The original documents are located in Box 65, folder "Watergate Reorganization and Reform Act - Congressional Report" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

94TH CONGRESS
2d Session

SENATE

REPORT
No. 94-823

WATERGATE REORGANIZATION AND REFORM ACT OF 1976

REPORT

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES SENATE

TO ACCOMPANY

S. 495

TO ESTABLISH CERTAIN FEDERAL AGENCIES, EFFECT CERTAIN REORGANIZATIONS OF THE FEDERAL GOVERNMENT, AND TO IMPLEMENT CERTAIN REFORMS IN THE OPERATION OF THE FEDERAL GOVERNMENT RECOMMENDED BY THE SENATE SELECT COMMITTEE ON PRESIDENTIAL CAMPAIGN ACTIVITIES, AND FOR OTHER PURPOSES

together with

ADDITIONAL VIEWS

MAY 12, 1976.—Ordered to be printed

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WATERGATE REORGANIZATION AND REFORM ACT OF 1976

MAY 12, 1976.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 495]

The Committee on Government Operations, to which was referred the bill (S. 495) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, and to implement certain reforms in the operation of the Federal Government recommended by the Senate Select Committee on Presidential Campaign Activities, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I—PURPOSE OF LEGISLATION

The purpose of this legislation is to promote the accountability of officers and employees of the Federal Government and to invigorate the Constitutional separation of powers between the three branches of the Federal Government.

Title I of the bill establishes a Division of Government Crimes and establishes a stand-by mechanism for the appointment of a temporary special prosecutor when needed.

Title II of the bill establishes an Office of Congressional Legal Counsel to represent the vital interests of Congress in matters before the courts.

Title III of the bill requires financial disclosure by high-level public officers and employees of the Federal Government.

II. NEED FOR LEGISLATION

A. Title I—Reorganization of the Department of Justice

HISTORY OF PROPOSALS FOR AND REASONS FOR REORGANIZATION OF DEPARTMENT OF JUSTICE

Introduction

On occasion during the history of our country, a special prosecutor has been appointed to investigate alleged criminal wrongdoing by high-level Federal Government officials. During President Grant's Administration, a special prosecutor was appointed to investigate the so-called "whiskey ring", a network of tax-evading whiskey distillers. The ring, which allegedly included the President's personal secretary and close friend Orville E. Babcock, was accused of diverting hundreds of thousands of dollars in Federal tax revenues to members of the ring. The Teapot Dome scandal in the early 1920's involved large-scale and corrupt leasing of oil reserves by high-level government officials. A special prosecutor was appointed to investigate these serious allegations after Congress passed a joint resolution requiring the appointment of a special prosecutor by the President with the advice and consent of the Senate. A special prosecutor was also appointed during the Truman Administration to investigate allegations of tax fixing and malfeasance in the letting of government loans which involved officials in the Tax Division of the Justice Department and the Internal Revenue Service, and at least one high-ranking White House staffer.

Current interest in the need for an independent special prosecutor to investigate alleged wrongdoing by high-level government officials was revived at the time the first revelations surfaced about what later became known as the "Watergate" scandal. During the spring of 1973, the Senate Judiciary Committee explored the need for a special prosecutor during the confirmation hearings on the appointment of Elliot Richardson to be Attorney General. During the course of those hearings, President Nixon made a commitment to permit Richardson to appoint such an independent special prosecutor. Richardson eventually appointed Archibald Cox.

After the "Saturday Night Massacre" which resulted in the firing of Cox, President Nixon took the position that the Department of Justice could handle the investigation. As a result, the Judiciary Committees of the House of Representatives and the Senate held extensive hearings on legislation to require the appointment of a temporary special prosecutor by the courts or the President. In response to the public outcry over the Cox firing and the likelihood of Congressional action requiring the appointment of a special prosecutor, President Nixon appointed Leon Jaworski special prosecutor with appropriate assurances of independence.

In the Spring of 1974, the Subcommittee on Separation of Powers of the Senate Judiciary Committee, chaired by Senator Sam Ervin, held hearings on proposals for removing politics from the administration of justice. Among the proposals considered were the establishment of the Department of Justice as an agency independent of Presidential control and the creation of a special commission to study the establishment of an independent permanent mechanism for the investigation and prosecution of official misconduct by high-level government officials.

Every study of the problem of how to handle criminal investigations and prosecutions of high-level government officials has concluded that the problem goes beyond the Watergate scandal. In June of 1974, the Senate Select Committee on Presidential Campaign Activities recommended that a permanent Office of Public Attorney be established, independent of the President, with jurisdiction to prosecute criminal cases in which there is a real or apparent conflict of interest.

The Watergate Special Prosecution Force Final Report concluded that: "No one who has watched 'Watergate' unfold can doubt that the Justice Department has difficulty investigating and prosecuting high officials, or that an independent prosecutor is freer to act according to politically neutral principles of fairness and justice" (p. 137–8).

The report recommended the creation of a Division of Government Crimes within the Justice Department and the creation of a temporary independent prosecution office by the President, or, if necessary, the Congress, when such an office is needed.

In June of 1973, the American Bar Association established a special committee to study Federal law enforcement agencies. After over two years of study, the House of Delegates of the American Bar Association endorsed the recommendations of their Select Committee which, among other things, included a proposal to establish a Division of Government Crimes and a recommendation that Congress enact legislation authorizing the appointment of a temporary special prosecutor by the Attorney General or by a special court under carefully defined circumstances and standards. The Select Committee concluded that the issue was not whether a special prosecutor is needed, but rather how, under what circumstances, under what authority, and at what time a special prosecutor should be activated. The Committee stated that history has taught us that the existing system permits extreme situations to develop which mandate the ad hoc appointment of a special prosecutor long after one should have been appointed.

A study done with the assistance of the Congressional Research Service of the Library of Congress identified a number of instances over the last twenty years where, due to a serious conflict on the part of the Attorney General or the President, an investigation handled outside the Justice Department would have been appropriate. Such incidents involved allegations of wrongdoing against a top assistant to a President, criminal conduct by a close associate and employee of a President prior to the time the President took office, and the investigation and prosecution of a sitting Vice President.

During the extensive hearings this Committee held on the Watergate Reorganization and Reform Act, there was little, if any, dispute about two crucial facts: (1) the Department of Justice has not in the past allocated sufficient departmental resources to handle official corruption cases and cases arising out of the Federal election laws; and (2) that the Department of Justice has difficulty investigating and prosecuting crimes allegedly commited by high-ranking executive branch officials because the Department is institutionally poorly equipped to handle such cases.

The solution to these problems is not merely the enactment of more criminal laws. It is essential that the President, the Attorney General and other top officials in the Department of Justice be men of unquestioned integrity. However, it is also essential that we have a system of controls and institutions which make the misuse and abuse of power difficult, if not impossible.

As James Madison stated in the 51st Federalist Paper:

> If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed, and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government, but experience has taught mankind the necessity for auxiliary precautions.

S. 495, as amended, contains such auxiliary precautions.

S. 495, as amended, would establish a new statutory division within the Justice Department with explicit jurisdiction over criminal violations committed by officials and employees of the Federal Government. This new division is called the Division of Government Crimes. S. 495 also provides for a mechanism for the appointment of a temporary special prosecutor by the Attorney General or the United States Court of Appeals for the District of Columbia in those situations where the President or Attorney General has a conflict of interest or the appearance thereof. This would cover investigations of high-level government officials and close personal or political associates of the President or Attorney General.

Division of Government Crimes

Some of the reasons for the establishment of a Division of Government Crimes are summarized as follows:

(1) A Division of Government Crimes would ensure an allocation of resources to the investigation and prosecution of government corruption and election law violations. With the battle for resources in government, what gets done depends to a great degree on whether there is a budget to do it. A Division of Government Crimes would at least result in some resources devoted exclusively to this problem.

The Watergate Special Prosecution Force Report stated that only one reported prosecution under the Corrupt Practices Act (recently repealed) was ever brought (in 1934) and the Justice Department had long followed a policy, enunciated by Attorney General Herbert Brownell in 1954, of not initiating investigations except upon referral by the Clerk of the House of Representatives or the Secretary of the Senate, the officials to whom reports were required to be made under the act. Evidently, such referrals rarely occurred.

The report went on to state that no reported prosecutions had ever been brought under the statute prohibiting contributions by Government contractors (18 U.S.C. 611). In the case of the prohibition against corporate or labor union contributions (18 U.S.C. § 610), the record was somewhat better with respect to charges against unions or

corporations, but generally the individual corporate officers responsible for making the illegal contributions had not been charged.

The Watergate Special Prosecution Force Report concluded that it is important to the integrity of both law enforcement and the electoral process that the Department of Justice use its resources and make the effort necessary to monitor actively areas of possible abuse and begin investigations without waiting for formal referrals or complaints.

(2) A Division of Government Crimes would serve as a deterrent to would be corrupt government officials and election law violators.

(3) The handling of prosecutions of government corruption and election law cases should be done by an individual who was not a high-level campaign official in the President's campaign.

(4) The existence of a Division of Government Crimes would enhance Congressional oversight. The American Bar Association stressed the advantage of having a Division which "would be specifically considered as part of the appropriations process and having an assistant attorney general who would have to be confirmed by the Senate." [1]

(5) A Division of Government Crimes would help assure public confidence in the Department of Justice.

Temporary Special Prosecutor

Some of the reasons that were presented to the Committee for a statute which would provide for an independent special prosecutor who would handle the investigation and prosecution of alleged criminal wrongdoing by high-level government officials are summarized as follows:

(1) The Department of Justice has difficulty investigating alleged criminal activity by high-level government officials.

(2) It is too much to ask for any person that he investigate his superior. As Former Special Prosecutor Cox said of the investigation and prosecution of crimes which might involve the White House:

> The pressures, the divided loyalty are too much for any man, and as honorable and conscientious as any individual might be, the public could never feel entirely easy about the vigor and thoroughness with which the investigation was pursued. Some outside person is essential.

The Supreme Court has also noted this problem when it stated that "one who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will." [2]

The responsibility for law enforcement is placed upon the executive branch of the Federal Government. In carrying out that responsibility there are of necessity policy judgments even in the area of criminal prosecution. The President and the Attorney General must have policy control to make discretionary enforcement decisions. However, where the alleged criminal conduct of high-level administration officials is involved, this argument must bow to the fundamental principle that no man can be a prosecutor or judge in his own case.

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[1] Hearings, Part I, p. 334.

[2] *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935).

(3) It is a basic tenet of our legal system that a lawyer cannot act in a situation where he has a conflict of interest or the appearance thereof. This is not a question of the integrity of the individual. In situations where men of integrity find they have a conflict of interest—and men of integrity can have a conflict of interest—it is commonly agreed that it is their duty to disqualify themselves and have someone else undertake the representation. This is done even though they may be men of such high character that they are capable of overcoming the conflict and discharging their responsibilities conscientiously. This principal is the basis of Canon 9 of the American Bar Association Code of Professional Responsibility which states:

> A lawyer should avoid even the appearance of impropriety.

The American Bar Association's Standards Relating to the Prosecution and Defense Function apply this principal to the situation of an individual serving as a prosecutor and conclude:

> It is of utmost importance that the prosecutor avoid participation in a case in circumstances where any implication of partiality may cast a shadow over the integrity of his office.[3]

The Attorney General and his principal assistants are appointees of the President and members of an elected administration. It is a conflict of interest for them to investigate their own campaign or, thereafter, any allegations of criminal wrongdoing by high-level officials of the executive branch. The appearance of conflict is as dangerous to public confidence in the administration of justice as true conflict itself. Having men of integrity operate in the face of a conflict is an insufficient protection for a system of justice.

It was repeatedly reiterated by the American Bar Association and other witnesses that such a conclusion in no way reflects upon the integrity of any individual. It does reflect the legal profession's constant concern with whether or not justice is administered with complete impartiality and, equally important, whether or not there is an appearance of such impartiality.

(4) It is not sufficient to rely on the President or the Attorney General to appoint a temporary special prosecutor the next time the Attorney General or the President has a conflict of interest or the appearance thereof. It is not at all obvious that such an appointment will occur.

It was only after an extraordinary sequence of events in the Spring of 1973 and because of the fact that the nomination of Elliot Richardson as Attorney General was before the Senate that President Nixon finally authorized the Attorney General to name a special prosecutor.

A statutory mechanism providing for the appointment of a temporary special prosecutor would ensure that in the next national emergency such an office would come into existence at an early stage.

(5) Temporary special prosecutors may result in the investigation and prosecution of some matters which in the past were not even known

[3] 46 ABA Project on Standards for Criminal Justice (Approved Draft 1971).

to the public and were never pursued. When we have used a temporary special prosecutor every few decades, they have discovered and prosecuted additional crimes that we might never have known about if they had not been appointed.

(6) The mere existence of an authority outside the Department of Justice and the Executive Branch which can make the appointment of a temporary special prosecutor will act as a substantial deterent to extreme situations such as Watergate. There are those who believe that campaign misconduct and misconduct by high-level government officials are not rare but simply flourish when there is little reason to fear prosecution.

Support for this position can be found in the testimony of individuals who held high-level positions in the Nixon Administration during the Watergate cover-up. These witnesses made the similar assumption that "their" Department of Justice would not investigate actions condoned and conducted by employees of the White House or the Committee to Re-Elect the President. No matter how unfounded these comments may be as a prediction of Justice Department conduct, the existence of the authority for the court to appoint a temporary special prosecutor would be a deterrent to such an attitude by high-level government officials.

(7) The appointment of a temporary special prosecutor would be of assistance to the Attorney General in a situation where the proper exercise of discretion calls for a decision not to prosecute a high-level government official publicly accused of criminal wrongdoing. The use of an independent temporary special prosecutor free from any conflict of interest would result in the public acceptance of a decision not to prosecute that may be entirely justified on the merits; whereas the same decision made by an Attorney General who has a conflict of interest, or the appearance thereof, might breed public distrust of the decision not to prosecute.

In addition, the lack of a procedure for the handling of investigations of allegations of criminal wrongdoing by high-level government officials independent of the Department of Justice does harm to the morale and self-esteem of the employees of the Department. This harm is caused when the top attorneys in the Department feel compelled to act in the face of a conflict of interest instead of abstaining as our normal principles of ethics require.

(8) Any individual who is charged with investigating alleged criminal wrongdoing by high-level officials of the incumbent administration must have independence. A temporary special prosecutor appointed pursuant to a statutory procedure, would have that independence.

A statute, such as S. 495, providing that a temporary special prosecutor could only be discharged by the Attorney General for extraordinary improprieties and which required that a temporary special prosecutor report to the Judiciary Committees of the House of Representatives and the Senate when he was not receiving sufficient cooperation from the Attorney General, would ensure future temporary special prosecutors the independence thy need.

B. Title II—Congressional Legal Counsel

1. Reasons for establishing an office of congressional legal counsel

The exercise by Congress of its constitutional powers is frequently challenged in and affected by various court proceedings. Through the establishment of an Office of Congressional Legal Counsel, Congress will enable itself to vigorously defend these constitutional prerogatives where they are challenged in the courts.

Unlike the executive branch of government, Congress does not generally, and should not, attempt to effectuate its will and perform its duties by initiating law suits in the courts. However, through no choice of the Congress, many matters vitally affecting Congress end up in the courts. Most of these cases arise where law suits have been initiated to challenge an official action of the Congress, a Member or employee of Congress, or a committee or agency of Congress. In cases where congress is not directly a party, the powers of Congress are often at issue and will be interpreted and defined by a court as, for example, when a legislative veto provision enacted by Congress is challenged and the executive branch will not or cannot adequately defend the constitutionality of the statute.

In each of these types of cases, the vital interests of Congress will be affected whether or not Congress chooses to present its position to the Court. Because our judicial system is based upon the premise that adverse parties will sharpen the issues in order for the court to make the best decision, it is essential that the court have the opportunity to evaluate congressional interests based upon the vigorous and effective presentation of those interests to the court by an attorney representing the Congress. At present, representation of Congress and Congressional interests in these cases is provided on an ad hoc basis by the Justice Department and private legal counsel. Title II of S. 495 creates an Office of Congressional Legal Counsel to provide for such representation.

The Justice Department's practice of defending Members, officers, and committees of Congress in civil cases has developed gradually, until at present the Congress is almost wholly dependent on the Department for such representation. The only direct statutory basis for the practice is 2 U.S.C. 118, enacted in 1875, which requires that upon request the Department defend an "officer" of either House of Congress for acts performed in the "discharge of his official duty." The Department does, however, represent Members and committees of Congress as well. Of course, the Department handles congressional cases only when requested to do so.

On occasion the Congress has chosen instead to retain private counsel to defend itself; for example, in the civil action brought against Congress by former Congressman Adam Clayton Powell and in connection with the subpenas issued to Members and staff in the Common Cause franking privilege case. Committees sometimes defend themselves using existing staff counsel, such as did the Senate Watergate Committee when three cases were brought against it.

In recent years, Congress has involuntarily become involved in extensive litigation to defend its constitutional powers. Indeed, in the

last five years alone the Justice Department has defended Members, officers and committees of Congress in at least 55 cases. These cases include civil actions brought to enjoin enforcement of committee subpenas or issuance of committee reports; civil actions related to the enforcement of the campaign finance laws by officers of Congress; civil actions related to attempts to hold demonstrations on the Capitol grounds; a civil action to invalidate the seniority system; a civil suit to recoup salaries paid to Members while absent from Congress; and a civil suit to invalidate the qualifications for membership in the Senate Press Gallery. Not included in this number are actions involving allegations of criminal conduct, abuse of the franking privilege by an individual Member, or contested elections, which the Department (and the Congressional Legal Counsel) will not handle.

As impressive as the number and variety of these cases is the importance of the precedents being established in them. In *Powell* v. *McCormack*, 385 U.S. 486 (1969) the Supreme Court limited the right of the Congress to judge the qualifications of its Members; in *Doe* v. *McMillan*, 412 U.S. 306 (1973) it limited the ability of Congress to inform the public; in *Buckley* v. *Valeo*, (—— U.S. ——, No. 75–436 (January 30, 1976)) it limited Congress' ability to appoint officers to the Federal Election Commission.

In each case the precedents established by the courts have an impact on Congress as an institution, not just on the specific Members, officers, or committees involved. Therefore, Congress as an institution cannot be indifferent to the legal precedents which are established in these cases and their outcome.

Court challenges to Congressional power will continue to occur. The *Buckley* decision leaves the question of the constitutionality of the Congressional veto to be litigated in a future case. Similarly criminal defendants recently have issued various subpoenas to Congressional committees demanding access to documents, raising the issue of the constitutional power of Congress to control access to its papers. The nature and novelty of other challenges to Congress' power cannot be predicted, but are sure to occur.

In cases of interest to Congress where Congress is not a party, the Department of Justice will not intervene or file an amicus brief on behalf of Congress. In such cases, however, Congressional interests have occasionally been represented by private counsel retained on an ad hoc basis. For example, Congress retained private counsel to represent it as amicus curiae in *Gravel* v. *United States*, 408 U.S. 606 (1972) where the scope of legislative immunity was at issue. Private counsel has also been retained to intervene on behalf of a subcommittee of the House of Representatives in *Ashland Oil* v. *FTC*, a case where the subcommittee is opposing an attempt by Ashland Oil to bar the FTC from complying with the subcommittee's subpoena.

The interests of Congress as an institution make its present reliance on the ad hoc services of the Justice Department and private counsel unsatisfactory. These institutional interests make it inappropriate as a matter of principle and of the constitutional separation of powers for the legislative branch to rely upon and entrust the defense of its vital powers to the advocate for the executive branch, the Attorney General. In testimony before the Senate Government Operations Committee and the Senate Judiciary Committee's Subcommittee

on the Separation of Powers, representatives of the Department of Justice have unequivocally stated the obvious: the Department of Justice is a part of the executive branch and its first and foremost responsibility is to represent the interests of the President and the executive branch. Where the interpretation of the powers of the Congress before the courts is entrusted to the executive branch, the Congress is, therefore, relying on a branch of government with which Congress has, under the constitutional system of checks and balances, an adverse relationship. Without in any way questioning the good will or intentions of the Department, it is clear that the integrity and independence of Congress as a co-equal branch of government requires that Congress defend itself.

More specifically, the Department of Justice admits that it is placed in an untenable conflict of interest situation when called upon to handle certain cases on behalf of Congress. (Examples of such cases are discussed below.) In such cases, the Department states that it declines to provide representation and assists in the hiring of outside private counsel. However, the Department's position as to what constitutes a conflict of interest is very limited and covers only those situations where the Department is taking an inconsistent position in another matter presently in litigation or where the position of Congress would infringe on a power of the President. However, a conflict may also exist whenever the Department of Justice is in the position of defending a Congressional power which may in the future be used against the executive branch. Many cases presently being handled by the Department on behalf of Congress involve precisely such powers.

When the Department is able to perceive a conflict in representing Congress, it will not commence such representation. Although the Department will handle most cases, Congress already must make ad hoc provisions for retaining private counsel when the Department perceives a conflict.

Unfortunately, in two recent cases the conflict did not become apparent to the Department until after the Department had entered its appearance on behalf of Congress. In fact, in *Doe* v. *McMillan* and *Eastland* v. *United States Servicemen's Fund*, 421 U.S. 491 (1975), the Department withdrew its representation of Congressional committees just as the litigation reached the Supreme Court. As a result, Congress then had to hire private counsel at this advanced and crucial stage of the litigation. Indeed, it is the Department's official position that even though it has undertaken to represent Congress, if an agency of the executive branch subsequently asks the Department to initiate a law suit which will create a conflict of interest with the Department's representation of Congress, the Department will automatically suggest that the Congressional client obtain other counsel. When such a conflict arises, it is clear that the Department does not and cannot consider representation of its Congressional clients to be its top priority.

As a result of these and similar experiences in several other cases, committees which were or are being represented by the Department have also retained private counsel to protect themselves in the event the Department suddenly feels compelled to withdraw. There is obvious waste when taxpayers must pay for Justice Department attorneys to handle a Congressioinal case and pay as well for a private lawyer to ensure that the Department vigorously defends Congressioinal interests and to be ready to undertake the representation of Congress if the Justice Department should choose to withdraw from the case. However, faced with the policy of the Department of Justice with respect to conflicts of interest, Congress must retain private attorneys to perform such duties.

There are other ways in which a conflict can arise for the Department either before or in the course of a legal action. For example, if a Member, presently being represented by the Department, chooses to initiate a separate legal action against some department in the executive branch, the canons of legal ethics would require the Justice Department to withdraw its representation of the Member because the canons provide that an attorney cannot serve as defense counsel in a case brought by an existing client. The conflict which arose in the *Servicemen's Fund* case occurred when the Department of Justice voluntarily chose to appear as amicus curiae in opposition to the suit by the Senate Watergate Committee to enforce its subpoena for the White House tapes.

Compounding the inherent conflict of interest when the Department serves as the advocate for the Congress, the Department asserts control over the litigation it agrees to handle. When Congress wishes to make arguments which the Department cannot or will not make, the Department will take the position that Congress must retain private counsel if it wants to make such arguments. This position can have the effect of inhibiting Congressiional defendants from asserting proper control over their Department attorney, except on crucial issues.

