with the Commission have achieved that sort of understanding to a large extent. I am not sure that to

the same extent the members of your industry appreciate that our staff too is an aggregate of reasonable individuals. I hope that opportunities for more frequent contact and for common consideration of common problems may go far to correct that disparity.

In urging upon you this idea of closer understanding between the industry and the Commission I do not want to be understood as disparaging the collaboration we have already received. We have benefited from it tremendously. I think you will find, if you review some of the things that have occurred under the securities acts, that there is tangible evidence of its effect in the progressive simplification of forms and procedures and increased simplicity in the processes of complying with the law.

What I particularly want to impress upon you is the thought that there is much more room for that sort of collaboration than has yet been realized. You are at least as keenly aware as those of us on the Commission that the securities industry has serious problems. Some of the factors that create those problems are beyond our jurisdiction. Some are your problems alone, to figure out better ways of doing your job under the changed conditions that have evolved in recent years. But there are many problems within the scope of the present or potential regulation of the Commission which demand consideration and disposition. It is in these fields that it seems to me a widening understanding and a broader exchange of information and ideas could be tremendously useful.

There is no point in discussing here the economic justification of the distribution and trading of securities. We would all agree that those functions are basic and essential to the effective operation of our system of enterprise. You and the Commission have a common interest in increasing the effectiveness with which those functions are performed. We are concerned, as you are, that the securities markets shall serve with the utmost efficiency as a medium for gathering capital for sound enterprises when such enterprises

need money to carry on their operations. We are concerned as you are that the securities markets shall operate to enable individual interests in such enterprise to be freely and fairly exchanged between those who acquire them on the initial distribution and others who want to acquire them later. We are concerned, too, but no more directly concerned than you are, that public confidence in those markets shall be maintained and constantly strengthened. And for that reason we are concerned, and if you are not concerned you certainly ought to be, that transactions in those markets shall be as free as possible from fraud and manipulation and other rackets which impair that confidence. We are responsible to see to it that participants in the market shall have access to information they need to have to make informed decisions —decisions likely to enable them to continue, as customers of yours, to participate in the financing of American enterprise. I should assume that you would be concerned with that too if you plan to continue making your living out of this business.

Perhaps I can best illustrate my point by a story about the wife of the sheep rancher from Montana who was visiting some friends up in Wisconsin and was taken to see a mink farm. She was very much interested in the whole operation and asked a lot of questions. Finally she said to the man, "And how often do you take their fur?" He looked at her a long time to recover his composure and finally said, "Well usually we take it just once because after we skin them the first time they get sort of nervous."

It is as fully evident I think to us as it is to you that the existing laws are not perfect and that disparities exist in the impact and effect of the regulations they prescribe that would benefit from change and improvement.

On some of these questions, particularly in the study we have given recently to the possibilities of improving the registration and prospectus provisions of the 1933 Act, we have had the most conscientious and helpful



collaboration from your representatives. The problem itself, whatever its relative importance, is an extremely intricate and difficult one. As a result of the meticulous study and analysis of the questions involved that have been carried out jointly between us I think we are much more likely now to come up with effective and practical suggestions for improvement than would have been possible two or three years ago, or even a few months ago. Whether we will arrive at a universally acceptable recommendation it is impossible to foretell. But I think we know the difficulties and the possible ways of dealing with them far better than we could possibly have known them if we had worked separately rather than together.

Other provisions of other acts merit careful consideration too. We shall welcome your ideas on those as well, when the time comes to give them specific consideration.

One other point which I should like to mention before I close is concerned not so much with relations between the securities industry and the Commission as it is with relations inside the industry itself. Your business has numerous distinct and diverse divisions of function. Consequently there are numerous divisions of interest within the industry itself. To some extent these interests are genuinely competitive. To that extent they are doubtless healthy conflicts. But it is very easy for such differences to be magnified into antagonisms that exceed any real relation to the factual background. It has seemed to me at times that there is at least as much need for increased interchange of views and composition of differences within your business as there is between the securities industry generally and the Commission. You might well consider whether in actuality your ultimate interests are as far apart as you sometimes make them seem from the interests of those whose functions in the industry and methods of operation differ from yours. It has seemed plainly evident to us on the Commission that some of the divisions among you seriously hamper, if they don't entirely prevent,

your objective consideration of proposals under discussion with us.

Antagonisms arise that cause aberrations in perspective wholly unrelated to the merits of the proposals under discussion.

This sort of thing has numerous manifestations. One example is the diversity of approach within the industry to the Commission's proposal that Congress extend to large companies not listed on exchanges the provisions of the '34 Act affecting annual reports, proxy regulations and insider trading.

We have yet to hear objections to that proposal which attack on the merits the basic premise that investors in such securities should have available the kinds of information the suggested amendments would make available to them. Nor is it suggested that they get those protections without the proposed amendments. They don't. The industry's objections to these proposals have rested wholly on competitive relationships within the business itself. The questions raised, aside from a few comments based on a general antipathy against regulation of any kind, have been founded in concern lest the result of the proposal would be to diminish some fortuitous special advantages which derive directly from the disparity in regulation that exists under the law as it now stands.

It has not seemed to me that any of the questions raised are in any sense insoluble. But achievement of the best solution is going to require more mutual accommodation within the industry than has been evident up to this time and a greater degree of candid consultation within the industry than apparently has thus far taken place. These questions will be resolved one of these days, one way or another. I should think it would be preferable to work them out intelligently and fairly on an amicable basis rather than to have a solution born of bitter controversy imposed by arbitrary mandate.

I point to this merely as an example of the sort of thing that would benefit from the development of a closer community of viewpoint within your

business and from a common appreciation of the fact that fundamentally you are all engaged in carrying out, in various ways, parts of an overall function that is essential to the continued well being of our economy. You know that your industry has serious problems. You have new conditions to cope with and a broadened potential clientele from which much of your new business will derive. You know that many things occur that run counter to the interests of the public investors from whose patronage your continuing business must come. I should think there would be great advantage to you in working constantly with us and among yourselves to devise simpler and more effective methods than now exist for minimizing the kinds of practices which in the long run can do your business nothing but harm by impairing the public confidence which is the basic ingredient of the merchandise you have to sell.