This description of the conflicts of interest for the Department of Justice when it represents Congressioinal interests is not intended as a criticism of the Department. The Department only represents Congressional interests at the request of its Congressional clients. In turn, Congress makes these requests because there is no adequate alternative but to do so. Indeed, when Members or committees are faced with litigation, the Members or committees may place substantial pressures on the Department to handle the case despite possible long term disadvantages for Congress as an institution. In its efforts to maintain cordial relations between the branches, the Department will make every effort to honor Congressional requests. The conflicts of interests which inevitably arise are of an institutional nature.

Congressional reliance on the use of private counsel also presents serious problems. First, the use of private counsel can be very expensive. In addition, few if any private counsel have experience or expertise with the unique substantive legal issues which arise in Congressional cases. It can be very expensive to subsidize private counsel for the time it takes for them to gain this expertise.

Second, the retention of different private counsel to handle different cases provides for little if any consistency among the legal positions and approaches taken in the different cases. A private attorney will only be intimately knowledgeable about the case he is handling—and not with the full range of litigation involving Congress. One attorney might, therefore, inadvertently make an argument or concede a point in one case which has an adverse precedential impact on another case

involving Congress. Individual private attorneys are likely to have little perspective or interest in how the long range interests of Congress may be affected by any given litigation.

Finally, when faced with a law suit, Members, officers and committees often have no time to locate and retain private counsel. In such cases there is, therefore, little alternative but to request Department of Justice representation, even when they may be aware that retaining private counsel would be preferable. A simple phone call from a Member to the Department suffices to arrange for the Department to handle a case. However, if private counsel is to be employed, an attorney must be found who is willing and able to handle the case, a fee arrangement must be negotiated and arrangements must be made for payment of the fee. Furthermore, to compensate private counsel it will often be necessary for the Congressional parties to request appropriations, a time consuming, and unpredictable process. A Member must, therefore, be willing to endure substantial additional inconvenience if he chooses not to rely on the Department of Justice.

In addition to mitigating these conflicts and practical problems resulting from reliance on the Department or private counsel, there are substantial benefits which would result from the establishment of an Office of Congressional Legal Counsel which cannot otherwise be achieved. A first class litigating office in Congress will make available to Congress ongoing advice on how to avoid or anticipate litigation and for continuous monitoring of Congressional interests in cases where Congress is not a party. Increasingly, the prospect of litigation must be considered whenever Congress exercises its constitutional powers. The consequences of failing to consider the possibility of litigation is most notable when contempt of Congress charges are dismissed by the courts on technicalities such as occurred in the recent *Reinecke* perjury case (Criminal Docket #74–2068, D.C. Cir., Dec. 8, 1975).

Similarly, when a committee undertakes an investigation, there is a constant need for advice on how properly to issue and frame subpoenas and how to utilize other Congressional investigative powers so that the committee's actions will be sustained by the courts. It would not be constitutionally proper for the Justice Department or feasible for private counsel to provide such a service. Existing legislative and staff counsel readily admit that they do not have the time or training to litigate or to provide advice in anticipation of litigation.

The Congressional Legal Counsel would also continuously monitor Congressional interests in cases where Congress is not a party. For example, in the litigation concerning the custody of former President Nixon's tapes and papers, the Justice Department is defending an Act of Congress which denies Mr. Nixon custody of these materials even though the Justice Department, at the time of the Nixon pardon, issued a written legal opinion that Mr. Nixon had the legal right to custody of the materials. Congress has not chosen to intervene or appear amicus curiae in this law suit. However, the testimony submitted to the Government Operations Committee by Senator Nelson concerning the conduct of the case (Hearings, Part II, page 142) illustrates the need for an office of Congress with the ability to represent Congress in a legal action, if necessary, and to closely monitor such legal actions. To the extent that existing legislative or staff counsel presently monitor the course of such litigation, it would still be necessary to retain counsel if Congressional interests were being adversely affected.

Finally, if Congress chooses to utilize the procedure set forth in title II of this bill to bring civil actions to enforce its subpoenas, attorneys are needed to bring the actions. Presently, Congress can seek to enforce a subpoena only by use of criminal proceedings or by the impractical procedure of conducting its own trial before the bar of the House of Representatives or the Senate. However, if the Congress or a committee is interested in compelling compliance with a subpoena rather than merely punishing the subpoenaed party, civil subpoena enforcement will often be preferable to certifying a criminal contempt complaint. Unlike a civil enforcement action, in a criminal contempt action the defendant cannot purge himself of the contempt by finally producing the documents. In addition, with a criminal contempt action, expediting the litigation is more difficult than in a civil enforcement action, committee compliance with its procedures is more strictly reviewed, and the subpoenaed party's rights are given greater weight.

2. PAST CONGRESSIONAL CONCERN WITH OFFICE OF CONGRESSIONAL LEGAL COUNSEL AND CIVIL ENFORCEMENT OF SUBPOENAS

Office of Congressional Legal Counsel

Congressional concern with the need to establish an Office of Congressional Legal Counsel has often been expressed over the last decade. In 1965 the Joint Committee on the Organization of Congress considered the litigation needs of Congress and recommended that a Joint Committee on Congressional Operations be established and given the "continuing responsibility for determining, with the approval of the leadership of both Houses, whether Congress should be appropriately represented" in cases of vital interest to Congress. The joint committee found that "representation of the Congress with respect to its vital interests is unsatisfactory and the effect upon Congress of court decisions should be a matter of continuous concern for which some agency of the Congress should take responsibility."

Building on this proposal, on March 23, 1967, Senator Vance Hartke introduced S. 1384, a bill to establish an Office of Congressional General Counsel. Then on May 3, 1967, Senator Vance Hartke attempted to offer his bill, S. 1384, as an amendment to S. 355, the Legislative Reorganization Act of 1967. S. 355 already included a provision which authorized the proposed Joint Committee on Congressional Operations, with the approval of the President Pro Tempore, Speaker, and majority and minority leaders, "to provide for appropriate representation on behalf of Congress or either House thereof in any proceeding or action" which, "in the opinion of the Joint Committee, is of vital interest to Congress, or to either House of the Congress." The principal objection to Senator Hartke's bill and amendment was that it authorized the Congressional General Counsel to be the "authoritative source for interpretation of legislative intent." The Senate considered it to be unwise to establish a quasi-legal office of Congress having the power to issue binding legal opinions whether or not requested by a committee to do so. Accordingly, Senator Hartke's amendment was tabled

by a vote of 66 to 16. When the Joint Committee on Congressional Operations was finally established in 1970, it was given the power only to "identify" court proceedings of vital interest to Congress.

In July of 1967 one of the subjects of the Subcommittee on Separation of Powers' first hearings under the chairmanship of Senator Sam Ervin was the Hartke proposal, S. 1384.

In 1973 the Joint Committee on Congressional Operations held 4 days of hearings on the "Constitutional Immunity of Members of Congress." In these hearings the joint committee explored the Justice Department's policy in representing Congress and in particular the conflict of interest faced by the Department of Justice when it defended Congress in *Doe* v. *McMillan*. The Senate's decision to file an amicus brief in *Gravel* v. *United States* was also discussed. In 1973, hearings by the Subcommittee on Separation of Powers on "Removing Politics From the Administration of Justice" again focused on the Counsel for Congress proposal.

The Senate Select Committee on Presidential Campaign Activities participated in over 60 different matters before the courts during the course of its Watergate investigations in 1973 and 1974. The court filings, which comprise most of the "Legal Documents Relating to the Select Committee Hearings," run to over 2,100 pages. As a result of its experience, the Select Committee recommended that the Congress give careful considertation to a bill then pending before the Senate (S. 2569) that would establish a Congressional Legal Service and thus give Congress "a litigation arm that would allow it to protect its interest in court by its own counsel." As Senator Baker, Vice Chairman of the Select Committee, stated: "These are numerous instances in which the interests of Congress and Congressional committees are divergent from those of the President and the various departments, and in which the existence of a permanent Congressional litigating staff would be both helpful and appropriate. The Select Committee on Presidential Campaign Activities certainly was engaged, albeit unsuccessfully, in extensive litigation; and a Congressional Legal Service would have been of great utility to the Committee." S. 2569 had been introduced by Senator Walter Mondale on October 11, 1973. Similar proposals to establish on Office of Congressional Legal Counsel had been introduced by Senator Jacob K. Javits, including S. 3877 on June 4, 1974. On December 11, 1974, Senator Ervin introduced S. 4277 which was based upon the recommendations of the Watergate Committee and which contained Senator Mondale's proposal.

In the fall of 1975 and the spring of 1976, the Subcommittee on Separation of Powers held hearings on "Representation of Congressional Interests Before the Courts." The chairman of the subcommittee, Senator James Abourezk, had earlier introduced S. 2731 which refined previous proposals for an Office of Congressional Legal Counsel. The subcommittee compiled a detailed hearing record, focusing specifically on the conflict of interest which occurs when the Justice Department represents Congress and generally on the inadequacy from Congress' institutional point of view of the present ad hoc provisions for representation of Congress.

Civil enforcement of subpoenas

Historically Congress has made various provisions for enforcing its subpenas and orders. The contempt power of Congress was affirmed in the 1821 case of *Anderson* v. *Dunn*. During its early period Congress brought contumacious witnesses for trial before the House and Senate and confined those found in contempt in the Capitol guard house. Variations of this practice continued until 1945.

In 1857 Congress grew disatisfied with the fact that it could imprison a person only until the end of a legislative session. In that year Congress passed a statute, still in effect in amended form as 2 U.S.C. 192, making it a criminal offense to refuse to divulge information demanded by Congress. Even after passage of the 1857 statute, Congress preferred to enforce its own punishment rather than turn a witness over to the United States attorney. However, as courts more frequently began to review Congressional contempt trials, Congress same to rely entirely on the criminal sanction. Using both procedures, Congress has held approximately 400 persons in contempt since 1789, most of the contempts having occurred since 1945.

While investigating the contested election of Senator William S. Vare in 1928, a Senate committee sought to enforce a subpena for certain ballot boxes and various documents by bringing a civil suit. The Supreme Court held that the Senate did not intend or authorize the committee to bring suit. The day the Supreme Court decision was rendered, the Senate enacted a standing order authorizing all Senate committees to "bring Suit . . . if the Committee is of the opinion that the suit is necessary to the adequate performance of the powers vested in it."

On May 4, 1953, Congressman Kenneth Keating introduced H.R. 4975 which conferred jurisdiction on the courts to hear civil actions to enforce congressional subpoenas. The principal advantages cited by Congressman Keating for civil enforcement were speed, flexibility, and effectiveness. Four days of hearings were held on the bill. The bill then passed the House on August 4, 1954, and again in the next session of Congress on March 15, 1955. The Senate took no action on either occasion.

In 1962 and again in 1972 judges of the United States Court of Appeals for the District of Columbia recommended in criminal contempt cases that Congress should adopt an alternate to criminal contempt. See *Tobin* v. *United States*, 306 F. 2d 276 (D.C. Cir. 1962) and *U.S.* v. *Fort*, 443 F.2d 670, 676–678 (D.C. Cir. 1970).

Confronted by President Nixon's refusal to honor its subpoena for certain White House tape recordings, the Senate Watergate Committee brought a civil action for a declaratory judgment that President Nixon's claim of executive privilege was unlawful. The committee found the prospect of criminal contempt or trial before the Senate inadequate and inappropriate remedies. Judge Sirica held that the court had no jurisdiction to hear the action, specifically rejecting the 1928 Standing Order as a basis for jurisdiction. Senator Ervin then introduced and the Congress soon passed a statute (Public Law 93–190) giving the District Court jurisdiction over that suit and others the Watergate Committee might bring to enforce subpoenas issued by it to the executive branch. Eventually the court of appeals dismissed the committee's suit due to the pending House Impeachment inquiry.

C. Title III—Financial Disclosure

1. REASONS FOR PUBLIC FINANCIAL DISCLOSURE

Existing financial disclosure requirements vary substantially throughout the Federal Government. Executive branch regulations require confidential disclosure to an employee's superior while the regulations of the House of Representatives, the Senate and the courts require some confidential disclosure and limited public disclosure. Some top government officials, such as the President, Vice President, and Justices of the Supreme Court, are not required to make any financial disclosures whatsoever.

It was the unanimous opinion of the witnesses who testified before the committee on this subject that any requirements for public financial disclosure should apply uniformly across-the-board to the executive, judicial and legislative branches of the government.

Some of the reasons stated by witnesses who appeared before the committee for public financial disclosure are summarized below:

(1) Public financial disclosure will increase public confidence in the government. Numerous national polls of voter confidence in officials of the Federal Government and the low turnout of voters in the 1974 Congressional elections were cited for the proposition that public confidence in all three branches of the Federal Government has been seriously eroded by the exposure, principally in the course of the Watergate investigation, of corruption on the part of a few high-level government officials. Public financial disclosure was seen as an important step to take to help restore public confidence in the integrity of top government officials, and, therefore, in the government as a whole.

(2) Public financial disclosure will demonstrate the high level of integrity of the vast majority of government officials. Only a very small fraction of a percent of all government officials have ever been charged with professional impropriety.

(3) Public financial disclosure will deter conflicts of interest from arising. Discloure will not tell an official what to do about outside interests; it will ensure that what he does will be subject to public scrutiny.

(4) Public financial disclosure will deter some persons who should not be entering public service from doing so. Individuals whose personal finances would not bear up to public scrutiny, whether due to questionable sources of income or a lack of morality in business practices, will very likely be discouraged from entering public office altogether, knowing in advance that their sources of income and financial holdings will be available for public review.

(5) Public financial disclosure will better enable the public to judge the performance of public officials. By having access to financial disclosure statements, an interested citizen can evaluate the official's performance of his public duties in light of the officials outside financial interests.

2. PAST FEDERAL GOVERNMENT CONCERN WITH FINANCIAL DISCLOSURE

Beginning in the late 1940's, individuals in the federal government began to express concern over the absence of official standards of conduct and financial disclosure regulations for employees of the federal government.

Within the Congress, Senator Wayne Morse was an early advocate of such disclosure legislation. In 1946 he introduced a resolution which would have required Senators to file annual statements of income and financial transactions. In subsequent years Morse expanded this legislation to cover not only Members of Congress, but also all persons receiving salaries from the Federal government in excess of $10,000 annually. President Harry Truman endorsed Morse's proposals in principle and, in a special message to Congress on September 17, 1951, Truman recommended conflict-of-interest legislation which included a requirement that all employees of the federal government receiving salaries of $10,000 or more annually file annual statements of their total incomes, including the amount and sources of outside income. Despite Truman's concern, none of the Morse proposals were enacted or even reported to the Senate.

In 1951 Senator J. William Fulbright introduced a resolution to establish a Congressional Commission on Ethics in the Federal Government which would make recommendations to the executive and legislative branches regarding standards of conduct for public officials. A subcommittee of the Senate Labor and Public Welfare Committee, chaired by Senator Paul Douglas, incorporated features of the Fulbright resolution in its study of ethical problems in the legislative and executive branches, including proposals for a code of ethics for government employees, a revision of the conflicts codes, and financial disclosure legislation. No action was taken on the subcommittee's proposals.

In 1961, President John Kennedy asked Congress to review and consolidate existing Federal bribery and conflict-of-interest laws. Congress enacted such legislation in 1962, but the law did not give agency heads the authority to issue ethical standards or to take disciplinary actions, provisions which the President had requested. Nor did the measure contain any financial disclosure provisions.

In the early 1960's, there was increasing concern over the conduct of Members and employees of Congress. Disclosure in the Senate of the activities of Robert G. (Bobby) Baker, Secretary to the Democratic Majority, is generally regarded as the event that precipitated the creation of the Senate Select Committee on Standards of Conduct and the adoption by the Senate of financial disclosure regulations. Faced with serious charges of professional misconduct against one of its former employees and no specific rules or regulations in existence governing the scope of activities of officers and employees, the Senate directed its Rules and Administration Committee to hold hearings in this area. Extensive hearings were held and investigations were conducted from October 1963 to March 1965. The Senate considered various resolutions from the Rules Committee which called for the establishment of standards of conduct and financial disclosure re-

quirements for Members, officers, and employees of the Senate, but failed to adopt any of these proposals. Instead, the Senate created the Select Committee on Standards and Conduct on July 24, 1964, and authorized it to recommend additional rules and regulations to insure proper standards of conduct for Members, officers, and employees of the Senate.

On March 1, 1967, the 90th Congress refused to seat Representative Adam Clayton Powell of New York, following an investigation into his activities while he was a Member of Congress. This action precipitated the creation, in April 1967, of the House Committee on Standards of Official Conduct, which was directed to make recommendations to the full House concerning the official conduct of House Members and employees. In 1968 both Houses of Congress adopted rules establishing standards of conduct and requiring annual disclosure of certain financial information (a portion of which is available for public inspection) by Members and officers of Congress, senatorial candidates, and certain legislative branch employees.

On May 26, 1970, the House amended its financial disclosure regulations to require Members, officers, and certain employees to report publicly the source of any honoraria of $300 or more and the identity of creditors to whom $10,000 or more in unsecured loans was owed for 90 days or longer. The amount of the income from honoraria and the amount of the indebtedness are reported confidentially.

The Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration held additional hearings in November of 1971 on two bills requiring further public disclosure by Federal Government employees. No other action was taken on these measures.

With respect to the executive branch, President Lyndon Johnson issued Executive Order 11222 on May 8, 1965, establishing ethical standards and requirements for confidential financial disclosure by officers and designated employees of the executive branch, excluding the President and Vice President. Pursuant to this Executive Order, standards of conduct and guidelines for confidential financial disclosure governing officers and employees in the Executive Office of the President were published in the Federal Register.

With respect to the judicial branch, the Judicial Conference of the United States adopted resolutions on June 10, 1969, prohibiting Federal judges from accepting compensation for nonjudicial services and requiring them to file periodic financial disclosure statements. The conference rescinded these resolutions on November 1, 1969, and replaced them with a requirement that Federal judges file a quarterly report with a panel of three United States judges, listing any compensation in excess of $100 earned for nonjudicial services.

On August 17, 1972, the American Bar Association issued a "Code of Judicial Conduct," which it considered applicable to Federal judges. The ABA Code requires judges to remain free from involvement in commercial enterprises, stipulates disqualification of judges from cases in which they own a single share of stock in a party involved in a dispute before their court, and requires judges to disclose publicly gifts worth $100 or more and income from non-judicial sources, except private investments. On November 1, 1972, Chief Justice Warren Burger stated that the ABA Code would apply to all Federal judges. On April 6, 1973, the Judicial Conference directed all Federal trial and appellate judges and full-time United States magistrates and bankruptcy judges to file semiannual public reports disclosing gifts of more than $100 and income from nonbench work. The Judicial Conference, however, cannot force a judge to obey its rules.

In 1973, 1974 and 1976 the Senate attempted to establish uniform public financial disclosure regulations for the three branches of government when it passed various amendments to the Federal Election Campaign Act applying to government officials and candidates for certain elective offices. All of these amendments, however, were deleted in conference with the House.

3. EXISTING FINANCIAL DISCLOSURE REGULATIONS FOR FEDERAL EMPLOYEES

Legislative branch

Senate

Senate Rule XLIV, "Disclosure of Financial Interests," requires all Senators, declared candidates for the Senate and employees compensated at a rate in excess of $15,000 a year to file an annual financial statement with the Comptroller General. Only a very small portion of the information required to be filed is made available to the public for inspection, namely gifts or aggregates of gifts from a single source exceeding $50 in value and the amount and source of each honorarium of $300 or more. All the financial information required to be reported is sealed and held by the Comptroller General and is not available to the public. The information reported, but not disclosed to the public, includes a copy of the Federal income tax return, the amount and source of each fee of $1,000 or more; the name and address of each business or professional corporation; the firm, business or enterprise in which the person reporting was an officer, director, partner, proprietor, or employee and from which he received compensation, and the amount of compensation; the identity of real or personal property worth $10,000 or more; the identity of each trust or other fiduciary relation in which he held a beneficial interest having a value of $10,000 or more; the identity of each liability of $5,000 or more owed (individually and jointly with spouse); and the source and value of all gifts in the aggregate amount of value of $50 or more from a single source. This information will be transmitted to the Senate Committee on Standards and Conduct upon the adoption of a resolution by a recorded majority vote of the committee requesting the reports.

House of Representatives

House Rule XLIV, "Financial Disclosure," requires Members, officers, principal assistants to Members and officers, and professional staff members of committees of the House of Representatives to file an annual financial statement with the House Committee on Standards of Official Conduct. The interest of a spouse or other party constructively controlled by the person reporting must also be reported. The following information is made available to the public: (1) the name,

instrument of ownership, and management position held by the individual in any business doing a substantial business with the Federal government or subject to Federal regulatory agencies in which the ownership is in excess of $5,000 or from which income of $1,000 or more was derived during the preceding calendar year; (2) the name, address, and type of practice of any professional organization in which the person reporting, or his spouse, is an officer, director, or partner, or serves in any advisory capacity, from which income of $1,000 or more was derived during the preceding year; (3) the source of income for services rendered exceeding $5,000, any capital gain from a single source exceeding $5,000 (other than sale of one's personal residence), each reimbursement for expenditures exceeding $1,000, and honorariums from a single source aggregating $300 or more; and (4) the name of each creditor to whom the person reporting was indebted, unsecured by assets, for a period of 90 days or more during the preceding year in an aggregate amount in excess of $10,000.

The exact amounts of the items made available for public inspection are filed confidentially and not made available for public inspection. This information includes the fair market value and income derived from a business interest, the amount of income derived from professional organizations and other services rendered, and the amount of indebtedness owed to each creditor.

Executive branch

Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," which was issued on May 8, 1965, by President Lyndon Johnson, requires confidential financial disclosure by officers and designated employees of the executive branch, excluding the President and Vice President who remain unaffected by any financial disclosure requirement. Pursuant to this Executive Order, the Civil Service Commission and agency heads have promulgated regulations to enforce its provisions.

The Executive Order requires heads of agencies, Presidential appointees in the Executive Office of the President, and full-time members of committees, boards or commissions appointed by the President to file financial statements with the Civil Service Commission.

The regulations issued by the Civil Service Commission require executive branch employees compensated pursuant to the Executive Salary Schedule and all other executive branch employees compensated at a level of GS–13 or above to file similar financial statements with their agency heads. These statements must be amended on a quarterly basis.

The Executive Order and the civil service regulations require that financial statements be held in confidence and that no information on the statements be disclosed to the public, except as the Chairman of the Civil Service Commission or the head of an agency concerned may decide to disclose.

The confidential financial statements filed by the above officers and employees must contain: (1) the names of all business enterprises, nonprofit organizations and educational or other institutions in which the individual serves as an employee, officer, owner, director, trustee, partner, adviser or consultant or in which he has a financial interest

through a pension, retirement, or other similar plan or through the ownership of stocks, bonds or securities; (2) the names of all creditors, excluding those resulting from a home mortgage or ordinary living expenses; and (3) a list of interests in real property, excluding a personal residence.

All special government employees in the executive branch are required to submit to their agency heads a statement listing all current Federal government employment, the names of all organizations and institutions in which an individual serves as a paid or volunteer officer or employee, the names of all corporations in which he holds stocks or bonds, and the names of all partnerships in which he is engaged. These statements must also be updated quarterly.

In March, 1975, President Ford issued guidelines requiring disclosure of financial information by White House staff members paid at a level equivalent to GS–13 or above to the Counsel to the President. These statements are also kept confidential and no information in them may be disclosed, except by direction of the President for good cause shown.

Judicial branch

Although Supreme Court Justices are not presently required to make any financial disclosures, Federal judges are covered under guidelines adopted by the American Bar Association and the Judicial Conference of the United States. The Code of Judicial Conduct, adopted in 1972 by the ABA, and a similar code adopted by the Judicial Conference in 1973, require the judges to file semi-annual reports with the Judicial Conference, the judicial council of their circuit or the appropriate court, and the clerk of the court of which the judge is a member. These reports will be public and will disclose gifts of more than $100 and income from non-judicial work. The Judicial Conference, however, cannot enforce the provisions of these codes.

In December 1974, the President signed a comprehensive Federal law dealing with judicial disqualifications. It bars Supreme Court Justices and Federal judges from participating in cases involving companies in which they own as little as one share of stock.

4. INADEQUACY OF EXISTING FINANCIAL DISCLOSURE REQUIREMENTS

The existing financial disclosure requirements for members of the executive, legislative and judicial branches of the Federal government are inadequate for the following reasons:

(1) *Existing financial disclosure requirements are inconsistent throughout the Federal government.*—The requirements for financial disclosure vary throughout the Federal government. The public is not aware of what has to be disclosed and where to go to see the material which is available to the public.

The committee agrees with the comment of Senator Howard Cannon that:

> It makes no sense at all to single out only one of the three branches of government and subject it alone to the glare of publicity and the possible cloud of suspicion.

Title III of this bill creates a uniform requirement for public financial disclosure applicable throughout the Federal government. The public will know what has to be disclosed and can go to one location, the General Accounting Office, to see the financial disclosure statement of any high-level government official.

(2) *Some of the highest government officials are not now covered by any financial disclosure requirements.*—The President, Vice President, and Justices of the United States Supreme Court are all exempt from any reporting requirements whatsoever.

(3) *No officials of the executive branch are currently required to make public financial disclosure statements.*—Executive Order 11222 and the pertinent Federal regulations state that the information required of executive branch officials and employees shall be submitted to the Chairman of the Civil Service Commission, or the agency head in appropriate cases, and that such information "shall be held in confidence."

(4) *Confidential financial disclosure statements are not adequately reviewed or audited.*—All but the top executive branch officials who presently file confidential financial statements do so with their respective agency heads. Many agencies, however, do not have effective regulations regarding prompt review of reports and divestiture of holdings which present a potential conflict of interest. For example, a General Accounting Office report on the financial disclosure system of the Food and Drug Administration revealed that 203 employees in regulatory positions who were supposed to file financial statements in 1974 failed to do so. These failures to report were not realized by the FDA Director until the 1975 reports were being filed.

(5) *Conflict of interest requirements are not adequately enforced.*—Executive Order 11222 specifically states that employees of the executive branch may not have "direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with their responsibilities and duties as Federal employees." Nevertheless, the General Accounting Office has found in studies of the Federal Maritime Commission, the Food and Drug Administration and the U.S. Geological Survey that the 1974 confidential financial statements filed by agency employees on their face show numerous financial conflicts of interest which the agency heads took no action to resolve.

(6) *Public financial disclosure by Members of Congress is limited.*—In the House, only the position held, the type of practice engaged in, the source of income and the name of each creditor is required to be disclosed publicly. The amounts of each of these interests are not publicly disclosed. In the Senate, only gifts in the aggregate amount of $50 or more and the amount and source of each honorarium of $300 or more are publicly disclosed. All other information is privately disclosed. The requirements established by S. 495 will make disclosure by Members of Congress meaningful and should avoid unfounded charges of impropriety.

(7) *Public financial disclosure requirements for judges are limited and unenforceable.*—The only items which members of the judicial branch are directed to report are the sources of income and gifts. The identification of assets which could present a conflict of interest is excluded from coverage. Furthermore, even the limited financial statements are voluntary, and, as stated above, no disclosure requirements are applicable to Justices of the Supreme Court.

III. SUMMARY AND NATURE OF WATERGATE REORGANIZATION AND REFORM ACT

A. Title I—Reorganization of the Department of Justice

1. SUMMARY

Division of Government Crimes

Title I of the legislation establishes a Division of Government Crimes within the Department of Justice. The Division is to be headed by the Assistant Attorney General for Government Crimes who shall be appointed by the President and confirmed by the Senate for a term coterminous with that of the President making the appointment.

An individual cannot be appointed Assistant Attorney General for Government Crimes if that individual has, during the five years preceding his appointment, held a high-level position in the campaign for office of the current President or Vice President. This statutory standard will be interpreted and applied solely by the Senate in the process of confirmation of the Assistant Attorney General.

The jurisdiction of the Division of Government Crimes includes all criminal allegations against top level officers or employees of the Federal Government and jurisdiction over criminal allegations against lower level government employees if the violation of Federal law is related to the government work or compensation of the employee.

The jurisdiction of the Division of Government Crimes would also include criminal violations of Federal laws relating to lobbying, campaigns and election to public office. This jurisdiction covers offenses in the above categories no matter who commits the offense.

The Attorney General has the responsibility and authority to supervise the Assistant Attorney General in the discharge of all his duties. Therefore, the Division is established on an equal footing with all other divisions of the Department of Justice.

Appointment of Temporary Special Prosecutor

This portion of the legislation requires the appointment of an independent temporary special prosecutor whenever the Attorney General or the President has a conflict of interest with respect to a particular investigation or prosecution.

The bill contains a legislative standard defining when the Attorney General or the President has such a conflict of interest. Whenever the Attorney General considers the appointment of a temporary special prosecutor, he must file a memorandum with the United States Court of Appeals for the District of Columbia. If the Attorney General decides that a temporary special prosecutor should be appointed, the Attorney General has the authority and responsibility to appoint a temporary special prosecutor. The Attorney General must also define in writing the matters which the temporary special prosecutor is authorized to investigate. The court will then review this appointment solely for the purpose of determining whether the individual appointed temporary special prosecutor meets the statutory standards for the appointment, and whether the jurisdiction given him is broad enough to carry out the purposes of this legislation. If the court finds the appointment of the temporary special prosecutor deficient for any of

the reasons specified above, the court is authorized to appoint a temporary special prosecutor which appointment would supersede any appointment made by the Attorney General.

If the Attorney General decides not to appoint a temporary special prosecutor, he must file a memorandum with the court. The court will then review that memorandum and decide whether a conflict of interest or the appearance thereof as defined in this bill exists. If the court concludes that a conflict of interest or the appearance thereof does exist, the court is authorized to appoint a temporary special prosecutor and to define the jurisdiction of the temporary special prosecutor. Court consideration of whether a temporary special prosecutor should be appointed can also be initiated by a private citizen thirty days after that citizen has gone to the Attorney General and the Attorney General has refused to consider such an appointment.

With respect to any of the functions assigned to the court under the bill, the three-judge division of the court is sitting as a panel of appointment making an appointment of an officer of the United States as authorized under article II of Section 2 of the United States Constitution. Whenever the Attorney General makes a finding that information, allegations or evidence of criminal wrongdoing are clearly frivolous, the court has no authority to appoint a temporary special prosecutor in that case.

A temporary special prosecutor which is appointed by the Attorney General or the court has all the authority and powers of the Assistant Attorney General for Government Crimes with respect to the specific matters the temporary special prosecutor is authorized to look into. A temporary special prosecutor may be removed from office before completing the investigation and any resulting prosecution only by the Attorney General for extraordinary improprieties.

This legislation contains an expedited review procedure to permit a constitutional challenge to the authority of a temporary special prosecutor appointed under this statute without damaging an investigation or prosecution. The expedited review procedure can only be used the first time a provision contained in this statute is challenged on constitutional grounds.

The United States Court of Appeals for the District of Columbia is the court which is assigned the responsibility for the appointment of temporary special prosecutors. Priority in assignment to the division of the court which will make the appointments must be given to retired circuit court judges and retired justices. There is also a provision prohibiting any judge or justice sitting on this division from sitting on any other matter involving a temporary special prosecutor whom that panel appointed.

The procedure for appointment of temporary special prosecutors specifically deals only with the serious conflicts of interest of a personal or partisan political nature by the President or the Attorney General. Conflicts of interest by lower level Justice Department personnel must be dealt with by the Attorney General, who is directed to promulgate rules and regulations which will require any officer or employee of the Department, including a U.S. attorney or a member of his staff, to disqualify himself from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or partisan political conflict of interest or the appearance thereof.

B. Title II—Congressional Legal Counsel

1. SUMMARY

Title II of the Watergate Reorganization and Reform Act establishes the Office of Congressional Legal Counsel, an office with responsibility for litigation involving the vital interests of Congress. The office will be headed by a Congressional Legal Counsel. The Joint Committee on Congressional Operations is given general responsibility for oversight of the activities of the Office.

The Congressional Legal Counsel and a Deputy Congressional Legal Counsel will be appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives from among recommendations submitted by the Majority and Minority Leaders of the Senate and the House of Representatives. Appointments to these positions must be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. An appointment of a Congressional Legal Counsel or Deputy Congressional Legal Counsel must be approved by a concurrent resolution of the Senate and the House of Representatives. Both the Congressional Legal Counsel and Deputy Congressional Legal Counsel will be appointed for a term which will expire at the end of the Congress following the Congress during which the Congressional Legal Counsel is appointed. However, Congress may, by concurrent resolution, remove either the Congressional Legal Counsel or the Deputy Congressional Legal Counsel before the expiration of their term of employment.

There are three major types of litigation in which the Congressional Legal Counsel can be authorized to represent Congress. Such representation, with two minor exceptions, requires the concurrence of one or both Houses of Congress.

The first responsibility of the Congressional Legal Counsel is to defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or any Member, officer or employee of a House of Congress in a civil action in which that individual or entity is a party defendant and in which an official Congressional action is placed in issue. The Congressional Legal Counsel is also authorized to defend the same entities and individuals in any civil action with respect to any subpoena or order directed to that individual or entity in their official capacity. The Congressional Legal Counsel undertakes such representational activity only at the direction of Congress or the appropriate House of Congress and, if the representation is of an individual, with the consent of that individual. The Joint Committee on Congressional Operations is given the responsibility for authorizing the Congressional Legal Counsel on an emergency basis to defend such individual or entity in certain specified situations when the Congress or the appropriate House of Congress is not in session and the interest to be represented by the Congressional Legal Counsel would be prejudiced by a delay in providing such representation.

Secondly, the Congressional Legal Counsel may be directed to intervene or appear as amicus curiae on behalf of Congress in legal actions in which the constitutionality of a law of the United States is challenged, the United States is a party, and the constitutionality of that

law is not adequately defended by counsel for the United States. The Counsel may also be directed to intervene or appear in a legal action where the powers and responsibilities of Congress under Article I of the Constitution are placed in issue. The Congressional Legal Counsel is given the ongoing responsibility to monitor major cases pending before the courts and is required to notify the Joint Committee on Congressional Operations of any legal actions in which he believes Congress should intervene or appear. The Joint Committee will then publish in the Congressional Record material received from the Congressional Legal Counsel describing the legal proceeding in which intervention or appearance is recommended. However, any intervention or appearance by the Counsel must be authorized by a concurrent resolution approved by both Houses of Congress.

The third major responsibility of the Congressional Legal Counsel is to bring civil actions against an individual or corporation to enforce a subpoena or other order issued by Congress, a House of Congress, or a committee or a subcommittee authorized to issue such a subpoena or order. This procedure does not apply to attempts to get information from the executive branch. The discretion of Congress to punish contempt by existing procedures—namely, to refer a contempt to the United States attorney for criminal prosecution or to hold an individual or entity in contempt of a House of Congress by bringing that individual before the bar of the Congress—is specifically reserved.

Finally, the Counsel is authorized to represent committees in requests to courts for grants of immunity. Such representation—as with representation on an emergency basis—does not need to be approved by Congress or by a House of Congress. This is consistent with the procedure currently followed under the immunity statute.

The Congressional Legal Counsel is authorized to advise, consult and cooperate with relevant agencies and offices of Congress. For example, the Congressional Legal Counsel is directed to assist the Congressional leadership in responding to subpoenas or other requests for withdrawal of papers in the possession of the Senate or the House of Representatives.

The Congressional Legal Counsel may assist individual Members, officers or employees of Congress with regard to obtaining private legal counsel for such individual when such individual is not represented by the Congressional Legal Counsel.

The Congressional Legal Counsel is also directed to compile and maintain legal research files of materials from court proceedings which have involved the Congress. These materials will provide Congress with a valuable resource center containing information with respect to legal issues and legal actions involving the powers and responsibilities of Congress.

2. NATURE OF CONGRESSIONAL LEGAL COUNSEL

Title II of S. 495, as amended, has been drafted to establish a high quality legal office under the direct control of the Congress to represent the Congress in civil litigation of vital interest to Congress.

(1) The bill is directed at reinforcing the doctrine of separation of powers. The Justice Department and all legal scholars of which the committee is aware agree that Congress has the constitutional power to

(1) hire legal counsel to represent it when Congress is a defendant in a civil legal action arising from the performance of official duties, (2) bring a civil action to enforce a subpoena, and (3) intervene or appear as amicus curiae with respect to matters relating to the powers of Congress. The Congressional Legal Counsel is given authority only to defend Congressional interests in already existing litigation and to bring civil actions against nongovernmental parties to enforce a Congressional subpoena. These responsibilities are consistent with the constitutional doctrine of separation of powers and will enable Congress effectively to assert its constitutional role as a co-equal branch of the Federal Government.

(2) The duties to be performed by the Office are not, with minor exceptions, presently performed by any existing Congressional staff. The Office will assist Congress in taking steps to avoid or anticipate litigation. The cost of creating the Office should not exceed the amount presently expended by the Justice Department in representing Congress and by Congress in retaining private counsel.

(3) Creation of an Office of Congressional Legal Counsel should not impose any additional burden on the courts. Every legal proceeding in which the Congressional Legal Counsel may be authorized by Congress to participate will already be pending before the courts, except for the bringing of civil actions to enforce Congressional subpoenas. The latter are already resolved in the courts in criminal contempt proceedings.

(4) The bill is drafted to assure that Congress will exercise firm and continuous control over all activities of the Office. The appointment of the Counsel is made by the joint leadership and must be approved by Congress. The Counsel serves for a term of four years, but may be removed at any time. Every representational activity undertaken by the Congressional Legal Counsel must be approved by a concurrent resolution of Congress or by a resolution of a House of Congress, except for representing a Member or committee on an emergency basis and for serving as an authorized representative of a committee in requesting immunity for a witness. The Joint Committee on Congressional Operations, with the joint congressional leadership serving as ex officio members, must authorize any emergency representation and is directed to oversee all activities of the Congressional Legal Counsel. When engaged in any representational activities, the Counsel is required to defend vigorously all Congressional powers.

(5) The bill fully respects the ethical principles which govern lawyer-client relationships. The Congressional Legal Counsel can be directed to represent an individual Member, officer or employee of Congress only with the consent of such individual. An individual who chooses not to be represented by the Congressional Legal Counsel is authorized to request reimbursement for the cost of retaining private counsel. The bill includes rational and detailed procedures for the resolution of any conflict or inconsistency between representation by the Counsel of any party and the carrying out of the Counsel's duties under the provisions of this title or the compliance with professional standards and responsibilities.

(6) The bill enhances the ability of a Member of Congress acting as an individual to bring any kind of civil action he or she might desire

to bring. The Counsel may advise, consult, and cooperate with such individual, although the Counsel may not represent him. For the same reason, the title preserves the ability of a Member to intervene or appear as amicus curiae in a legal proceeding, even when the Congressional Legal Counsel is already appearing on behalf of Congress and even if the Member is taking a different position from that taken by the Congressional Legal Counsel. Furthermore, the Congressional Legal Counsel is specifically authorized to assist individual Members in obtaining private counsel and by making relevent legal research materials available to them.

(7) The bill specifically precludes the Congressional Legal Counsel from representing any individual Member of Congress in a criminal proceeding or any other proceeding which is unrelated to performance of official duties.

C. Title III—Financial Disclosure

SUMMARY

Title III of the legislation is a comprehensive statute requiring full and complete public financial disclosure by high-level officials in all three branches of the Federal Government. It does not in any way regulate permissible conduct or prohibit the holding of any financial interest.

The bill may be divided into three main portions. The first portion defines who must file financial disclosure statements, the second specifies what information must be provided in the statements, and the third provides regulations for the enforcement of this statute and for public access to the reports.

Individuals required to file reports

The individuals who must file an annual public financial disclosure report are the President, Vice President, Members of Congress, justices and judges of the United States, officers and employees of the Federal Government compensated at a rate equal to or greater than the rate of pay for grade GS–16 (presently $36,388.00), and members of a uniformed service compensated at a rate equal to or greater than the rate of pay for grade O–6.

In addition, any individual who seeks nomination for election to the office of President, Vice President or Member of Congress must file a public financial disclosure statement in any year in which that individual has taken actions to qualify as a candidate for public office under the Federal election laws.

Contents of reports

The financial disclosure statements required under this statute are uniform for all individuals who have to file and must contain the following information:

(1) The amount and source of each item of income, each reimbursement for any expenditure, and each gift or aggregate of gifts from one source (excluding gifts from any member of his immediate family) received during the preceding calendar year which exceeds $100 in value;

(2) The amount and source of each item received in kind (other than items received from any member of his immediate family) during the preceding calendar year which exceeds $500 in value;

(3) The identity and category of value of each asset held during the preceding calendar year which has a value in excess of $1,000 as of the close of the preceding calendar year. This requirement covers only assets of a business nature and specifically excludes personal possessions and household items, including vehicles, owned exclusively for the personal use of the individual and his dependents;

(4) The identity and category of value of each liability owed in excess of $1,000 at the close of the preceding calendar year;

(5) The identity, category of value and date of any transaction in securities of any business entity or any transaction in commodities futures during the preceding calendar year which exceeds $1,000 in value;

(6) The identity and category of value of any purchase, sale, or holding of real property during the preceding calendar year which exceeds $1,000 in value;

(7) A description of any patent right or interest in a patent right held; and

(8) A description of any contract, promise or other agreement between the reporting individual and any other person regarding the individual's employment after he leaves government service, including any unfunded pension agreement between the reporting individual and any employer other than the Federal Government.

Those government employees who must file a report under this statute, (excluding the President, Vice President, Members of Congress, and justices and judges of the United States) must also include in their reports the identity of any prior nongovernmental employers by whom they were paid over $5,000 in any of the five preceding years, as well as a description of the nature and terms of the employment involved.

With respect to requirements (3) through (6) above, the exact amount or fair market value of each asset or item need not be reported. When reporting these items, it will be sufficient to report which of the following categories of value the asset or item is within:

(A) less than $5,000;
(B) between $5,000 and $15,000;
(C) between $15,000 and $50,000; or
(D) greater than $50,000.

Filing of reports

Each government official required to file a financial disclosure report must do so with the Comptroller General by May 15th of each year. A copy of the report must also be filed by the individual with the appropriate supervisory official. Those officials are the individual's agency head, for employees of the executive branch; the Secretary of the Senate or Clerk of the House, for Members and employees of Congress; the Director of the Administrative Office of the United States Courts, for judges and employees of any court; and the Chairman of the Civil Service Commission, for agency heads, Presidential appointees in the

Executive Office of the President, and fulltime members of committees, boards and commissions appointed by the President.

The President is authorized to exempt undercover agents from filing public financial reports, but these individuals must still file a financial disclosure form with the head of their agency.

Candidates for Federal elective office required to file a financial report must do so with the Comptroller General within one month after becoming a candidate for that office.

The Comptroller General is authorized to grant extensions up to ninety days for the filing of financial disclosure reports.

Failure to file reports or falsifying reports

Criminal and civil penalties are established for willful failure to file a report or willful falsification of any information in a report. The Comptroller General is directed to refer to the Attorney General the name of any individual who he has reasonable cause to believe has failed to file a report or has falsified or omitted information required by the report. In addition, if the individual is a Member, officer, or employee of the Senate or House of Representatives, the Comptroller General must refer the name of the offending individual to the appropriate ethics committee for investigation.

Custody and audit of and public access to reports

The Comptroller General is required to make each report filed with him available to the public within 15 days after receipt of the report. He must provide a copy of any report to any person who requests one, contingent upon payment of a fee for reproducing the document. It is made unlawful for any person to inspect or obtain a copy of a report for any unlawful or commercial purpose, for determining the credit rating of an indvidual, or for use in the solicitation of money for any purpose. A civil penalty not to exceed $1,000 may be assessed against anyone who violates this provision. Although the reports are made public, the agency head or appropriate supervisory person is still responsible for reviewing the report and ensuring that conflict of interest regulations are not being violated.

To help ensure the accuracy and completeness of the information filed in the reports, the Comptroller General is also required to conduct random audits of not more than 5 percent of the financial disclosure reports filed each year. The Comptroller General must also audit the financial disclosure reports of each individual holding the office of President or Vice President at least once during each of their term of office and of each Member of the Senate and the House of Representatives at least once during each six-year period. The Comptroller General is given the power to subpoena papers and documents necessary for conducting these audits and the consequent authority to seek court assistance in the enforcement of any such subpoena.

IV—HISTORY OF LEGISLATION

The Committee on Government Operations held seven days of public hearings on S. 495 and related legislation during the 94th Congress (July 29, 30 and 31, and December 3, 4, and 8, 1975, and March 11, 1976). During these seven days the committee heard testimony from

17 witnesses. The following is a list of the witnesses who testified at the hearings in the order of their appearance:

Senator Walter M. Mondale, Democrat of Minnesota.
Senator Howard H. Baker, Republican of Tennessee.
Sam Dash, former Chief Counsel to the Senate Select Committee on Presidential Campaign Activities.
Leon Jaworski, former Watergate Special Prosecutor.
Henry S. Ruth Jr., Watergate Special Prosecutor, accompanied by Peter Kreindler, counsel, Special Prosecutor's Office.
Marc Lackritz, former assistant majority counsel, Senate Select Committee on Presidential Campaign Activities.
Terry Lenzner, former assistant chief counsel, Senate Select Committee on Presidential Campaign Activities.
Michael M. Uhlmann, Assistant Attorney General, Office of Legislative Affairs, Department of Justice.
Lloyd N. Cutler, attorney, Wilmer, Cutler & Pickering, Washington, D.C.
Senator Clifford P. Case, Republican of New Jersey.
Congressman Robert W. Kastenmeier, Democrat of Wisconsin.
David Cohen, President of Common Cause, accompanied by Mike Cole, legislative director, and Ann McBride.
Senator James Abourezk, Democrat of South Dakota.
James Hamilton, former assistant chief counsel, Senate Select Committee on Presidential Campaign Activities.
Norman Dorsen, professor, New York University School of Law.
William B. Spann Jr., president-elect nominee of the American Bar Association and chairman of the ABA Special Committee to Study Federal Law Enforcement Agencies.
Herbert Miller, professor, Georgetown University Law Center and reporter/consultant for the ABA Special Committee.

In addition to the witnesses who presented oral testimony, five Members of Congress submitted prepared written statements on the Watergate Reorganization and Reform Act. The five were:

Senator Lowell P. Weicker, Republican of Connecticut.
Senator Howard W. Cannon, Democrat of Nevada.
Senator Hugh Scott, Republican of Pennsylvania.
Senator Gaylord Nelson, Democrat of Wisconsin.
Congressman Fred B. Rooney, Democrat of Pennsylvania.

In order to assist the Government Operations Committee in evaluating the proposals contained in the Watergate Reorganization and Reform Act, Chairman Abe Ribicoff and Ranking Minority Member Charles Percy wrote to a number of distinguished members of the American legal and academic communities. In the letter, the Senators asked specific questions about the then current provisions of S. 495 and also asked for general feedback about the concepts contained in the bill and possible alternative proposals.

The following 17 individuals responded to the letter from Senators Ribicoff and Percy:

Raoul Berger, Harvard University.
James MacGregor Burns, Williams College.
Clark M. Clifford, Clifford, Warnke, Glass, McIlwain & Finney, Washington, D.C.

Peter A. Dingman, Alexandria, Va.
Thomas Ehrlich, Stanford University.
Erwin N. Griswold, Jones, Day, Reairs & Pogue, Washington, D.C.
Philip B. Kurland, The University of Chicago.
Philip A. Lacovara, Hughes, Hubbard & Reed, Washington, D.C.
Frederick C. Mosher, University of Virginia.
Elliot L. Richardson, U.S. Ambassador to England.
Harold Seidman, The University of Connecticut.
J. Clay Smith Jr., chairman, Council on Federal Law, Agencies & Practice.
Theodore C. Sorenson, Paul, Weiss, Rifkind, Wharton & Garrison, New York City.
James L. Sundquist, the Brookings Institution.
Randolph W. Thrower, Sutherland, Asbill & Brennan, Atlanta, Ga.
William Van Alstyne, Duke University.

The Government Operations Committee also received comments on the Watergate Reorganization and Reform Act and related measures from the following:

Department of Justice.
General Accounting Office.
Central Intelligence Agency.
U.S. Civil Service Commission.
ABA Special Committee to Study Federal Law Enforcement Agencies.
Research Committee, National Capitol Area Chapter of the American Society for Public Administration.

During the Committee's extensive hearings on this bill the Committee heard from a representative of the Department of Justice. The Department raised a number of objections to the original version of S. 495 as introduced. As noted below, the bill, as reported, contains many modifications from the original S. 495, a number of which were designed to meet the Department's objections.

Following completion of these hearings, the Committee met on April 8 and 9, 1976. On April 9, the Committee by a unanimous vote approved S. 495, as amended, and ordered it to be reported to the Senate.

V. Section-by-Section Analysis

A. Title I—Amendments to Title 28, United States Code; Reorganization of the Department of Justice

Sec. 101(a) of Title I contains a new chapter to be added to Title 28 of the United States Code. The new chapter—Chapter 39—is entitled "Division of Government Crimes and Appointment of Temporary Special Prosecutor."

SECTION 591—ESTABLISHMENT OF DIVISION OF GOVERNMENT CRIMES

Sec. 591(a) of the new Chapter 39 establishes a Division of Government Crimes within the Department of Justice, which will be headed by an Assistant Attorney General for Government Crimes. The Assistant Attorney General is to be appointed by the President by and with the advice and consent of the Senate for a term coterminous with that of the President making the appointment.

The Division of Government Crimes is to be on an equal footing with all other divisions within the Department of Justice. The position of Assistant Attorney General for Government Crimes will be filled by each President upon taking office. However, the Assistant Attorney General for Government Crimes has a fixed term of office, namely, four years. If a vacancy occurs in the position of Assistant Attorney General for Government Crimes during the President's term of office, the person appointed by the President to fill the vacancy will serve only until the end of the President's term.

The fixed term of the Assistant Attorney General for Government Crimes is similar to that of a U.S. Attorney, except that a U.S. Attorney's four-year term is not coterminous with that of the President. There is an expectation that a person appointed will serve for a four-year period; however, the President retains the power to remove the Assistant Attorney General at any time.

Section 591(b) prohibits the appointment of an individual as the Assistant Attorney General for Government Crimes if that individual has held a high-level political position in the campaign of a person elected to the office of President or Vice President. This provision eliminates from consideration only those top-level campaign officials, such as a campaign manager or a state coordinator. The provision applies whether the high-level campaign official served in a paid or unpaid capacity. It also applies whether the official served on the personal campaign staff or worked through a state or national organization or political party.

Moreover, the provision does not eliminate from eligibility for appointment to the office of Assistant Attorney General for Government Crimes those people who served solely as volunteer policy advisors to a Presidential candidate.

Section 591(c) makes it explicitly clear that the Senate is to be the final arbiter of whether a Presidential appointment complies with Section 591(b). This statute does not give any court jurisdiction to at any time review whether an individual appointed by the President and confirmed by the Senate meets the requirements of Section 591(b). Thus, an indictment or any other action by the Assistant Attorney General for Government Crimes may not be subsequently challenged on the alleged basis that his appointment fails to comply with Section 591(b).

This provision was included in the statute for two important reasons. First, it is important to establish a clear and final approval of the selection of a person to hold a position like the Assistant Attorney General for Government Crimes. It would not be in the best interests of the United States or of the Department of Justice to permit potential defendants or any other individuals to challenge the legality of the Assistant Attorney General's actions because of non-compliance with this particular qualification for appointment. Second, there is a certain degree of judgment which enters into determining whether or not an individual nomination complies with this requirement. The Senate is particularly suited to make such a judg-

ment because of its Members' experience in political campaigns and partisan political activity. The determination by the Senate on a matter such as this should be, and is under Section 591(c), final.

Section 591(d) prohibits the Assistant Attorney General for Government Crimes from engaging in any other business, vocation, or employment while holding the office of Assistant Attorney General. This would prohibit an individual serving as Assistant Attorney General from practicing law or from participating in the operation of a family-owned business or any other corporate or business activity. The position of Assistant Attorney General for Government Crimes is intended to be a full-time position. However, this provision would not prohibit an individual from investing in securities.

Section 591(e) requires the Attorney General at the beginning of each regular session of Congress to report to the Congress on the activities and operations of the Division of Government Crimes for the last preceding fiscal year. Since the fiscal year ends on September 30 of each year and a regular session of Congress does not begin until January of the next year, the Department of Justice has a three-month period to prepare this report. The report should be the basis for Congressional oversight over the operations and activities of the Division of Government Crimes. While the Assistant Attorney General for Government Crimes will obviously play a major role in compiling and drafting this report, in keeping with other legislative directives and the desire that the Attorney General be accountable for the operations of the Department of Justice, it is the Attorney General who is given the responsibility to file this report.

The report must include at a minimum a listing of the number, type, and nature of the investigations and prosecutions conducted by the Division, and the disposition thereof, and any proposals for new legislation which the Attorney General may wish to recommend. The report may contain any other matters pertaining to the Division which the Attorney General feels proper.

Since public confidence in the administration of the criminal laws as they are applied to government officials and the enforcement of the election and lobbying laws is a matter of great public concern, this section mandates that the report filed by the Attorney General be made public. However, there may be certain matters which the Attorney General may want to report to Congress which should not be made public because they may prejudice an ongoing investigation or prosecution or infringe upon the rights of individuals without due process of law. Such material must be reported by the Attorney General to Congress; however, the Committee on the Judiciary of the House of Representatives or the Senate may on its own, or at the request of the Attorney General, decide to seal portions of the report which are related to uncompleted and ongoing investigations. If one House decides to seal such information, the other House may or may not take similar action.

Section 592—Jurisdiction

Section 592 of the new Chapter 39 defines the jurisdiction which the Attorney General must delegate to the Division of Government Crimes. Section 592(a) sets forth the specific offenders and laws which

will be within the jurisdiction of the new division. This statutory definition of jurisdiction makes it clear that the Division of Government Crimes, and not any other division within the Justice Department or any other agency of the Federal Government, is to handle the matters to be delegated to the Division. The one exception to this is with respect to matters described below in Section 595 of the new Chapter 39, where a temporary special prosecutor must be appointed to handle a particular investigation or prosecution.

Section 592(a) states that the Attorney General shall delegate to the Assistant Attorney General for Government Crimes jurisdiction over criminal violations of Federal law committed by any elected or appointed Federal Government officer or employee who is serving or has served during the preceding six years in a position compensated at a rate equivalent to, or greater than, Level III of the Executive Schedule.

Unlike the jurisdiction of the Division with respect to lower level government officials, the alleged violation of Federal law by these high-level officials need not be related to the Federal officer or employee's work or compensation. Thus, any Federal charges brought against such an individual would automatically be handled by the Division of Government Crimes.

Section 592(a)(1) also covers any officer or employee who held such a position during the previous six years. This requirement was included so that a person could not escape the jurisdiction of the Division of Government Crimes simply by resigning from office.

Section 592(a)(2) states that the Division of Government Crimes shall have jurisdiction over criminal violations of Federal law committed by any elected or appointed Federal government officer or employees other than those described in Section 592(a)(1) if the violation of Federal law is directly or indirectly related to the official government work or compensation of such officer or employee. Again, this provision applies with respect to those presently holding such a position or those who held such a position during the previous six years.

This provision should be interpreted broadly. The provision covers those criminal violations of Federal law by government employees which relate to their work and might be considered instances of official corruption. Examples of matters which would be clearly covered under this definition are the accepting of bribes, extortion, violations of conflict of interest statutes, theft of government property, and obstruction of justice. Examples of types of matters which would clearly not be covered by this definition are crimes such as burglary of a personal residence, any kind of assault unrelated to the employee's work, and serious traffic offenses, such as driving while under the influence of alcohol, which are not committed in the course of the employee's work. When there is any doubt whether a violation is related to the official Government work or compensation of an officer or employee, the case should be assigned to the Division of Government Crimes.

Section 592(a)(3) applies a standard to special Federal Government employees which is identical to the standard applied to other Federal Government employees. The operative phrase used in this subsection

is "in the course of his employment by the Government" to distinguish between activities undertaken while one is a special Government employee and those activities undertaken as an employee for someone else or in the person's private life.

Section 592(a)(4) states that the Division of Government Crimes shall have jurisdiction over criminal violations of Federal laws relating to lobbying, campaigns, and election to public office committed by any person. This category of jurisdiction is not determined by the person who is the subject of the criminal investigation, as are the categories in paragraphs (1) through (3) above; rather, this category defines jurisdiction based on the type of offense allegedly committed. Any violation of the 1946 Lobbying Act, or the Federal Elections Campaign Act of 1971 and the amendments thereto, or any other Federal offense related to the conduct of elections for public office—no matter who is alleged to have committed these offenses—will be handled by the Division of Government Crimes. Thus, any matter referred by the Federal Elections Commission to the Justice Department for prosecution would be handled by the Division of Government Crimes.

Section 592(a)(5) gives the Attorney General discretion to refer any other matter to the Assistant Attorney General for Government Crimes. If there are investigations which do not fit within the jurisdictional categories set forth above which the Attorney General believes are closely related to these categories or the Attorney General desires to have all the prosecutions under a particular statute handled by the same division or officer, the Attorney General has the option to refer such matters to the Division of Government Crimes. For example, in addition to the jurisdiction of the Division of Government Crimes set forth above, the Attorney General might want to assign to the Division of Government Crimes responsibility for all cases involving unlawful electronic surveillance or intrusion (Title 18 U.S.C. 2511) where involvement by public, corporate or law enforcement officials is suspected.

The jurisdictional grants of authority contained in section 592 supersede any jurisdictional grants of authority which may be inconsistent with them. The jurisdiction for handling most of the matters described above currently resides with the Criminal Division of the Department of Justice. The jurisdiction given to the Division of Government Crimes supersedes the Attorney General's regulations delegating such matters to the Criminal Division.

Of course, the Assistant Attorney General for Government Crimes can enlist the cooperation and assistance of other divisions within the Justice Department or one or more U.S. attorneys in the handling of any investigation or prosecution. However, the conduct of the investigation or prosecution must be under the control of the Assistant Attorney General for Government Crimes, and ultimately under the control of the Attorney General.

Section 592(b) provides that the six-year period referred to in section 592(a) shall be computed from the date on which (1) the Assistant Attorney General makes a reasonable effort to notify an individual who is the subject of an investigation or prosecution as described in subsection (a) that such individual is the subject of an investigation of a possible violation of Federal law, or (2) such individual is informed of his indictment, whichever is earlier. The six-year period provided in section 592(a) does not in any way affect existing statutes of limitation. The sole purpose of this time period is to determine the jurisdiction of the Divsion of Government Crimes in relationship to the other components and departments within the Department of Justice.

Section 592(c) provides that any information, allegation, or complaint received by any officer or employee of any branch of the government relating to a violation of the type handled by the Division of Government Crimes must be expeditiously reported to a local United States Attorney or to the Attorney General. A United States Attorney receiving such information must expeditiously inform the Attorney General in writing of the receipt and content of such information, allegation, or complaint.

Any allegation, complaint, or information relating to a matter within the jurisdiction of the Division of Government Crimes which comes into the possession of any government employee or officer should ultimately be brought to the attention of the Attorney General. United States Attorneys, as employees of the Justice Department located throughout the country, are the logical vehicle for the communication of such information from government officers or employees to the Attorney General. However, it is not sufficient for a government employee simply to tell his superior about information, allegations, or complaints of criminal wrongdoing. Each employee has an independent obligation to inform a local United States attorney. Similarly, a United States attorney has the obligation of relaying this information to the Attorney General if it deals with a matter within the jurisdiction of the Division of Government Crimes. While subsection (c) does not create any duty for a private citizen to report such information to a United States attorney or the Attorney General, a United States attorney has the obligation of forwarding such information to the Attorney General if received from a private citizen.

SECTION 593—FINAL DECISION BY THE ATTORNEY GENERAL

Section 593 provides that the Attorney General shall supervise the Assistant Attorney General for Government Crimes in the discharge of his duties. This is the same operative language used in describing the relationship between the Attorney General and United States attorneys. The Attorney General has the authority to make the final determination with respect to any matter handled by the Assistant Attorney General for Government Crimes. Thus, the Assistant Attorney General for Government Crimes is in the same position as any other assistant attorney general in the Justice Department in that he is under the supervision of the Attorney General. The Assistant Attorney General for Government Crimes has the responsibility for directing the activities of the Division of Government Crimes, but when questions arise such as whether to prosecute a certain case, whether to subpoena a certain witness or whether to pursue a certain investigation, the Attorney General has the ultimate authority to make final decisions, except in the few cases where a temporary special prosecutor is appointed to conduct an investigation pursuant to Sections 594 and 595 of this title.

In this respect, the proposal for a Division of Government Crimes is very different from other proposals presented to the Committee, including the proposal contained in the original version of S. 495 introduced in January of 1975. The Assistant Attorney General for Government Crimes is not independent of the rest of the Justice Department. He cannot act independently of the Attorney General and, if there is a disagreement between the Assistant Attorney General for Government Crimes and the Attorney General, the decision of the Attorney General shall stand. Accountability for the actions of the Division of Government Crimes, like for the actions of the rest of the Justice Department, is placed squarely where it belongs—with the Attorney General.

SECTION 594—STANDARD FOR APPOINTMENT OF TEMPORARY SPECIAL PROSECUTOR

Sections 594 and 595 establish a triggering device which will result in the appointment of a temporary special prosecutor when needed. Section 594(a) requires the Attorney General to file a memorandum with the division of three judges of the United States Court of Appeals for the District of Columbia (hereinafter referred to as the "court") which court is fully described in section 49 of Title 28 of the United States Code. If within 30 days of receiving information, allegations, or evidence of any Federal criminal wrongdoing, the Attorney General determines that a potential conflict of interest, as defined in subsection (c) of section 594, or the appearance thereof, may exist if he participates in any investigation or prosecution resulting from such information, allegations, or evidence, the Attorney General has the responsibility to bring that matter to the attention of the court. Therefore, the Attorney General must still file a memorandum in a case where he considered the appointment but decided that a conflict of interest did not exist.

If it is arguable whether a conflict of interest exists, then the memorandum should be filed. In determining whether a conflict of interest or the appearance thereof may exist, the Attorney General should not consider the strength or credibility of the evidence. The consideration should be limited to the type of offense charged and the relationship of the subject of the investigation to the President and the Attorney General.

It is the intention of the Committee that many memoranda will be filed by the Attorney General although only a very few of these memoranda will justify a finding of conflict of interest. However, it is important that any case which arguably could contain a conflict of interest be brought to the attention of the court.

The memorandum which the Attorney General must file with the court must contain (1) a summary of the information, allegations, or evidence received by the Attorney General, and the results of a preliminary investigation or evaluation thereof by the Federal investigative agencies which looked into these allegations; (2) a summary of the information relevant to determining whether a conflict of interest, or the appearance thereof, exists; (3) a finding by the Attorney General based upon all information known to the Department of Justice as to whether the information, allegations, and evidence summarized as required under paragraph (1) above are clearly frivolous and therefore do not justify any further investigation or prosecution, and any other comments or recommendations by the Attorney General; and (4) a decision, if any, by the Attorney General, to disqualify himself and to appoint a temporary special prosecutor as described in section 595.

The court must have a summary of the information, allegations, and evidence received in order to determine the scope of the potential investigation and to know which matters the Attorney General has considered and which ones have not come to his attention.

Paragraph (1) of section 594(a) also requires that the results of a preliminary investigation or evaluation of the information, allegations, or evidence the Attorney General has received which was conducted by any Federal investigative agency be included in the report to the court. In the 30 days between the time the Attorney General receives allegations and the time that a memorandum is due to be filed with the court, the Attorney General must cause whatever preliminary investigation may be justified to be completed. If an allegation is clearly frivolous, the preliminary investigation might consist of a perfunctory check on the source of the allegation of criminal wrongdoing. If the allegation deserves more careful consideration, an initial investigation by the FBI or another Federal investigative agency should be conducted.

The purpose of reporting the results of such an investigation or evaluation to the court is to place on the court record the actions which the Attorney General has undertaken to determine whether the information, allegations, or evidence are clearly frivolous. The court has no power to review the Attorney General's findings of whether a charge is clearly frivolous. However, this requirement in the memorandum to the court makes it clear to the Attorney General that an initial investigation of the charges should be conducted prior to filing the memorandum with the court. It would not be proper for the Attorney General to fail to conduct an initial investigation, to state that the charges were clearly frivolous, and then to conduct an investigation after the memorandum was filed with the court.

Paragraph (2) of section 594(a) calls for a summary of the information relevant to determining whether a conflict of interest or the appearance thereof exists to be included in the report to the court. Information that might be provided in this section would include the identity of the subject of the investigation, the subject's past or present ties or associations with the Attorney General and the President, and any possible personal or partisan political interests which the Attorney General or the President may have in the outcome of the investigation. Under section 594(d)(2), the court can require the Attorney General to provide additional information if the information contained in the memorandum filed with the court is not sufficiently comprehensive and complete.

Section 594(a)(3) gives the Attorney General the authority to make a finding which is not reviewable by the court as to whether the information, allegations, and evidence summarized under paragraph (1) above are clearly frivolous and therefore do not justify any further

investigation of prosecution. Thus, in light of the doctrine of "prosecutorial discretion" as enunciated in *United States* v. *Cox*, 342 F. 2d 167 (5th Cir. 1965), the court cannot review the decision of the Attorney General to the extent that a court in general cannot review the exercise of a prosecutor's discretion whether or not to commence any prosecution. If allegations or evidence justify investigation by the Justice Department beyond the 30-day period prior to the Attorney General's filing a memorandum with the court and a conflict of interest as defined in this bill exists, that investigation must be conducted under the supervision of a temporary special prosecutor. The early fact-finding stages of a criminal investigation are just as important, if not more important, than the actual prosecution of an indictment in the courts. Therefore, if there is a conflict of interest or the appearance thereof, a temporary special prosecutor should take over the investigation as soon as it is clear that the allegations of criminal wrongdoing are not clearly frivolous.

There is, however, an informal check on the abuses by an Attorney General of the authority to determine that a case is frivolous. If and when certain allegations become public, it would be difficult for an Attorney General or a President to justify a position that serious charges against high-level Administration officials are so clearly frivolous that they do not justify any investigation or prosecution beyond the initial 30-day investigation. It would be a violation of the intent and letter of this statute for the Attorney General to make a finding that a matter is clearly frivolous and then continue an investigation in the Justice Department of the matter. If the allegations are not clearly frivolous and hence justify further investigation, whether it is checking additional sources or any other kind of additional investigation past the 30-day period when the memorandum by the Attorney General must be filed with the court, then the matter is not clearly frivolous and this further investigation should be conducted by a temporary special prosecutor, provided there is a conflict of interest or the appearance thereof.

Paragraph (4) of section 594(a) states that the memorandum from the Attorney General shall contain a decision by the Attorney General to disqualify himself and to appoint a temporary special prosecutor under section 595 if the Attorney General has made such a decision. If the Attorney General believes that there is a conflict of interest and decides to disqualify himself and appoint a temporary special prosecutor, he has the power to do so under this statute. In such a case there is no need for the court to review the memorandum to determine whether a conflict of interest exists and there is no need for the court to appoint a temporary special prosecutor (unless the Attorney General's appointment does not meet the statutory standards set forth in Section 595).

Subsection (b) of section 594 permits any individual to request that the court decide whether the Attorney General should disqualify himself with respect to a particular investigation. This request to the court may not be made sooner than 30 days after the individual first notifies the Attorney General of the information, allegations or evidence in his possession of possible criminal wrongdoing. If after this 30-day period, the Attorney General has not submitted a memorandum under subsection (a) to the court, the private individual is authorized to file his own memorandum with the court providing the court with such information, allegations or evidence in his possession as to possible criminal wrongdoing as well as a summary of the information relevant to determining whether a conflict of interest exists. Whatever materials the individual provides to the court must simultaneously be submitted to the Attorney General. The Attorney General then has an additional 15 days from receipt of this information to file a memorandum with the court containing the information described in subsection (a) if he has not already done so.

This procedure permits a private citizen to bring evidence of criminal wrongdoing to the attention of the Attorney General and to ensure that consideration was given to the need for a temporary special prosecutor. The manifestation of the Attorney General's consideration of the possible existence of a conflict of interest is the memorandum filed by the Attorney General with the court. If, in response to a memorandum filed by a private citizen, the Attorney General files a memorandum stating that the information, allegations or evidence presented by the private individual are clearly frivolous and do not justify any further investigation or prosecution, the court is not authorized to determine whether a conflict of interest exists or to appoint a temporary special prosecutor.

If a private citizen should follow all the procedures set forth in subsection (b) and the Attorney General should decide not to file a memorandum with the information described in subsection (a), the court is authorized to review the memorandum filed by the private citizen and to appoint a temporary special prosecutor if such appointment is called for under the statutory standards set forth in this title.

If a citizen should present evidence or allegations of criminal wrongdoing directly to the court, the court should recommend to the citizen that the information and allegations of criminal wrongdoing be presented to the Attorney General or a United States attorney. At the same time the individual should be informed of his right to return to the court 30 days after providing the information to the Attorney General. The requirements of this subsection should not result in procedural obstacles which thwart citizen participation as provided herein.

Subsection (c) of section 594 establishes statutory standards which define when a conflict of interest or the appearance thereof exists (and therefore when a temporary special prosecutor must be appointed). Paragraph (1) of subsection (c) states that in determining whether a conflict of interest or the appearance thereof exists, the court and the Attorney General must consider whether the President or the Attorney General has a direct and substantial personal or partisan political interest in the outcome of the proposed criminal investigation or prosecution.

Paragraph (2) of subsection (c) states that, for the purposes of this section, a conflict of interest or the appearance thereof will be deemed to exist if the subject of a criminal investigation or prosecution is the President, Vice President, Director of the Federal Bureau of Investigation, any individual presently serving in a position compensated at Level I of the Executive Schedule under section 5312 of title 5, United States Code, any individual working in the Executive

Office of the President compensated at a rate equivalent to or greater than Level V of the Executive Schedule under section 5316 of title 5, United States Code, or any individual who held any office or position described in this paragraph during the four years immediately preceding the investigation or prosecution. This section provides that if any of the above named individuals is the subject of a criminal investigation or prosecution, a temporary special prosecutor must be appointed. (In such a case, there is no need to apply the standard set forth in paragraph (1) of this subsection.)

Paragraph (1) of subsection (d) sets forth when the court is authorized to determine whether a conflict of interest or the appearance thereof exists. The court may make such a determination if (A) the Attorney General files a memorandum as provided under subsections (a) or (b) which does not include a decision to disqualify himself or a finding pursuant to subsection (a)(3) that the information, allegations and evidence are clearly frivolous; or (B) the Attorney General fails to make a timely reply as required under subsection (b). Whenever the Attorney General files a memorandum under subsection (a) or (b) the court must review the memorandum to determine whether a conflict of interest exists. Such a review is not necessary if the Attorney General has already determined that a conflict of interest exists and has appointed a temporary special prosecutor. Court review is also not authorized if the Attorney General has made a finding pursuant to subsection (a)(3) that the information, allegations and evidence are clearly frivolous.

If the Attorney General fails to make a timely reply as required under subsection (b) to a memorandum filed by a private citizen, the court is authorized to review the citizen's memorandum and to determine if a conflict of interest or the appearance thereof exists. In such a case, even though the Attorney General has failed to submit any materials to the court, the court would have the authority to directly request documents, materials or other information from the Attorney General pursuant to the provisions of paragraph (2) below.

If the court finds a conflict of interest or the appearance thereof, the court must appoint a temporary special prosecutor pursuant to section 595. The court then is directed to notify the Attorney General in writing of such an appointment and the Attorney General must disqualify himself from direct participation in the investigation or prosecution assigned to the temporary special prosecutor.

Paragraph (2) of subsection (d) provides that upon the request of the court the Attorney General or any individual must make available to the court all documents, materials and memoranda which the court finds necessary to carry out its duties under this section. This permits the court to utilize its powers to obtain whatever information is necessary for the court to perform its functions. The court, in the course of its consideration of whether to appoint a temporary special prosecutor, is also authorized to request participation or argument from a party other than the Attorney General. The court may also appoint an individual to participate in the proceedings before the court or to argue a position before the court.

Because the court will be making a decision whether or not a conflict of interest or the appearance thereof exists, at an early stage of an

investigation and prosecution, it is likely that in many cases the public will not even be aware of the potential investigation or prosecution. If the court would like a party other than the Attorney General to present arguments to the court on the question of whether a conflict of interest exists, the court is authorized to appoint an individual to perform that function. If a party other than the Attorney General is aware of the proceeding and the court is aware of the party's interest in the proceeding, the court is also authorized to request or allow that party to participate before the court with respect to the court's decision on that matter and to provide argument on the question of whether a conflict of interest or the appearance thereof exists.

The participation or argument by any party other than the Attorney General is a matter in the sole discretion of the court.

Subsection (e) states that the Attorney General has a continuing responsibility to file a memorandum with the court in accordance with subsection (a) of section 594 even after the Attorney General has made a finding under subsection (a)(3) that information, allegations and evidence of possible criminal wrongdoing are clearly frivolous. A finding that a case is clearly frivolous is a finding based upon the information known to the Attorney General at the time the finding is made. If the Attorney General, after making a finding that a matter is clearly frivolous, should receive additional information, allegations or evidence which in his opinion justify a further investigation or prosecution of that matter, the Attorney General must file a new memorandum with the court. The new memorandum must contain the information required under subsection (a) and must be filed within 15 days after the Attorney General has received this additional information, allegations or evidence.

SECTION 595—TEMPORARY SPECIAL PROSECUTOR

Subsection (a)(1) provides that a temporary special prosecutor shall be appointed pursuant to this section (A) by the Attorney General upon a decision of the Attorney General to disqualify himself pursuant to section 594(a)(4), or (B) by the court upon a finding of a conflict of interest, or the appearance thereof, pursuant to section 594(d)(1).

Paragraph (2) of subsection (a) requires the court to notify the Attorney General in writing of a decision by the court to appoint a temporary special prosecutor (under paragraph (1)(B)). This paragraph also explicitly states that any action taken by the court under any of the provisions of section 595 supersedes any actions by the Attorney General which are in conflict therewith. Thus, if the court appoints a temporary special prosecutor and the Attorney General has already made arrangements by use of a temporary special prosecutor to handle the investigation of the same matter, the appointment of the temporary special prosecutor by the court supersedes the actions taken by the Attorney General in conflict therewith.

Paragraph (3) requires whoever appoints a temporary special prosecutor under this section to define in writing the matters into which the prosecutor is authorized to investigate and prosecute. This written statement of a temporary special prosecutor's jurisdiction

limits the powers and authority of the temporary special prosecutor. In the course of an investigation, the Attorney General may want to broaden this jurisdiction as a result of evidence and information obtained since the appointment of the temporary special prosecutor. A broadening of the jurisdiction would not require court review under subsection (c).

Subsection (b) of section 595 sets forth two qualifications required of any individual appointed temporary special prosecutor. An officer or employee of the Federal government is not permitted to be a temporary special prosecutor because the purposes of this title would be circumvented if the Attorney General or the court were to appoint as a temporary special prosecutor an employee of the Federal government responsible to the Attorney General or the President. The second qualification is that an individual who served in the campaign of the President or Vice President may not serve as a temporary special prosecutor.

Subsection (c) requires the court to review each appointment of a temporary special prosecutor made by the Attorney General under this section to determine whether that appointment meets certain standards set forth in this subsection. If the court finds that the appointment is deficient under the standards set forth in this subsection, the court is required to appoint a temporary special prosecutor pursuant to this section. Thus, the court is given the responsibility to review the appointment by the Attorney General and to appoint a temporary special prosecutor of its own to replace the person appointed by the Attorney General if the Attorney General's appointment does not meet the statutory standard.

The standards provided in subsection (c) which define when the court should make its own appointment are (1) if the individual appointed temporary special prosecutor by the Attorney General has a conflict of interest or the appearance thereof as defined under section 594(c); (2) if the individual appointed fails to meet the requirements of section 595(b); or, (3) if the jurisdiction defined by the Attorney General for the temporary special prosecutor is not sufficiently broad to enable the temporary special prosecutor to carry out the purposes of this title.

Section 594(c), which defines conflict of interest or the appearance thereof, defines the terms in reference to the interests of the President or the Attorney General. The applicable standard is whether the temporary special prosecutor appointed by the Attorney General has a direct and substantial personal or partisan political interest in the outcome of the proposed criminal investigation or prosecution.

The definition of conflict of interest or the appearance thereof also includes a second paragraph which states that a conflict of interest or the appearance thereof will be deemed to exist if the subject of the investigation is one of certain individuals named in that statute. Under subsection (c) each of those named individuals is also prohibited from being appointed temporary special prosecutor by the Attorney General.

Finally, subsection (c) states that the court is required to appoint a temporary special prosecutor if the jurisdiction defined for the temporary special prosecutor appointed by the Attorney General is not sufficiently broad to enable the temporary special prosecutor to

carry out the purposes of this chapter. If a temporary special prosecutor is restricted from pursuing an investigation in such a way that a fair, impartial and independent investigation of the allegations of criminal wrongdoing cannot take place, the court is required to appoint a temporary special prosecutor itself and to define a sufficiently broad jurisdiction for that temporary special prosecutor. For example, if an individual is apprehended breaking into a political headquarters and a temporary special prosecutor is appointed to investigate that break-in but is not permitted to follow any leads which may involve high-level campaign officials who might have authorized that break-in, the jurisdiction is not sufficient for the temporary special prosecutor to conduct an impartial and thorough investigation of that criminal conduct.

Subsection (d) of section 595 provides for the termination of the temporary special prosecutor's authority and powers.

Paragraph (1) of the subsection provides that the authority and powers of any temporary special prosecutor terminate upon the submission to the Attorney General of a report stating that all investigations under the jurisdiction of the temporary special prosecutor as set forth pursuant to subsection (a)(3) and any resulting prosecutions have been completed.

Paragraph (2) of subsection (d) provides for the removal of a temporary special prosecutor prior to the submission of the report referred to in paragraph (1). A temporary special prosecutor may be removed from office by the Attorney General only for extraordinary improprieties. This is the same standard used in the appointments of Temporary Special Prosecutors Jaworski and Cox. Immediately after removing a temporary special prosecutor under this subsection, the Attorney General is required to submit to the court a written report specifying with particularity the cause for which the temporary special prosecutor was removed. The court is then required to make this report available to the public, except that the court is given the discretion to delete or postpone publishing such portions of the report or the whole report or any name or other identifying details in the report for such time as the court determines is necessary to avoid prejudicing the rights under Federal law of any individual. If the court finds that deletions of portions of the report, or names or identifying details in the report will make the report misleading or unfair to the temporary special prosecutor being removed, the court has the authority to withhold the public release of the entire report until a time when enough of the report may be made public so that the report is not misleading or unfair as a result of deletions of parts of the report or the names of individuals mentioned in the report.

Paragraph (3) authorizes the temporary special prosecutor or any person with standing under existing law to bring an action in the United States District Court for the District of Columbia to challenge the action of the Attorney General under paragraph (2) by seeking reinstatement or other appropriate relief. This paragraph gives the court explicit jurisdiction to hear such an action but does not change existing standing requirements which define who is an aggrieved party for the purpose of initiating such an action. In any hearing of an action challenging the removal of a temporary special prosecutor, the court must proceed de novo.

Subsection (e) of section 595 provides that, when the temporary special prosecutor is carrying out the provisions of this section, he shall have within the jurisdiction defined by the Attorney General or the court the same powers the Assistant Attorney General for Government Crimes has to act on behalf of the United States. The one exception made in subsection (e) is that the temporary special prosecutor has the authority to appeal any decision of a court in a proceeding in which he is a party without the approval of the Solicitor General or the Attorney General. If the temporary special prosecutor was required to get the approval of the Solicitor General or the Attorney General, the temporary special prosecutor would not have the independence required for him to carry out his functions under this title. Subsection (e) also provides that the Attorney General is required to make available to the temporary special prosecutor all the documents, materials and memoranda necessary for the temporary special prosecutor to carry out his duties under this section.

Subsection (f) of section 595 provides for the provision of resources and personnel to the temporary special prosecutor. The Attorney General, upon the request of a temporary special prosecutor, is required to make available to the temporary special prosecutor the resources and personnel necessary for the temporary special prosecutor to carry out his duties under this section. If a temporary special prosecutor does not receive the resources and personnel required to perform his duties, the temporary special prosecutor is required to inform the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate of this problem. Requiring a temporary special prosecutor to report to the Congress if the Attorney General is not cooperating by providing the resources and personnel necessary for him to conduct an investigation or prosecution should assure that the temporary special prosecutor receives the assistance he requires.

SECTION 596—DISQUALIFICATION OF OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF JUSTICE

Section 596 requires the Attorney General to promulgate rules and regulations which require every officer or employee of the Department of Justice, including a United States Attorney or a member of his staff, to disqualify himself from participation in a particular investigation or prosecution if such participation may result in a personal, financial or partisan political conflict of interest, or the appearance thereof. Presently, the Department of Justice has rules and regulations requiring the disqualification of employees if the employee has a financial conflict of interest. This section requires the Attorney General to broaden those regulations to require disqualification of employees who have personal and partisan political conflicts of interest, in addition to those who have financial conflicts of interest.

Sections 594 and 595 of this title specifically deal with those conflicts of interest which involve such high-level personnel that a reassignment of personnel within the Department of Justice will not eliminate the conflict—that is, conflicts on the part of the President or the Attorney General. Section 596, however, is intended to deal with all

the conflicts of interest by personnel in the Department of Justice below the level of Attorney General.

The last sentence gives the Attorney General flexibility in drafting and promulgating rules and regulations pertaining to conflicts of interest. However, Congress is on record that if the problems being dealt with in these rules and regulations are serious enough, then the Attorney General is fully authorized to provide that serious violations of important parts of these rules and regulations will result in removal from office.

SECTION 597—EXPEDITED JUDICIAL REVIEW

Section 597 establishes a procedure for expedited judicial review of the constitutionality of the provisions of this title providing for the appointment of a temporary special prosecutor. Subsection (a) of section 597 provides that a person who is the subject of an indictment or information who wishes to make an objection on constitutional grounds to the authority of a temporary special prosecutor appointed under this chapter to frame and sign indictments or informations or to prosecute offenses in the name of the United States must raise such objection, if at all, by a motion to dismiss the indictment or information. That motion must be made within 20 days of notice of the indictment or information.

This is the only procedure which a person who is the subject of an information or indictment may use to raise constitutional objections to the authority of a temporary special prosecutor appointed under this section. This subsection does not preclude the making of motions on other grounds as provided by the Federal Rules of Criminal Procedure.

Under paragraph (2) of subsection (a) the District Court must immediately certify any motion made under paragraph 1 to the United States Court of Appeals for that Circuit which shall hear the motion sitting en banc. Therefore, the District Court receives the motion but immediately passes the motion on to the United States Court of Appeals.

Paragraph (3) of subsection (a) provides that notwithstanding any other provision of law, a determination on such a motion is reviewable by appeal directly to the Supreme Court of the United States if the appeal is filed within ten days after determination by the United States Court of Appeals.

The Supreme Court is required to decide the question presented on appeal on its merits, unlike the traditional course of permitting the Supreme Court, at its discretion, to hear those matters which it desires to hear by means of a writ of certiorari.

Paragraph (4) provides the operative section of this procedure. It provides that no court will have jurisdiction to consider any objectives to the validity of an indictment or information or a conviction based on the lack of authority under the constitution of a temporary special prosecutor to frame or sign indictments or information and to prosecute offenses in the name of the United States except as provided in this section. Therefore, if the objection to the constitutional power of the temporary special prosecutor is not raised in accordance with the procedures set forth in this subsection, it is not

possible for a criminal defendant to raise that objection at a later time in the court proceeding.

Paragraph 5 states that even if a court should find that a temporary special prosecutor was not constitutionally authorized to perform his duties, a person appointed to such a position under this statute, and anyone acting on his behalf, are individuals authorized to be present during sessions of a grand jury.

Section 597(b) establishes a procedure similar to that in section 597(a) except that it is available to people aggrieved by an official act of a temporary special prosecutor. Thus a person not the subject of an indictment or information has the opportunity to challenge the constitutional authority of a temporary special prosecutor and has the responsibility to follow the statutory procedures set forth in this section if he chooses to challenge that special temporary prosecutor's constitutional authority. Again, the action must be filed within 20 days after the aggrieved person has notice of the act to which he objects. The procedures for certifying all constitutional questions to the United States Court of Appeals for a hearing en banc and then an appeal to the Supreme Court are identical to the provisions in Section 597(a).

Subsection (c) requires the Court of Appeals and the United States Supreme Court to advance on the docket and to expedite to the greatest possible extent the disposition of any motions filed under subsection (a)(1) or questions certified under section (B)(1) described above. Since this procedure for the appointment of a temporary special prosecutor will only be utilized in those situations where criminal conduct of high-level government officials or close associates of the President or Attorney General are involved, there is an overriding public interest in resolving any question with respect to the authority of the temporary special prosecutor in an expedited manner. Once such a ruling by the Supreme Court is made, the temporary special prosecutor can proceed with the prosecution of the subject of his investigation or Congress can provide for the prosecution by other means.

In determining whether the expedited review procedures of this section apply, the determining factor is whether the constitutionality of the particular provision or operative section of this chapter has been subject to a constitutional challenge which resulted in a determination by the Supreme Court of the United States. It makes no difference that the challenge was brought by other parties involving another temporary special prosecutor. It is also not important that the constitutional challenge was not framed in the exact same way or relying on the exact same interpretation of one or more provisions of the Constitution.

The above sections complete the new chapter 39 of title 28 of the United States Code. The following paragraphs describe the remaining subsections of section 101 of title I of this statute.

Subsection (b) of section 101 amends the analysis of part II of title 28, U.S.C. by adding the name of chapter 39 to that analysis.

Paragraph (1) of subsection (c) provides for the compensation of the Assistant Attorney General for Government Crimes, at the same level as the other existing Assistant Attorneys General—Level IV of the Executive Schedule.

Paragraph (2) provides for the compensation of the temporary special prosecutor. A temporary special prosecutor is to receive compensation at a per diem rate equal to the rate of basic pay for Level V of the Executive Schedule under section 5316 of title 5 of the United States Code.

SECTION 102—ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT TEMPORARY SPECIAL PROSECUTOR

Section 102(a) amends chapter 3 of title 28 of the United States Code by adding a new section 49 which provides for the assignment of judges to a division in the United States Court of Appeals for the District of Columbia for the purposes of appointing temporary special prosecutors when needed.

Subsection 49(a) of section 49 requires the chief judge of the United States Court of Appeals for the District of Columbia every two years to assign three judges to a division of that court to determine all matters arising under sections 594 and 595 of this title with respect to the appointment of temporary special prosecutors. The court of appeals presently decides most questions by the use of three judge divisions of the court. This section is different from present court procedure only in that a division is appointed for a period of two years, not appointed for shorter period of time, to hear a number of assigned cases. This provision was needed because under section 594 and 595, a number of memoranda from the Attorney General with respect to potential conflicts of interest will be filed with the court. While the number of occasions when the court will be called upon to appoint a temporary special prosecutor or review the appointment of a temporary special prosecutor by the Attorney General most probably will be rare, it would be administratively burdensome to appoint a different panel of three judges each time a memorandum under section 594 was filed by the Attorney General.

Section 49(b) states that assignment to the division established in subsection (a) shall not be a bar to other judicial assignments during the period of time a person is assigned to the division. The one exception to this is subsection (f) of section 49 prohibiting a judge or justice who is a member of the division established in subsection (a) from participating in a decision involving a temporary special prosecutor they appointed.

Section 49(c) directs the chief judge of the United States Court of Appeals for the District of Columbia to give priority to senior retired circuit court judges and senior retired justices when assigning judges or justices to sit on the division established in subsection (a). By giving priority to senior retired circuit court judges and senior retired justices, the members of the special division will not be sitting on matters involving the Department of Justice on a day-to-day basis. This provision is a safeguard against the possibility of conflicts of interest on the part of a judge where the judge is involved in reviewing memoranda under sections 594 and 595 and then is called upon to sit on a case involving the temporary special prosecutor or the Department of Justice. By using senior retired circuit court judges or justices the possibility of conflict is reduced. Another correlative consideration

is that the deliberations of the special division established in subsection (a) will be dealing with very sensitive matters of great concern to the present Administration and other elected officials. As retired judges their ambitions would have been largely achieved and their activities would be less likely to involve them in any conflict situation. Also, the use of retired judges would minimize any dislocations in judicial backlogs.

Section 49(d) authorizes the Chief Judge of the United States Court of Appeals for the District of Columbia, without presenting a certificate of necessity, to request that the Chief Justice of the United States designate and assign retired circuit court judges of another circuit or retired justices to the division established under subsection (a). Such designation and assignment of judges must be in accordance with section 294 of title 28 United States Code which presently governs the designation and assignment of retired judges to sit outside the circuit to which they are permanently assigned. Thus any assignment or designation would be voluntary and only with the approval of the judge or justice being assigned. A request by the Chief Judge of the United States Court of Appeals for the District of Columbia for the designation or assignment of retired judges from other circuits need not be based on the fact that there is no judge of the United States Court of Appeals for the District of Columbia who could possibly perform the task.

Since the matters to be determined by this division are not of a local nature, it is advantageous to have retired circuit court judges from other circuits assigned to this division where appropriate.

Section 49(e) provides that any vacancy in the division established under subsection (a) shall be filled only for the remainder of the two-year period in which the vacancy occurs. Thus, if the division has been appointed and been sitting for a period of one year and a vacancy occurs, the person assigned to sit on the division shall sit on the division for one year at which time the Chief Judge of the United States Court of Appeals for the District of Columbia will assign three judges to sit on the division for the following two years. Vacancies must also be filled in the same manner as initial assignments to the division.

Section 49(f) states that no judge or justice who as a member of the division established in subsection (a) participated in the decision of a matter under section 594 or 595 of this title involving a temporary special prosecutor shall be eligible to participate on a court of appeals division deciding a matter involving that temporary special prosecutor. This prohibition applies while the individual appointed temporary special prosecutor is serving in that office. This prohibition also applies to any case which involved the exercise of a temporary special prosecutor's official duties regardless of whether that individual is still serving in the office of temporary special prosecutor. Thus, if a judge participated in the appointment of a temporary special prosecutor and that temporary special prosecutor brought a prosecution, the judge would not be eligible to sit on any case involving that prosecution even if the temporary special prosecutor which he appointed had resigned and another individual had taken his place.

Section 102(b) amends the table of sections of chapter 3 of Title 28, United States Code, to add the title of the new section 49 to that

table of sections. The new section 49 is entitled "49. Assignment of Judges to Division to Appoint Temporary Special Prosecutors."

SECTION 103—SEPARABILITY

Section 103 states that if any part of this title is held invalid, the remainder of the title should not be affected by that holding. Similarly, if any part of the title or its applications to any person or circumstance is held invalid, the provisions or other parts of the title and their application to other persons or circumstances shall not be affected thereby.

SECTION 104—AUTHORIZATIONS OF APPROPRIATIONS

Section 104 authorizes the appropriation of such funds as may be necessary to carry out the provisions of this title for each fiscal year through October 30, 1981. This limited authorization for a period of approximately 4 years will permit the Congress to review the operations of the Division of Government Crimes and the mechanism for the appointment of temporary special prosecutors to determine whether they have operated in the manner in which they were intended and whether their continued existence is justified.

B. Title II—Congressional Legal Counsel

SECTION 201—ESTABLISHMENT OF OFFICE OF CONGRESSIONAL LEGAL COUNSEL

Section 201 provides for the establishment, personnel qualifications, appointment, compensation and general structure of the Office of Congressional Legal Counsel.

Paragraph (a) (1) of section 201 establishes the Office of the Congressional Legal Counsel to be headed by a Congressional Legal Counsel. A Deputy Congressional Legal Counsel who will perform duties assigned by the Congressional Legal Counsel is also provided for. The Deputy Congressional Legal Counsel is authorized to serve as Acting Congressional Legal Counsel during any absence, disability or vacancy in the position of Congressional Legal Counsel.

The Office of Congressional Legal Counsel is a support office for Congress similar to the Congressional Budget Office or the Office of Technology Assessment. The Congressional Legal Counsel, the Deputy Congressional Legal Counsel and other employees of the Office of Congressional Legal Counsel are employees of the Congress. They are not officers of the Congress or of the United States. They perform functions on behalf of Congress under the direction of Congress and only to the extent that Congress requests their assistance.

Paragraph (2) of subsection (a) provides for the appointment of the Congressional Legal Counsel and the Deputy Congressional Legal Counsel by the President pro tempore of the Senate and the Speaker of the House of Representatives from among recommendations submitted by the Majority and the Minority Leaders of the Senate and the House of Representatives. The President pro tempore of the Senate and the Speaker of the House of Representatives must reach agree-

ment on the final selection for each of these positions and the appointment will be jointly made. It is expected that the appointment will be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Persons appointed Congressional Legal Counsel or Deputy Congressional Legal Counsel must be learned in the law, members of the bar of a State or the District of Columbia, and must not engage in any business, vocation or employment during the term of their appointment.

The success of the Office of Congressional Legal Counsel will depend on its being staffed by first rate professionals. Both the Counsel and the Deputy must have sufficient stature and litigation experience to effectively represent Congress in any court, including the United States Supreme Court.

Paragraph (3)(A) of subsection (a) provides that the appointments described above will become effective upon approval by a concurrent resolution of the Senate and the House of Representatives. The Congressional Legal Counsel and Deputy Congressional Legal Counsel will both have terms which shall expire at the end of the Congress following the Congress during which the Congressional Legal Counsel is appointed.

However, the Congress again by concurrent resolution is given the power to remove either the Congressional Legal Counsel or the Deputy Congressional Legal Counsel prior to the expiration of his or her term of employment.

Upon the resignation or removal of the Congressional Legal Counsel before the end of his term of employment, a new Congressional Legal Counsel and Deputy Congressional Legal Counsel must be chosen. The new appointees will have terms which expire at the end of the Congress following the Congress during which the Congressional Legal Counsel was appointed.

Paragraph (3)(B) of subsection (a) provides that the first Congressional Legal Counsel and Deputy Congressional Legal Counsel shall be appointed and take office within 90 days after the enactment of this Title. Future Congressional Legal Counsels and Deputy Congressional Legal Counsels are to be appointed and assume their responsibilities within thirty days after the beginning of the session of Congress immediately following the termination of the Congressional Legal Counsel's term of office. If a vacancy in either position occurs prior to the expiration of the relevant term, a new counsel should be appointed and should assume office as soon as practical.

Paragraph (4) of subsection (a) sets the pay scale for the Counsel and Deputy. The Counsel is to receive compensation at the rate provided in 5 U.S.C. 5314, which is the same as for the Solicitor General of the United States. The Deputy is to receive compensation at the rate provided in 5 U.S.C. 5316, which is the same as the Deputy General Counsel of the Department of Defense.

Paragraph (1) of section 201(b) authorizes the Counsel to appoint and fix the compensation of such Assistant Congressional Legal Counsels and of such other personnel as may be necessary to carry out the provisions of the statute. The same qualifications apply to such appointments as to the appointment of the Counsel and Deputy. The Counsel may prescribe the duties and responsibilities of personnel in the office and may remove any such personnel at his pleasure.

Paragraph (2) of subsection (b) provides that for purposes of pay (other than pay of the Counsel and Deputy) and employment benefits, rights, and privileges, all Assistants and other personnel of the office shall be treated as if they were employees of the Senate.

Subsection (c) of section 201 authorizes the Counsel to hire consultants in the same manner as may Senate and House committees. The hiring of all such consultants must be approved by the Committee on Rules and Administration in the Senate or by the Committee on House Administration in the House. The Office may find it desirable to hire consultants to assist it with legal research on constitutional issues involving the powers of Congress. The Office may also wish on occasion to hire private attorneys of national reputation to argue certain cases before the courts.

Subsection (d) provides that the Congressional Legal Counsel may establish such procedures as may be necessary to carry out the provisions of this Title. These may include internal office procedures for the clearance and signing of court papers as well as procedures for public access to legal memoranda and other legal research materials regarding the powers of Congress compiled and maintained pursuant to section 207(b). None of these procedures may alter the substantive provisions of the Act which limit the authority of the Counsel.

Subsection (e) permits the Congressional Legal Counsel to delegate authority for the performance of any function imposed by this Act, except that the Congressional Legal Counsel is prohibited from delegating his responsibility under section 205(b) to notify the Joint Committee on Congressional Operations of any legal proceeding in which the Counsel is of the opinion that Congress should intervene or appear as amicus curiae. Because this latter function is the only one in the Act which permits the Congressional Legal Counsel to initiate consideration of any action by Congress, it is appropriate that only the Congressional Legal Counsel be able to make such a recommendation to the Joint Committee.

SECTION 202—DUTIES AND FUNCTIONS OF JOINT COMMITTEE

Section 202 delegates to the Joint Committee on Congressional Operations the general responsibility to oversee the activities of the Office of Congressional Legal Counsel.

Section 202(a) adds the joint leadership of the House and the Senate to the Joint Committee on Congressional Operations as ex officio members of that Committee for purposes of supervising the activities of the Office of Congressional Legal Counsel. For purposes of this section, the joint leadership is comprised of the Speaker of the House of Representatives, the Majority and Minority Leaders of the House of Representatives, the President Pro Tempore of the Senate and the Majority and Minority Leaders of the Senate.

The Joint Committee on Congressional Operations presently has the responsibility of identifying any court proceeding or action which is of vital interest to Congress and of informing Congress about such proceedings. The Joint Committee also presently has the general authority to recommend to either House of Congress or to the Congress as a whole any action it deems advisable in connection with such court

cases. The Joint Committee on Congressional Operations, therefore, is the appropriate Congressional body to oversee the operations of the Congressional Legal Counsel. However, to help assure that the Congressional Legal Counsel will be responsive to, and have the full confidence of, the bipartisan leadership of the Senate and House of Representatives, the leaders in each House of Congress have been added as ex officio members of the Joint Committee whenever the Joint Committee is exercising its oversight authority over the Congressional Legal Counsel.

Subsection (b)(1) sets forth the specific supervisory and other responsibilities of the Joint Committee. The Joint Committee is given the responsibility generally to oversee all activities of the Office of Congressional Legal Counsel. It is specifically stated that this responsibility includes consulting with the Congressional Legal Counsel regarding the conduct of litigation in which the Congressional Legal Counsel is involved. Other sections of this statute provide detailed procedures by which the Congressional Legal Counsel may be authorized to undertake certain types of representational activities. However, once the Congressional Legal Counsel is authorized to handle a particular case, the Joint Committee is given the general responsibility to supervise the Congressional Legal Counsel during the course of that litigation. For example, important decisions will have to be made on occasion concerning the arguments which will be presented to a court as well as concerning the tactics of how to proceed with a particular case.

It is not expected that the Joint Committee will undertake to instruct the Congressional Legal Counsel on how to practice law or clear all briefs. A Congressional Legal Counsel should be chosen for his established ability as a litigator; however, the Joint Committee must take an active role in advising the Congressional Legal Counsel with regard to the resolution of major policy questions as they arise in the course of litigation.

Paragraph (2) of subsection (b) authorizes the Joint Committee to recommend the appropriate action to be taken pursuant to the procedures set forth in section 209 of this Title to resolve any conflict or inconsistency which arises during the course of litigation. These procedures are described in detail below. The primary responsibility for resolving such conflicts or inconsistencies is placed with the Joint Committee. Section 209 does, however, set forth a procedure to permit Congress or the appropriate House of Congress to resolve any such conflict in a manner other than that recommended by the Joint Committee. It is anticipated that in the vast majority of cases the recommendation of the Joint Committee will become final, with the Congress choosing not to alter the Joint Committee's recommendation.

Paragraph (3) of subsection (b) requires the Joint Committee to notify the Congress when the Congressional Legal Counsel is of the opinion that the Congress should intervene or appear amicus in a particular law suit. This notice will be published by the Joint Committee in the Congressional Record. It is the responsibility of the Congressional Legal Counsel under section 205(b) to continually monitor legal actions and to notify the Joint Committee when the vital interests of Congress are involved such that the Counsel believes that Congress

should intervene or appear as amicus curiae. This provision simply provides a mechanism for the Congressional Legal Counsel's recommendation to be printed in the Congressional Record for the information of all the Members of Congress. The authority of the Counsel and of the Joint Committee extends only to recommending that the Congress authorize intervention or appearance as amicus curiae. It is then possible for any Member of Congress to introduce a concurrent resolution to direct the Counsel to intervene or appear. Without passage of such a concurrent resolution, the Counsel may not intervene or appear.

Subsection (c)(1) of section 202 authorizes the Joint Committee whenever the Congress is not in session to permit the Congressional Legal Counsel in emergency circumstances to undertake representation in the absence of an appropriate resolution. The Joint Committee can only grant such permission in accordance with the provisions of section 203(b)(2), and the emergency authorization is only applicable when Members, officers, employees, or committees of Congress are party defendants in civil suits brought to challenge their official actions. Under section 203(b)(2) such emergency authorization may be made only when delay would prejudice Congressional interests. The Joint Committee's authorization of representation by the Congressional Legal Counsel is only valid for a period not to exceed 10 days after the Congress or the appropriate House of Congress reconvenes. However, upon reconvening, Congress or the appropriate House of Congress can pass an appropriate resolution to provide renewed authorization for the representational activities undertaken by the Congressional Legal Counsel. It is unlikely that many emergencies of this type will occur. If Congress anticipates that a suit might be filed against a Member or committee during a recess, the Congress, prior to recessing, might authorize the Counsel to defend the Member or committee when and if the suit is filed.

Paragraph 2 of subsection (c) specifically authorizes the Joint Committee to poll its Members by telephone in order to conduct a vote under this subsection. This is necessary and appropriate because by definition the Joint Committee will be making decisions under this emergency provision only while the Congress or the appropriate House of Congress is in recess. Therefore, it is unlikely that all of the Members of the committee will be available to attend a meeting in person to decide whether to authorize interim representational services by the Congressional Legal Counsel.

SECTION 203—DEFENDING A HOUSE, COMMITTEE, MEMBER, OFFICER, AGENCY OR EMPLOYEE OF CONGRESS

Sections 203. 204, 205 and 206 describe the basic types of legal actions in which the Counsel may be directed to participate. Except under the emergency procedures applicable to section 203, authorization under one of these sections is required before the Counsel may represent Congress, a House of Congress or a Member or committee of Congress. In no instance may the Counsel be directed to bring an action either in the name of Congress or in the name of a Member to compel an officer of the executive branch to enforce the law. Similarly, the Counsel may not be authorized to bring an action to challenge a Presidential claim of executive privilege.

Section 203 provides the basis for the Congress or a House of Congress to direct a Congressional Legal Counsel to undertake the defense of a Congressional interest.

Subsection (a)(1) provides that, except as otherwise provided in subsection (b), the Congressional Legal Counsel may be directed to undertake the defense of individuals or entities associated with the Congress at the direction of the Congress or the appropriate House of Congress. The individuals and entities which may be represented by the Congressional Legal Counsel are the Congress, a House of Congress, any office or agency of the Congress, a committee or subcommittee of a House of Congress, or any Member, officer or employee of a House of Congress. It is specifically provided that the Congressional Legal Counsel may only represent these individuals and entities in a civil action and only when the individual or entity has been made a party defendant. No such representation may take place unless the validity of an official proceeding or action, including the issuance of a subpoena or order, taken by that individual or entity is placed in issue in that legal proceeding. The civil action must be pending in a court of the United States or of a State or a political subdivision thereof.

If the individual or entity to be represented is a Member of the House of Representatives, on the Member's staff, an employee of a committee of the House of Representatives, or a committee of the House of Representatives, then the House of Representatives is the appropriate body to authorize representation of that individual or entity. Similarily, if the individual to be represented is a Senator, on the Senator's staff, an employee of a Senate committee or if a Senate committee itself is the entity to be represented, such representation can be authorized by the Senate. If a joint committee of Congress or the Congress as a whole or an officer or employee of a joint committee of Congress is the individual or entity to be represented, the Congressional Legal Counsel can be authorized to represent such individual entity only by a concurrent resolution of the Congress.

The Congressional Legal Counsel cannot be authorized to represent a Member of Congress, or an employee of Congress, in a legal action which is not civil in nature and in which there is not placed in issue the validity of an official action taken by the individual. The statute requires that the validity of any proceeding or action, including issuance of any subpoena or order, taken by any of the individuals or entities be at issue in any case to be handled by the Congressional Legal Counsel under this section. This language only covers the validity of actions taken by the individual or entity in their official capacity. Official capacity will cover any actions a Member of Congress or employee takes in the normal course of his employment. It is not necessary that the action being challenged have been taken on the floor of Congress or at a formal committee meeting. A challenge to any action taken by a Member when performing his legislative duties, including actions he takes to express his views on issues or to communicate with constituents, would fall within the definition of an action taken by the Member in the course of his official duty. However, if an employee of the Congress is driving to work and is in an automobile accident on the way to work, a tort action arising out of that accident would not normally constitute a challenge to the

validity of any official action. This section does not, therefore, create a free legal defense fund for personal legal matters of Members of Congress or their employees. In each case a preliminary judgment must be made whether or not the action of the Member, officer, committee, or employee which gives rise to the proceeding is within the scope of that individual's or entity's official duties. In making that judgment those duties which properly lie within the scope of a legislator's or aide's official duties should be broadly construed.

The failure to broadly construe such duties is serious because Members and their staff will often raise the defense of speech and debate clause immunity. Therefore, the crucial issue involved in much litigation involving Congress is whether the type of actions challenged are part of the individual's official duties. In order to preserve the ability of Congress as an institution to function and to prevent harrassment and undue financial burden and inconvenience to Members, officers and employees, Congress must be able to defend its Constitutional immunity from suit. Therefore, if there is a close question as to whether a particular action is within the official duties of the individual, Congress must have the option of authorizing representation by the Congressional Legal Counsel.

Paragraph (2) of subsection (a) provides a mechanism for Congress or the appropriate House of Congress to authorize the Congressional Legal Counsel to defend the same individuals and entities described in paragraph (1), above, with respect to any subpoena or order directed to that individual or entity. Again, this section only applies to subpoenas or orders which relate to the official duties of the individual or entity. If, for example, an employee of the Senate is the subject of a subpoena requesting the production of documents he has collected for use in a committee oversight hearing, the Congressional Legal Counsel could be directed to provide that employee with representation. However, if a Member of the House of Representatives is issued a subpoena with respect to documents relating to a financial investment made by that Member, the Congressional Legal Counsel would not ordinarily be directed to provide representation.

Subsection (b)(1) provides that the Congressional Legal Counsel may only be directed to undertake the representation of a Member, officer or employee under section 203(a) if the Member, officer or employee has consented to such representation. It is a basic principal of the American Bar Association's Canons of Ethics that a client be given the freedom to choose the attorney who will represent him. Accordingly, while this bill provides that, with respect to committees, or any office or agency of Congress, the representation by the Congressional Legal Counsel will be mandatory, with respect to the representation of an individual, the Counsel can provide representation only if the individual to be represented consents. In this regard, section 207(a)(4) below authorizes the Counsel to advise an individual not represented under this section in retaining private counsel. Furthermore, section 209(c) specifically authorizes Congress to reimburse the individual for the costs of retaining private counsel. It should not be likely, however, that many individuals will choose to retain private counsel.

Paragraph (1) of subsection (b) also recognizes that situations will occur when Congress will want to authorize the Congressional Legal

Counsel to provide legal assistance and representation to a Member, officer or an employee with respect to certain issues involved in a litigation matter and not with respect to other issues or with respect to the application of the law to the facts of the particular case at bar. It is often the case that the same legal action can contain issues relating to a Member, officer or employee's official duties and issues relating to matters of a personal nature. Therefore, this paragraph specifically provides that a resolution directing the Congressional Legal Counsel to provide representation to a Member, officer or employee may limit such representation to constitutional issues relating to the powers and responsibilities of Congress.

Paragraph (2) of subsection (b) establishes the procedure described above whereby representation by the Congressional Legal Counsel of entities or individuals in matters described in subsection (a) of section 203 may be authorized in emergency situations in the absence of an appropriate resolution by the Congress or by one House of Congress. Such emergency representation can be authorized only by the Joint Committee on Congressional Operations if (a) Congress or the appropriate House of Congress is not in session and (b) defense of the Congressional interest at issue would be prejudiced by a delay in providing representation. An application of these standards will involve consideration of the type of legal action pending, the court deadlines involved, and the anticipated length of the Congressional recess. It is the intent of this provision that an individual or entity who could be represented by the Congressional Legal Counsel if properly authorized by Congress should not have to retain private counsel on an interim basis merely because of the existence of a court deadline. The authority of the Joint Committee should, however, only be exercised when failure to authorize representation would in fact unavoidably prejudice the rights of the individual or entity to be represented.

An example of where such emergency authorization of representation by the Congressional Legal Counsel might be necessary is the situation where a committee of a House of Congress has scheduled a hearing during a Congressional recess and a party subpoened to testify before the hearing initiates a civil action against the committee to enjoin the committee from going forward with its hearing. In such a case, the committee cannot wait until Congress reconvenes to obtain legal representation since such a delay would prevent the committee from performing the official action which is being challenged by the law suit.

SECTION 204—INSTITUTING A CIVIL ACTION TO ENFORCE A SUBPOENA OR ORDER

Section 204 permits the Congress or the appropriate House of Congress to authorize the Congressional Legal Counsel to bring a civil action to enforce a subpoena or order issued by Congress, a House of Congress, a committee or a subcommittee of a committee authorized to issue a subpoena. Section 204 only provides for authorizing the Congressional Legal Counsel to undertake representation in such a legal action. This section must be read in conjunction with section 213 which contains a statute providing the U.S. District Court for the District of

Columbia with jurisdiction to hear certain cases to enforce a civil subpoena and with section 210(c) setting forth certain procedures which a committee and each House of Congress must follow in order for the Counsel to be authorized to bring a civil action to enforce the subpoena.

Section 204(a) authorizes Congress or the appropriate House of Congress to direct the Congressional Legal Counsel to bring a civil action under any statute conferring jurisdiction on any court of the United States to enforce a subpoena issued by a Congressional committee or subcommittee. Section 213 of this title expressly confers jurisdiction on the United States District Court for the District of Columbia to hear cases brought by the Congressional Legal Counsel pursuant to this section.

The words "statute conferring jurisdiction" are intended to refer specifically to the statute set forth in Section 213 and any statute which Congress may choose to enact in the future which specifically gives the courts jurisdiction to hear a civil legal action brought by Congress to enforce a subpoena against an executive branch official. This bill, however, does not provide for authorization for enforcement of subpoenas against executive branch officials.

Subsection (a) does not limit or redefine which congressional committees or subcommittees have the authority to issue a subpoena or order. However, subsection (a) expressly applies only to those committees or subcommittees which have the authority to issue a subpoena or order. Only such committees and subcommittees will be able to use the new civil action as an alternative means of enforcing that subpoena or order.

Both subpoenas and orders may be the subject of an action brought under section 204 and section 213. Similarly, under these two sections. Congress may ask a court to directly order compliance with such subpoena or order or may merely seek a declaration concerning the validity of such subpoena or order. By first seeking a declaration, Congress gives the party an opportunity to comply before actually ordered to do so by a court. Congress has the complete discretion of whether or not to utilize such a two-step enforcement process.

Subsection (b) expressly provides that the enactment by Congress of a mechanism for the civil enforcement of a subpoena does not affect the power and authority and absolute discretion of Congress or an appropriate House of Congress, to choose to enforce a subpoena by either of the two existing methods rather than by initiating a civil enforcement action. The first of these two existing methods is certification by the President Pro Tempore of the Senate or the Speaker of the House of Representatives to the United States Attorney for the District of Columbia of a matter pursuant to section 104 of the revised statutes (2 U.S.C. 194). This procedure provides for a criminal prosecution brought by the United States Attorney to punish an individual or entity for refusing to comply with a congressional subpoena or order. The second existing method of enforcement is for either House of Congress to hold an individual or entity in contempt of such House of Congress. This method is commonly referred to as trial before the bar of Congress. While historically this method has been used numerous times, it is generally considered to be time consuming and not

very effective. No one has been tried for contempt of Congress before the bar of Congress since 1945.

In exercising its discretion with respect to enforcing a subpoena or order, Congress may decide that it is important to secure production of the subpoenaed documents or compliance with the order and that a civil action is quicker and more effective in achieving these purposes. In other cases, Congress may decide that it is more important to punish the individual or entity who has refused to comply with a Congressional demand and thereby to deter violations by others. In that case the contempt should be certified to the United States Attorney for the District of Columbia for criminal prosecution. This title provides Congress with another method to enforce its subpoenas and orders—a method which should prove less cumbersome to use—without restricting the discretion of Congress to utilize other enforcement mechanisms available to Congress.

SECTION 205—INTERVENTION OR APPEARANCE

Section 205 provides a procedure under which the Congressional Legal Counsel may be directed to intervene or appear as amicus curiae on behalf of Congress in a pending legal action.

There are a number of legal actions in which Congress is not a party, but where the vital interests of Congress will be affected by the decision in that action. In such cases, it is desirable for Congress to have an opportunity to consider whether it is in its interests to intervene as a party or appear as amicus curiae, to present the legal position of Congress for the consideration of the court.

Under section 205 Congress may, by concurrent resolution, direct the Congressional Legal Counsel to intervene or appear amicus curiae in a legal action. Congress may direct such intervention or appearance where the constitutionality of law of the United States is challenged, the United States is a party, and the constitutionality of such law is not adequately defended by counsel for the United States, namely by counsel for the Justice Department. In addition, intervention or appearance may be authorized to defend the powers and responsibilities of Congress under Article I of the Constitution of the United States.

With respect to cases involving the constitutionality of a statute, even if the United States is not a party in that action, 28 U.S.C. 2403 permits the Department of Justice to intervene in the action as a party on behalf of the United States. Therefore, the Department of Justice as the attorney for the executive branch of the United States government is given the prime responsibility to defend the constitutionality of lawfully enacted statutes. Section 205 of this bill does not alter the Department of Justice's responsibility described above; nor, does this section permit the Congressional Legal Counsel to intervene or appear amicus curiae in cases involving the constitutionality of a statute where the statute's constitutionality is being adequately defended by the Department of Justice.

It has been the experience of Congress over the past decade, however, that there are occasions when the Department of Justice chooses not to vigorously and unequivocably defend the constitutionality of a

statute. This may occur when the Department determines that the statute in question infringes on the constitutional powers of the President, or because the Department, on behalf of the executive branch, simply does not believe that the statute is constitutional. Examples of this occurred in litigation involving the constitutionality of statutes with respect to the 18-year old vote, in litigation involving the constitutionality of the composition of the Federal Elections Commission, and in litigation concerning statutes containing a legislative veto provision. When, for whatever reason, the Department of Justice is not adequately defending the statute, the Congress may under section 205 direct the Congressional Legal Counsel to intervene or appear as amicus curiae to vigorously defend the constitutionality of the statute.

Congress may determine that the Department of Justice is not adequately defending the constitutionality of a statute even where the Department is ostensibly taking a position in support of the statute. An example of this possibility has occurred in the presently pending case involving the constitutionality of a statute providing for the custody of the Nixon tapes. The Department of Justice originally took a position that former President Nixon had the legal right to custody to his presidential papers and tapes. However, Congress subsequently passed a statute which was inconsistent with that legal opinion. The Department of Justice has chosen to defend the constitutionality of the Congressional enactment; however, the Department is attempting to do so in a manner consisent with its previously rendered legal opinion regarding the custody of those tapes and papers. Because of the Department's prior inconsistent position, the Department might foreclose itself from making one or more effective arguments on behalf of the constitutionality of the statute. The Department by its actions may have restricted its effectiveness in this representational matter and therefore Congress would be justified under this statute in directing the Congressional Legal Counsel to intervene or appear amicus curiae in that action. (A detailed memorandum on the background of that litigation was submitted by Senator Nelson to the Committee in the course of its hearings. Hearings, Part II, page 142).

The second situation in which the Congressional Legal Counsel may be directed to intervene or appear amicus curiae in an existing legal action is where the powers and responsibilities of Congress under Article I are placed in issue. In such a litigation, Congress' vital interests are directly at stake and the vigorous representation of those interests should not be left to others, let alone to a coequal branch of the government. If it is Congress which will be directly affected by any court interpretation of the powers and responsibilities of Congress, Congress should have the discretion to authorize its attorney to appear in such a legal action and vigorously defend the powers and responsibilities of Congress under Article I.

Subsection (b) imposes upon the Congressional Legal Counsel the responsibility to notify the Joint Committee on Congressional Operations of any legal action in which the Congressional Legal Counsel believes that intervention or appearance as amicus curiae by Congress is necessary to protect the interests specified in subsection (a). Therefore, the Congressional Legal Counsel has the responsibility to continually monitor legal actions which might be of interest to Congress. The

notification by the Congressional Legal Counsel to the Joint Committee must contain a description of the legal proceeding together with the reasons that the Congressional Legal Counsel believes call for intervention or appearance as amicus curiae by Congress. It is the responsibility of the Joint Committee to have this notification published in the Congressional Record for the information of the Senate and the House of Representatives. By this procedure, the Congressional Legal Counsel can bring the existence of legal actions to the attention of the Congress, and Congress can then decide when intervention or appearance amicus curiae is appropriate.

Subsection (c) makes it clear that when the Congressional Legal Counsel is directed to intervene or appear as amicus curiae in a legal action involving a Member, officer or employee of Congress, the intervention or appearance as amicus curiae by the Congressional Legal Counsel must be limited to argumentation with respect to the constitutional issues relating to the powers and responsibilities of Congress. Thus, if the Congressional Legal Counsel is not authorized to represent a Member, officer or employee of Congress under section 203, the Congressional Legal Counsel may still be directed to intervene or appear as amicus curiae in that action. However, when this occurs, the Congressional Legal Counsel may not take a position on behalf of the Member, officer or employee with respect to any issues in the litigation other than those relating to the powers and responsibilities of Congress. This clear limitation would make it possible for Congress to determine to intervene or appear in a criminal case affecting Congressional interests, without directly representing the defendant.

SECTION 206—IMMUNITY PROCEEDING

Under section 206 a House or a committee may direct the Congressional Legal Counsel to assist such House or committee in requesting the United States District Court to issue an order granting immunity, pursuant to section 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6005). Under that statute, a procedure is established whereby a House of Congress or a committee may request that a witness be ordered to testify or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination. The court is empowered to grant such an order, in which case the testimony given by the individual under the order may not be used against the individual in any criminal case except a prosecution for perjury. Such a grant of immunity may be issued by a court "upon the request of a duly authorized representative of the House of Congress or the committee concerned." Section 106 of this title authorizes the Congressional Legal Counsel to serve as the duly authorized representative of a House of Congress or a committee if that committee or House of Congress has complied with all the necessary requirements of section 201(a) of the Organized Crime Control Act of 1970.

18 U.S.C. 6005 (b)(2) requires that any request for immunity made by a committee or subcommittee of a House of Congress "must be approved by an affirmative vote of two-thirds of the members of the full committee." This same two-thirds voting requirement is applied

to any directives from a committee to the Counsel in section 210(a)(3), below.

A request by a committee under section 206 and the emergency authorization procedure in section 203(b)(2) are the only occasions when the Congressional Legal Counsel may undertake any representational activities without being specifically directed to do so by at least one House of Congress.

SECTION 207—ADVISORY AND OTHER FUNCTIONS

Section 207(a) requires the Congressional Legal Counsel to advise, consult and cooperate with other individuals and entities which provide assistance to Congress.

Paragraph (1) of subsection (a) requires the Counsel to advise, consult, and cooperate with the United States Attorney for the District of Columbia with respect to any criminal proceeding for contempt of Congress certified pursuant to section 104 of the revised statutes (2 U.S.C. 194). Since the Congressional Legal Counsel will advise and cooperate with committees in the course of their investigations and with the leadership in the course of a consideration of a citation for contempt of Congress, it is appropriate for the Congressional Legal Counsel to cooperate with the United States Attorney for the District of Columbia when a matter is referred to the United States Attorney for criminal prosecution for contempt of Congress. The Congressional Legal Counsel may, for example, serve as liaison with the United States Attorney and assist him in transferring evidence needed to prosecute such a case. At the same time, the Congressional Legal Counsel can monitor the activities of the United States Attorney and insure that the interests of Congress are vigorously represented.

Paragraph (2) of subsection (a) requires the Counsel to advise, consult and cooperate with the Joint Committee on Congressional Operations in identifying court proceedings or actions which are of vital interest to Congress or to either House of Congress. The Joint Committee already is given responsibility to identify such proceedings under section 402(a)(2) of the Legislative Reorganization Act of 1970 (2 U.S.C. 412(a)(2)). It is intended that the Joint Committee on Congressional Operations will continue to do the excellent job it has done in the past of identifying these proceedings. Since it is the responsibility of the Congressional Legal Counsel to monitor pending litigation under Section 205(b), and the Congressional Legal Counsel will be involved in much of the litigation of vital interest to Congress, it is essential that the Congressional Legal Counsel coordinate his efforts with that of the Joint Committee in the performance of the Committee's function.

Paragraph (3) of subsection (a) requires the Congresional Legal Counsel to advise, consult and cooperate with the agencies and offices which provide assistance to Congress of a nature which often involves legal issues; namely the Comptroller General, the General Accounting Office, the Office of Legislative Counsel of the Senate, the Office of Legislative Counsel of the House of Representatives and the Congressional Research Service. None of these organizations are presently performing any of the responsibilities assigned to the Con-

gressional Legal Counsel. However, while drafting legislation or researching legal questions on behalf of committees or Members of Congress, the agencies should have access to and the cooperation of the Congressional Legal Counsel.

A proviso has been added to paragraph (3) to make it explicit that the authority granted to the Congressional Legal Counsel in this statute should not be construed to affect or infringe upon any functions, powers, or duties of the Comptroller General of the United States.

Paragraph (4) of subsection (a) requires the Congressional Legal Counsel to assist a Member, officer or employee of Congress in obtaining private legal counsel if that Member, officer or employee is not represented by the Congressional Legal Counsel under section 203. The Congressional Legal Counsel is authorized to assist the individual in obtaining private counsel without respect to the reason the individual chooses not to be represented by the Congressional Legal Counsel or the reason that Congress or the appropriate House of Congress may have choosen not to authorize such representation. To be of assistance under this section, the Congressional Legal Counsel should take steps to determine which attorneys are experienced in dealing with different types of cases involving Members, officers and employees of Congress and with defending the powers of the legislative branch of the government. The assistance required of the Counsel under this section is in conformity with the canons of ethics of the American Bar Association which require an attorney to assist an individual in obtaining private legal counsel when that attorney is not able to provide legal representation for the individual.

Paragraph (5) of subsection (a) requires the Congressional Legal Counsel to advise, consult and cooperate with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Parliamentarians of the Senate and House of Representatives regarding subpoenas, orders or requests for withdrawal of papers presented to the Senate or the House of Representatives or which raise a question of the privileges of the Senate or the House of Representatives. Receipt of such subpoenas or orders have become frequent in recent years. Over 100 such subpoenas or orders have been reported to the House of Representatives over the last five years.

Increasingly, defendants in criminal actions are subpoenaing information in the possession of committees of Congress, then using a refusal of that committee to turn over the information as a ground for seeking the reversal of their convictions. Similarly, parties to legal actions have issued numerous subpoenas to Congressional employees in the course of widespread discovery efforts. The removal of papers and documents in the possession of the Congress thus presents a serious constitutional and practical question for the Senate or the House of Representatives.

The Congressional Legal Counsel would be authorized under paragraph (5) to advise, consult, and cooperate with the leadership in developing a systematic and consistent response to such subpoenas or orders and in identifying the legal consequences associated with the decision to comply or not to comply with such a subpoena or order.

Paragraph (6) of subsection (a) requires the Congressional Legal Counsel to advise, consult and cooperate with committees and subcommittees in the promulgation and revision of their rules and procedures for the use of Congressional investigative powers and with respect to questions which may arise in the course of any investigation. The conduct of a proper Congressional investigation is complex and fraught with many legal technicalities. Knowledge of court rulings in this area is essential to make sure that the investigation is conducted so as to avoid or anticipate litigation and to ascertain that Congressional interests will prevail. An example of this problem is the criminal prosecution of Edwin Reinecke for perjury before a Congressional committee. The indictment of Mr. Reinecke was dismissed by a Federal court because the committee before which Mr. Reinecke testified had not published its rules and procedures in the Congressional Record as required. Other contempt actions have been dismissed because of the failure of Congressional committees to follow proper procedures with respect to quorum requirements, notice and other technical matters.

The advice of the Congressional Legal Counsel at an early stage of the Congressional investigatory process will be as valuable or more valuable than representational assistance on behalf of the committee after the committee has taken actions which later become the subject of the legal action. Of course, the effectiveness of the Congressional Legal Counsel in performing this preventative function will be directly dependent on the desire and willingness of the committees and subcommittees to utilize the assistance of the Congressional Legal Counsel. In no sense will the Counsel be able to substitute his judgment for that of the committee or subcommittee.

The Committee on Government Operations received testimony from attorneys involved in the work of the Senate Select Committee on Presidential Campaign Activities (the "Watergate" Committee) that when they undertook their investigative efforts, there was little or no expert advice available in the Congress with respect to how to proceed with a Congressional investigation. The matters which arose, such as the drafting of committee procedures and the proper manner in which to issue and enforce subpoenas, each had to be researched by the Committee anew. The litigation experience of a Congressional Legal Counsel should be of invaluable assistance, not only to standing committees and subcommittees, but to the select and temporary committees of both Houses of Congress.

Subsection (b) of section 207 requires the Congressional Legal Counsel to compile and maintain legal research files of materials from court proceedings which have involved Congress or an entity or individual associated with Congress. Presently, the Joint Committee compiles and maintains files of materials to assist it in identifying court proceedings of vital interest to Congress; however, the files are not compiled or maintained for active use in litigation, which is the purpose of the requirement of this section. The Department of Justice does not index their research files and material on the basis of whether or not they involve Congress, nor does the Department make its research files available on a routine basis.

Subsection (b) also provides that public court papers and other research memoranda which do not contain information of a confidential or privileged nature will be made available to the public. The manner and extent to which this material will be made available to

the public must be consistent with the applicable procedures set forth in any rules of the Senate and the House of Representatives which may apply, and must be consistent with the interest of Congress. For example, a memorandum prepared in the course of an on-going litigation matter might be withheld from public inspection during the course of the litigation if the information in the memorandum has not been incorporated in public court papers and if the public release of the memorandum might adversely affect the Congressional position in the pending litigation. Memoranda of a factual nature which contain information of a confidential nature could not be released. The access to research materials by private attorneys representing Members or other individuals not represented by the Counsel will be very much in the interests of Congress.

Subsection (c) provides that the Congressional Legal Counsel shall perform such other duties consistent with the purposes and limitations of this title as the Congress may direct. Under no circumstances is it intended that this subsection be utilized to authorize the Counsel to bring any action against the executive branch either to compel an officer of the executive branch to enforce the law or to challenge a claim of executive privilege.

In contrast, it might be proper for Congress to authorize the Counsel to intervene in a case to modify a court protective order which controlled access to documents under subpoena by a committee or subcommittee. The Senate Intelligence Committee has sought precisely this kind of relief in one case.

SECTION 208—DEFENSE OF CERTAIN CONSTITUTIONAL POWERS

Section 208 sets forth certain substantive legal positions which the Congressional Legal Counsel must take when he is performing representational duties under this Act. The section states that whenever the Congressional Legal Counsel is performing a function under sections 203, 204, 205, or 206, the Congressional Legal Counsel must defend vigorously, when placed in issue, the Constitutional powers and responsibilities of Congress. Paragraphs (1) through (5) of section 208 itemize specific constitutional powers of Congress which the Congressional Legal Counsel must always vigorously defend when they are placed in issue in a legal matter in which the Congressional Legal Counsel is participating. Paragraph (6) requires the Congressional Legal Counsel to defend all constitutional powers and responsibilities of Congress which have not been specifically enumerated. Paragraph (7) requires the Congressional Legal Counsel to vigorously defend the constitutionality of statutes enacted by Congress when the question of the constitutionality of the statute arises in the course of a litigation matter in which the Congressional Legal Counsel is involved.

The purpose of this section is to prevent the Congressional Legal Counsel from taking a position on behalf of a particular client which is adverse to the constiutional powers and responsibilities of Congress or the constitutionality of a statute enacted by Congress. If such a conflict should present itself, under this provision the Congressional Legal Counsel would be required to notify the Joint Committee that he has a conflict between the interest of his client and the specific

requirements of section 208 and to request that the Joint Committee determine how the conflict should be resolved under the procedures in section 209 below. Resolution of such a conflict must be consistent with the requirements of Section 208. The express requirements of Section 208 serve to notify any individual or entity to be represented by the Counsel of the substantive positions he must take. Therefore, the occurrence of conflicts between these substantive positions and the best interests of given individuals should be rare. Finally, section 208 will impress on the Legislative Counsel that his ultimate client is always the Congress itself.

SECTION 209—CONFLICT OR INCONSISTENCY

Section 209(a) establishes a procedure for the resolution of any conflicts or inconsistencies which may occur between the representation of a party by the Congressional Legal Counsel and the other responsibilities of the Congressional Legal Counsel as set forth in this title or as set forth in the professional standards and responsibilities of the legal profession. If any such conflict should arise, the Congressional Legal Counsel is required to notify the Joint Committee and any party the Congressional Legal Counsel is representing or who is entitled to representation under this title, of the existence and nature of the conflict or inconsistency. Because at least one House of Congress must direct the Counsel to undertake any representational activities, Congress should be able to avoid most conflicts or inconsistencies. The substantive requirements of section 208 should further reduce the incidence of conflicts. Finally, section 209 is drafted so that the Counsel must notify the Joint Committee if he becomes aware of the possibility of a conflict even before the Counsel is directed to commence such representation.

Subsection (b) provides that upon receipt of that notification, the Joint Committee is required to recommend what action should be taken to avoid or resolve the conflict or inconsistency. The Joint Committee then must take steps to publish in the Congressional Record of the appropriate House or Houses of Congress the Congressional Legal Counsel's notification of conflict or inconsistency and the Joint Committee's recommendation with respect to how to avoid or resolve that conflict or inconsistency. At this point, the Congress or the appropriate House of Congress has a period of 15 days from the date of publication of this material in the Record to direct the Congressional Legal Counsel to resolve the conflict or inconsistency in a manner other than that recommended by the Joint Committee. If the Congress or the appropriate House of Congress takes no action, or if it endorses the recommendation of the Joint Committee, the Congressional Legal Counsel must avoid or resolve the conflict or inconsistency in the manner recommended by the Joint Committe. Otherwise, the Congressional Legal Counsel must comply with the directive of Congress or the appropriate House of Congress.

The procedures set forth in this section are intended to be internal checks on the operation of the Office of Congressional Legal Counsel and any instruction or determination with respect to a conflict or inconsistency made pursuant to this subsection may not be reviewed in a

court of law. This section does not create rights in any party to contest actions under this section in a court of law. Rather, this section is a procedure for the internal control of an employee of the Congress.

Subsection (c) restates the present procedure for authorizing the reimbursement of any Member, officer or employee of the Congress for the cost of his legal counsel. If a Member, officer or employee chooses not to be represented by the Congressional Legal Counsel, or for some other reason is not represented by the Congressional Legal Counsel, the appropriate House of Congress has the option of reimbursing that individual for the cost reasonably incurred in obtaining representation. This provision does not require the House of Congress to reimburse the individual and does not set any standards for reimbursement. Where, however, the operation of section 209 results in the Counsel withdrawing his representational services, Congress may wish to give special weight to any subsequent request for reimbursement.

SECTION 210—PROCEDURE FOR DIRECTION OF CONGRESSIONAL LEGAL COUNSEL

Section 210 sets forth the procedures by which Congress or a House of Congress may direct the Congressional Legal Counsel to undertake representational activity. This Section specifies the form which directives to the Counsel must take pursuant to the provisions of section 203(a), 204(a), 205(a), and 206. These procedures must be adhered to whenever the Counsel is directed to take action under any of these sections.

Paragraph (1) of subsection (a) requires directives made by Congress as provided for in sections 203(a), 204(a) and 205(a) be made by means of a concurrent resolution of Congress.

Paragraph (2) provides that a directive to the Congressional Legal Counsel by a House of Congress must be made by that House of Congress adopting a simple resolution authorizing action by the Congressional Legal Counsel. This procedure would apply in sections 203(a), 204(a) and 206 of this title. Paragraph (3) requires that a directive to the Congressional Legal Counsel to serve as the authorized representative of a committee in an immunity proceeding be authorized by a motion made in writing by that committee. That motion must be approved by an affirmative vote of two-thirds of the members of that full committee, as presently provided for in the immunity statute.

Subsection (b) contains detailed procedures for the consideration of any resolution or a concurrent resolution which is intended to authorize representational activity by the Congressional Legal Counsel under this title. The effect of subsection (b) is to limit debate on such a resolution or concurrent resolution to a period of 5 hours. With respect to any resolution except one involving the enforcement of a subpoena by a civil action, the resolution or concurrent resolution may not be referred to a committee for consideration. The procedures for consideration of such a resolution are patterned after those procedures contained in the Congressional Budget Act.

Subsection (c) provides a specific procedure for committee consideration of the desirability of bringing a civil action to enforce a subpoena. This subsection does not apply to civil enforcement of any subpoenas issued by Congress or a House of Congress.

The subsection provides that it will not be in order for the Senate or the House of Representatives to consider a resolution to direct the Congressional Legal Counsel to bring a civil action to enforce a committee subpoena unless such resolution has been reported by a majority vote of the members of such committee or of the committee of which such subcommittee is a subcommittee and unless the report filed by the committee contains certain information set forth in detail in this subsection.

This requirement is identical to the present vote requirements in the House for issuing a subpoena. Under the criminal contempt statute, committees of both Houses are required under various court cases to report the contempt by a majority vote of at least a quorum of the members of a committee. This subsection also requires a subcommittee to gain the approval of the full committee of which they are a subcommittee before bringing a civil action to enforce a subpoena under the procedures set forth in this title. House subcommittees do not have authority to issue subpoenas. Presently, Senate and House subcommittees would be required to secure a favorable vote in their committees to report any contempt for criminal prosecution.

The report which the committee files with the House of Congress which will consider the resolution authorizing a civil action to enforce a subpoena must contain a statement of (A) the procedure followed in issuing the subpoena; (B) the extent to which the party subpoenaed has complied with such subpoena; (C) any objections or privileges raised by the subpoenaed party; and (D) the comparative effectiveness of bringing civil action to enforce a subpoena, certification of a criminal action for contempt of Congress, or initiating a contempt proceeding before a House of Congress. Clause (A) and (B) describe information which must be presented to the House of Congress before they can decide whether to approve an enforcement action. Clause (C) institutionalizes a procedure whereby the objections and privileges raised by the subpenaed party will be placed before the House of Congress for its consideration. This will ensure that the House of Congress will have all relevant information before it when making its determination. By requiring a committee to note both objections as well as privileges, all arguments made by the subpoenaed party with respect to the subpoena will be presented for consideration—whether or not legally dispositive. The Congress is thus assured of being apprised of all factors relevant to its considerations. Finally, clause (D) requires the committee to consider the alternative means of enforcing the subpoena so that the considerations which favor each form of enforcement will be put before the appropriate House of Congress each time a decision is made with respect to bringing civil enforcement action.

Subsection (d) makes it clear that compliance with the reporting requirements of subsection (b) are not to be matters which will be reviewed by a court of law. It was especially important to make this clear so that technical noncompliance with these reporting requirements would not be used by individuals who refused to comply with Congressional subpoenas as another technicality to defeat the enforcement of a subpoena. However, as a matter of Senate or House procedure, any consideration of a report which fails to conform to these requirements is subject to a point of order.

Subsection (e) sets forth rules for the computation of periods of time under section 202(c)(1) and 209(b). These rules are those traditionally incorporated in rules and legislation passed by the Congress.

Subsection (f) defines the term "committee" for the purposes of this title as including standing, select, special and joint committees established by law or resolution as well as the Technology Assessment Board. The definition of committee is intended to be broadly interpreted and all inclusive of committees, boards and agencies composed of Members of Congress which have been given subpoena power by Congress.

Subsection (g) specifies that the rule changes contained in section 210 are enacted pursuant to the rulemaking authority of the Senate and the House of Representatives. It recognizes that under the Constitution either House retains the full right to subsequently change the rules established by section 210 insofar as they apply to such House, regardless of the actions of the other House.

Subsection (h) makes it clear that a directive to the Congressional Legal Counsel to bring a civil action pursuant to 204(a) of this title in the name of a committee or a subcommittee of Congress to enforce a subpoena by a civil action will constitute authorization for the committee or subcommittee to bring such action within the meaning of any statute conferring jurisdiction on any court of the United States. The issue whether a committee or subcommittee has been authorized by the Congress to engage in a litigation action has been raised in some prior litigation. This section will make it clear that with respect to civil actions to enforce a subpoena, Congress is authorizing its committee or subcommittee to bring such an action.

SECTION 211—ATTORNEY GENERAL RELIEVED OF RESPONSIBILITY

Section 211 establishes a procedure which will avoid any conflicts between the Department of Justice and the Congressional Legal Counsel or any overlap during the transition period between these two offices with respect to providing legal services for the defense of Congressional interests. The section provides that upon receipt of a written notice from the Congressional Legal Counsel that the Congressional Legal Counsel has undertaken a form of representational service under section 203(a) of this title, the Attorney General will no longer have any responsibility or authority to represent the Congressional interest in that proceeding. The Congressional Legal Counsel must clearly specify the action and proceeding involved and the specific party which the Congressional Legal Counsel will be representing. With respect to these parties and actions, the Attorney General is relieved of any responsibility to provide representational service and the Attorney General has no authority to perform any such representational service except with the approval of the Congressional Legal Counsel or either House of Congress. Finally, the Attorney General is required to transfer to the Congressional Legal Counsel all materials relevant to the representational services undertaken by the Congressional Legal Counsel as authorized under section 203(a). This requirement, of course, does not cover materials in the possession of the Attorney General no matter how relevant they may be to the representational service undertaken by the Congressional Legal Counsel if those materials were not collected or compiled in the Attorney General's role as an attorney for the party now being represented by the Congressional Legal Counsel.

Subsection (b) of section 211 sets forth a rational procedure for communication between the Attorney General and the Congress in a vital area where communication presently exists on an ad hoc basis. Presently, when the constitutionality of a statute enacted by Congress is challenged in a legal proceeding where the United States is not a party, notice of this fact is given to the Attorney General and the Attorney General is given an opportunity to intervene in that action on behalf of the United States. The clear intent of Congress in giving the Attorney General that responsibility was for the Attorney General, on behalf of the United States, to defend the constitutionality of that statute. This question of legislative intent is clarified explicitly in section 214(f) of this title.

However, it is not unusual for the United States to be a party in a legal action in which the constitutionality of a statute is at issue and for the Attorney General or Solicitor General to make a determination not to appeal a court decision adversely affecting the constitutionality of that statute. Very often this decision is made for legitimate tactical reasons such as the fact that the case before the court did not present the best fact situation for defending the statute. However, it is possible for the Department of Justice to base its decision not to appeal a finding adversely affecting the constitutionality of a statute based upon a consideration with which Congress, as a co-equal branch of the government, would not agree. Therefore, subsection (b) requires the Attorney General to notify the Congressional Legal Counsel with respect to any proceeding in which the United States is a party or has intervened and the Attorney General or Solicitor General has made a decision not to appeal a court decision adversely affecting the constitutionality of a statute enacted by Congress. The Attorney General must so notify the Congressional Legal Counsel in such time as will enable the Congressional Legal Counsel to intervene in that legal proceeding pursuant to the procedures for intervention set forth in section 205 of this title. This procedure will give the Congress notice of the instances in which the Justice Department decides not to defend the constitutionality of a statute by failing to appeal an adverse decision and, thereby, permit the Congress to make arrangements for intervention. Upon intervention in such action Congress may appeal such adverse finding with respect to constitutionality.

SECTION 212—PROCEDURAL PROVISIONS

Subsection (a) of section 212 establishes the standards a court is to apply in determining whether the Congressional Legal Counsel may intervene as a party or file a brief amicus curiae on behalf of Congress under section 205 of this title. This section states that such intervention as a party or participation as amicus curiae is of right and not a matter for the discretion of the court. However, such participation may be denied by the court upon an express finding that such intervention or filing is untimely and would significantly delay the pending action.

The power of Congress to determine the proper parties to participate in litigation or as a friend of the court is unquestioned as long as the basic constitutional requirements of case or controversy are complied with. This section assumes that a case or controversy exists and directs its attention to the discretionary and statutory considerations that courts apply in determining who may intervene or file a brief amicus curiae. It is the intention of Congress to give itself that right under section 205 of this title unless such intervention or appearance as amicus curiae would significantly delay the pending action.

Under subsection (b) the attorneys working in the Office of Congressional Legal Counsel are entitled to enter an appearance in any proceeding before a court of the United States without compliance with any requirement for admission to practice before that court. This authority only applies to proceedings in which the attorney is performing functions authorized under this title, and is not applicable to an appearance before the United States Supreme Court.

Subsection (c) specifies that nothing in this title can be construed by a court of law to confer standing on any party seeking to bring an action against an individual or entity associated with Congress. Thus, a provision permitting Congress to utilize a civil proceedng to enforce a subpoena does not in turn give an individual any standing or a court any jurisdiction to consider legal actions against Congress if such standing or jurisdiction did not exist prior to the enactment of the statute.

Under subsection (d), civil actions brought by the Congressional Legal Counsel to enforce a subpoena under section 204 must be assigned by a court for a hearing at the earliest practicable date and must be expedited in every way possible. Similarly, any appeal or petition for review in such a proceeding should be expedited in the same manner. One of the compelling arguments for a civil enforcement mechanism is the need to obtain testimony and documents quickly while these documents and testimony can still be of use to Congress. It is the nature of a Congressional investigation that delay in the production of vital information is equivalent to an absolute refusal to provide that information. Criminal contempt is often adequate to punish the individual who will not comply with a Congressional subpoena. However civil enforcement has clear advantages if the proceeding is handled in an expedited manner. If it is expedited, there is an incentive for the individual subpoenaed to comply with the subpoena under the direction of a court in a manner which is timely to the Congressional investigation for which the information was sought.

The committee received extensive testimony from those associated with the Senate Watergate Committee investigation that numerous witnesses employed the tactic of delaying their response to Committee subpoenas or refusing to comply in the hope that they could hold out until the investigators no longer needed the documents or went out of business. To a large extent, the tactic of these individuls was successful. The goal of a Congressional investigation is to obtain the information and testimony necessary for Congress to fulfill its constitutional functions. If Congress is relegated to a position of punishing those who do not comply with its orders, without any effective means of actually obtaining the information it needs, the ability of Congress

to fulfill its constitutional functions will be impaired. Therefore, it is the express purpose of this subsection to assign civil proceeding to enforce a subpoena the highest priority on the court dockets.

SECTION 213—JURISDICTION OF CONGRESSIONAL ACTIONS

Section 213 adds a new section to chapter 85 of title 28 of the United States Code, giving the District Court for the District of Columbia original jurisdiction without regard to the sum or value of the matter in controversy, over any civil action brought on behalf of Congress, a House of Congress or a committee of Congress to enforce a subpena or order issued by that entity. Since at least one court has taken the position that without new legislation the Federal courts do not have jurisdiction to hear a civil action to enforce a Congressional subpoena (see various proceedings in *Senate Select Committee on Presidential Campaign Activities* v. *Nixon*), this new section is being enacted to leave no question that Congress intends for the District Court for the District of Columbia to have jurisdiction to hear civil actions to enforce Congressional subpoenas.

This jurisdictional statute applies to a subpoena directed to any natural person or entity acting under color of state or local authority. By the specific terms of the jurisdictional statute, it does not apply to a subpoena directed to an officer or employee of the Federal government acting within his official capacity. There is now pending in the Committee on Government Operations legislation directly addressing the problems associated with obtaining information from the executive branch. (See S. 2170: "The Congressional Right to Information Act"). This exception in the statute is not intended to be a Congressional finding that the Federal courts do not now have the authority to hear a civil action to enforce a subpoena against an officer or employee of the Federal Government. However, if the Federal courts do not now have this authority, this statute does not confer it.

The exemption in the statute with respect to actions to enforce subpenas against Federal government officers or employees acting within their official capacity should be construed narrowly. Therefore, a subpoenas against Federal government officers or employees acting within ernment officer or employee is not excluded from the coverage of this jurisdictional statute.

The jurisdictional statute applies to actions to enforce or secure a declaration concerning the validity of a subpoena or order issued by Congress, a House of Congress, or a committee of Congress to secure the production of documents or other materials of any kind, to secure the answering of any deposition or interrogatory, or to secure testimony or any combination of the above.

The Court is given jurisdiction to enforce subpoenas on behalf of committees only when the committee is authorized to seek enforcement. This section expresses the requirement of standing which a court must consider before hearing a case. Under section 210(h) whenever Congress directs the Counsel to bring a civil enforcement action on behalf of a committee, it thereby authorizes that committee to bring the action. It is unnecessary for Congress to authorize itself to bring an action. By voting to enforce a subpoena issued by Congress or a House

of Congress, it is clear that Congress is authorizing itself to bring such action.

While the Congressional Legal Counsel may be authorized to bring a civil action under this jurisdictional statute pursuant to the procedures set forth in section 204 of this title, subsection (b) of the new section 1364 provides that the entity of Congress bringing the civil action to enforce the subpoena or order may be represented in such action by any attorneys it may designate. Thus, this jurisdictional statute does not require Congress, a House of Congress or a committee of Congress to use the Congressional Legal Counsel in bringing such an action. However, the standing order of the Senate which gives Senate committees standing authority to bring any legal action is limited to exclude actions under this jurisdictional statute. Otherwise, the voting, reporting, and approval required under sections 210(a) and (c) to enforce a committee subpoena could be easily circumvented.

Subsection (c) of the new section 1364 provides that a civil action commenced or prosecuted under this section may not be authorized pursuant to the Standing Order of the Senate "authorizing suits by Senate Committees" (S. Jour. 572, 70–1, May 28, 1928).

Subsection (b) of section 213 simply adds the description of the new jurisdictional statute, namely: "1364, Congressional Actions." to the analysis of chapter 85 of title 28, United States Code.

SECTION 214—TECHNICAL AND CONFORMING AMENDMENTS

Section 214(a) gives the Congressional Legal Counsel the same authority to send materials related to his official business activities and duties as franked mail. This authority is now possessed by the Legislative Counsels of the House of Representatives and the Senate. Subsection (b) amends section 321(a)(1) of title 39 so that the Postal Service is reimbursed on the same basis for franked mail sent by the Congressional Legal Counsel that it is with respect to other franked mail. Subsection (c) amends section 3219 of title 39 so that mailgrams sent by the Congressional Legal Counsel are treated as franked mail as are mailgrams sent by the legislative counsel of the House of Representatives or the Senate.

Subsection (d) repeals the statute which requires the Attorney General to defend an action brought against an officer of either House of Congress with regard to the discharge of his official duty (2 U.S.C. 118). Since Congress may authorize representation by the Congressional Legal Counsel of any officers which it believes should be represented by the government, there is no need for a requirement that the Attorney General undertake such representation.

Subsection (e) of section 214 of this title amends section 2403 of title 28 U.S.C. to clarify the original legislative intent at the time of the passage of that section. The legislative history of that section makes it clear that Congress was seeking to authorize the Attorney General to intervene in an action where the United States is not a party and where the constitutionality of an act of Congress affecting the public interest is drawn in question in order for the Attorney General to defend the constitutionality of that statue on behalf of the United States. However, in at least one instance the Attorney General has chosen to intervene in an action where the United States was not a party to challenge the constitutionality of an act of Congress. Such an interpretation of the statute is clearly contrary to the congressional intent at the time of the enactment of that statute and is contrary to the intent of Congress at this time. Therefore, subsection (f) of this title amends section 2403 of Title 38, United States Code to make it clear that if the Attorney General chooses to intervene in an action under that Section, the Attorney General must argue in favor of the constitutionality of the Act of Congress being challenged.

SECTION 215—SEPARABILITY

Section 215 contains the provision separability clause which states that if any part or application of this title is held invalid, the remaining parts, provisions or applications of the title shall not be affected thereby.

SECTION 216—AUTHORIZATION OF APPROPRIATIONS

Section 216 authorizes appropriations for each fiscal year through October 30, 1981, in such sums as are necessary to carryout the provisions of this title. A limited authorization period was chosen so that Congress can review the operations of the Office of Congressional Legal Counsel after an approximately four-year period and make a determination whether such an office has been effective in accomplishing the purposes for which it was established.

C. Title III—Financial Disclosure

SECTION 301—DEFINITIONS

Section 301 defines the key terms used in this title.

Section 301(1) defines "agency" as any authority of the United States Government.

Section 301(2) defines "commodity future" as defined in Sections 2 and 5 of the Commodity Exchange Act, as amended (7 U.S.C. 2 and 5).

Section 301(3) defines "Comptroller General" as the Comptroller General of the United States.

Section 301(4) defines "dependent" as defined in Section 152 of the Internal Revenue Code.

Section 301(5) defines "employee" as any employee designated under section 2105 of title 5, United States Code or any employee of the United States Postal Service or the United States Postal Rate Commission.

Section 301(6) defines "immediate family" as the individual's spouse, the child, parent, grandparent, grandchild, brother or sister of an individual or the spouse of such individual and the spouses of these individuals. This definition is used in exempting gifts and items received in kind from immediate family members from being reported under this title (see sections 303(a)(1) and (2)). However, the more limited term "dependent" is used when defining what information must be reported under section 303(c).

Section 301(7) defines "income" as defined in Section 61 of the Internal Revenue Code.

Section 301(8) defines "Member of Congress" as a Senator, Representative, Resident Commissioner, or Delegate of the United States Congress.

Section 301(9) defines "officer" as any officer designated under section 2104 of title 5, United States Code, and any officer of the United States Postal Service or the United States Postal Rate Commission.

Section 301(10) defines "security" as defined in Section 2 of the Securities Act of 1933, as amended (15 U.S.C. 77b).

Section 301(11) defines "transactions in securities and commodities" as any acquisition, transfer or other disposition involving any security or commodity.

Section 301(12) defines "uniformed services" as any of the armed forces, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration.

Section 301(13) defines "political contribution" as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

Section 301(14) defines "expenditure" as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

SECTION 302—INDIVIDUALS REQUIRED TO FILE REPORT

Section 302 defines those individuals who are required to file a public financial disclosure report. Subsection (a) requires any individual who is or was an officer or employee of the Federal Government designated under subsection (b) below to file a full and complete financial disclosure statement each year for the preceding calendar year if that individual has occupied the office or position for a period in excess of 90 days in that calendar year. The 90-day period refers to 90 calendar days and not 90 working days.

Subsection (b) states that the officers and employees referred to in subsection (a) who must file a financial statement are (1) the President, (2) the Vice President, (3) each Member of Congress, (4) each justice or judge of the United States, (5) each officer or employee of the United States who is compensated at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS–16 under section 5332(a) of title 5, United States Code, and (6) each member of the uniformed service who is compensated at a rate equal to or in excess of the monthly rate of pay prescribed for grade 6, as adjusted under section 1009, title 37, United States Code.

Section 302(c) requires any individual who seeks nomination for election, or election, to the office of President, Vice President, or Member of Congress to file a financial disclosure statement in any year in which that individual has taken the actions necessary to be considered a candidate for elective office under the Federal Election Campaign Act of 1971. These standards are that the individual has taken the action necessary under the law of a State to qualify for nomination for election or that he has received political contributions or made expenditures, or has given the consent for any other person to receive political contributions or make expenditures with a view to bringing about the individual's nomination for election or election to such office. If an individual meets these requirements in any year, the individual is required to file a full and complete financial statement for the preceding calendar year.

SECTION 303—CONTENTS OF REPORTS

Section 303 sets forth the information which must be contained in the financial disclosure report filed by each individual identified in Section 302. The Comptroller General is given the responsibility to prescribe the manner and form of the report and is directed to draw up a standard form, as well as a set of instructions with illustrative examples to assist individuals required to file these reports.

Paragraph (1) of section 303(a) requires that the report contain the amount and source of each item of income, each item of reimbursement for any expenditure, and each gift or aggregate of gifts from one source (other than gifts from any member of his immediate family) received during the preceding calendar year which exceeds $100 in amount or value. Because the term "income" is defined broadly in the same manner that it is defined with respect to Internal Revenue laws, this section is all-inclusive. Anything received by an individual which has a value in excess of $100, other than a gift received from the individual's immediate family, must be reported. Paragraph (2) below includes one exception to this general reporting requirement. Paragraph 1 also explicitly states that a fee or honorarium received for or in connection with the preparation or delivery of any speech, attendance at any convention, or other assembly of individuals or the preparation of any article or composition for publication must be reported. This specific language simply mentions items which would have to be reported under the definition of income.

Paragraph (2) of subsection (a) states that if an item is received in kind, even though that item would be an item of income as described in paragraph 1, the item only has to be listed on the financial disclosure form if the fair market value of that item is in excess of $500. An item received in kind refers to any thing of value which is received in a form other than money or currency. Thus, a gift of property, a rendering of services, and other such benefits would be considered items received in kind. Paragraph (2) explicitly states that transportation or entertainment received is included as an item received in kind. There is an exception from this reporting requirement, as there is to the reporting requirement in paragraph (1) above, for items received in kind from any member of the individual's immediate family.

The higher reporting level for items received in kind was chosen because of the difficulty of placing a fair market value on many services received and because the requirement is not intended to require the reporting of services and benefits an individual or his family might receive in the normal course of being entertained by or socializing with friends. Items received in kind from an individual's immediate family, regardless of their value, are exempted from the reporting requirements of this statute.

An individual working for the government continually receives items in kind in the form of services and benefits from his employer; for example, all employees receive office space and some employees

receive chauffeur service or other special transportation provided by the government. Any services in kind provided by the government need not be reported if the individual utilized those services in the performance of his official duties.

Likewise, the provisions of this section would not include benefits which may accrue to an individual by virtue of his office or position with the federal government. For instance, foreign service officers and their families who are stationed abroad are entitled to travel and other benefits for home leave and rest and recuperation under provisions of the Foreign Service Act of 1946 as amended. While the purpose of these benefits is to provide leave from duty, the benefits accrue by virtue of their official responsibilities and are based in law and agency regulations.

Thus, almost all services received from the Federal Government do not have to be reported. However, in the event that the Department of Transportation provided a special plane to take an employee to Colorado for a ski vacation, the fair market value of that service would have to be reported because it was not provided to the reporting individual for the performance of his official duties.

However, any item received in kind from an individual or entity other than the Federal Government must be reported if its fair market value exceeds $500, regardless of whether the item received in kind was provided to permit the reporting individual to perform his official duties. Thus, if a large corporation or a foreign government paid for the airplane flight of a Cabinet Secretary to a trade exposition or conference in South America, the fact that the Secretary of Commerce was performing official duties would not affect his obligation to report the fair market value and source of the item received in kind from this source.

Another more frequent situation will occur when a government employee receives in kind items or services in the course of travel paid for, at least in part, by the Federal Government. If the primary purpose of the trip is the performance of the individual's government duties, the fair market value of the services received, such as the airplane transportation, need not be reported. In such a case, the items received in kind, such as services, which are attributable to non-governmental functions should be reported if those services or items received in kind exceed $500 in value. For example, if an individual attends a conference in Egypt as a representative of the United States and the primary purpose of the individual's trip overseas is to attend that convention, the cost of the plane flight paid for by the United States Government need not be reported. If the individual spent one day sightseeing or took a side excursion to Israel for one day sightseeing or took a side excursion to Israel for one day on personal business and that side trip was paid for by someone other than a member of the individual's immediate family, the fair market value of that side trip and the identity of the individual who paid for that side trip must be reported only if the cost of the side trip exceeds $500.

Paragraph (3) of subsection (a) requires the reporting of the identity and category of value of each asset held during the preceding calendar year which has a value in excess of $1,000 as of the close of the preceding calendar year. Excepted from this general reporting

requirement are household furnishings or goods, jewelry, clothing and any vehicle owned solely for the personal use of individual, his spouse, or any of his dependents. Thus, assets of a business nature are required to be reported, while assets of a personal nature which are very unlikely to present any conflict of interest are not required to be reported. It is not necessary for an individual to catalogue furniture and possessions in his home for the purpose of filing his financial disclosure statement. This provision does require reporting with respect to an asset of any kind which is not consistent with the specific exemptions provided.

If an asset exceeds $1,000 in value as of the close of the preceding calendar year, it must be reported. However, if the individual owned an asset and sold that asset before the end of the preceding calendar year, the identity and category of value of that asset must still be reported if the value of that asset exceeded $1,000 at the close of the preceding calendar year. It is not necessary for the asset to be owned by the reporting individual at the close of the calendar year for that asset to be reported.

As described more fully under the discussion of subsection (b) of section 303 below, the exact fair market value of an asset need not be reported. Subsection (b) requires the reporting simply of the category of value of an asset. Subsection (b) creates four categories and it is only necessary to identify which category the value of the asset falls within.

Paragraph (4) of subsection (a) requires the reporting of the identity and category of amount of each liability owed which is in excess of $1,000 at the close of the preceding calendar year. Unlike the reporting requirement under paragraph (3), the individual must only report liabilities outstanding at the close of the preceding calendar year which are in excess of $1,000. Thus, if a loan is taken out and paid off before the close of the preceding calendar year it need not be reported. For example, if a $1,200 loan is taken out during the preceding calendar year and it is repaid in part so that the outstanding amount of the loan is less than $1,000 at the close of the preceding calendar year, the liability need not be listed. This reporting requirement covers all liabilities whether they are secured or unsecured.

With respect to liabilities, all that must be reported is the category of amount of the liability and the identity of the liability. The identity of the liability refers to the identity of the individual or entity to whom the liability is owed.

Paragraph (5) of subsection (a) requires the reporting of the identity, the category of amount, and the date of any transaction in securities of any business entity or any transactions in commodities futures during the preceding calendar year which exceeds $1,000 in value. The $1,000 triggering level refers to transactions in the same security or commodity future. Thus, if a $500 transaction in IBM stock is conducted on one day and a $700 transaction in IBM stock is conducted on the next day each of those transactions must be identified since the value of these transactions in the same security is in excess of $1,000 for the preceding calendar year. When reporting a security transaction, the name of the security and a description of the type of transaction, such as sale, purchase, or transfer, should be provided. As in

paragraphs 3 and 4 above, the exact value of the transaction need not be given—just the category of amount involved. Thus, if a purchase of 50 shares of a stock for $100,000 takes place, the identity of that stock must be given, the date on which the transaction takes place must be reported, the transaction must be identified as a purchase of stock, and it must be shown that the amount involved in the transaction exceeded $50,000.

Paragraph (6) of subsection (a) requires the reporting of the identity and category of amount of any purchase or sale of real property or any interest in any real property during the preceding calendar year if the value of the property involved in such purchase or sale exceeds $1,000. The identity of the property usually can be given by an address, or in the case of large pieces of property, a location and amount of acreage involved. Again, only the category of amount must be reported. Thus, the sale of a personal residence would require the reporting of the sale of property at 11 Jones Road in Bethesda, Maryland, the identity of the purchaser, and the fact that the category of amount of the sale exceeded $50,000.

Paragraph (7) of subsection (a) requires the reporting of any patent right or any interest in any patent right and the nature of such patent right held during the preceding calendar year. There is no requirement that any value or category of value be placed on the patent right. The patent right must be described in sufficient detail so that the subject of the patent is evident. If the patent is held jointly with other individuals, the other individuals must be identified.

Paragraph (8) of subsection (a) requires the reporting of information with respect to a contract promise or other agreement between a reporting individual and any other person with respect to the reporting individual's employment after he ceases to occupy his office or position with the government. This reporting requirement would also cover an agreement under which an individual takes a leave of absence from a position outside the government in order to occupy an office or position with the government if such agreement provides for the individual's return to his nongovernmental position. This would also include unfunded pension agreement between an individual and a nongovernmental employer.

In reporting such a contract or agreement, a description of the contract or agreement must be given which includes the major terms of the contract or agreement and the parties to the contract or agreement. For example, the contract of future employment might require reporting that the Jones Oil Company and the reporting individual entered into an agreement in 1973 guaranteeing the reporting individual a salary of $100,000 a year and 3 percent of Jones Oil Company's profits upon the individual's return to work for Jones Oil Company after terminating his government employment any time within the next 10 years. This reporting requirement will reveal agreements which a Federal Government employee has with a nongovernmental entity which may not be resulting in income to the employee at the present time but which directly affect the employee's financial future.

In addition to the items to be included in the report described above, there is one additional reporting requirement for those government

employees who are not elected and who are not a judge or justice of the United States. These employees must include in their report the identity of any person other than the Federal Government who paid them compensation in excess of $5,000 in any of the five years prior to the preceding calendar year. This provision essentially requires the individual to identify his prior employers. The report must contain the name of the employer and the type of services performed for that employer. Thus, if an individual has been working for the government for two years but for the ten preceding years had worked for the Jones Oil Company, the individual must report that he worked from 1964 to 1974 for the Jones Oil Company as an accountant.

An individual is not required to report any information which is considered confidential as a result of a privileged relationship established by law between such individual and any person. Thus, if the reporting individual is a psychiatrist who was paid more than $5,000 in one of the five years prior to the preceding calendar year by one patient and if existing law protects the right of a psychriatrist not to reveal the identity of his clients, the identity of that client need not be reported. However, if an individual wants to keep the identity of his clients confidential but the law does not recognize the relationship between that individual and the client as a privileged one where the identity of the client is not legally protected from disclosure then the identity of the client must be reported. Also, the fact that communications between the individual and his client are confidential and privileged, and therefore protected by law from disclosure, does not mean that the identity of the client does not have to be revealed if the identity of the client itself is not privileged. For example, it is often the case with lawyers that the communications between a lawyer and his client are privileged but the identity of a lawyer's client is not privileged.

This reporting requirement does not require the amount of compensation received from the prior employer to be listed; only the identity of the prior employer must be reported. There is one further exception to this reporting requirement. An individual is not required to report any information with respect to a person for whom services were provided by a firm or association of which the reporting individual was a member, partner, or employee unless the reporting individual was directly involved in the providing of such services. Thus, a law firm may have many clients which pay that law firm more than $5,000 in fees in any one year. A partner in that law firm indirectly benefits financially from the fees collected by any client of the firm. However, under this provision a partner in a law firm must report the identity of those clients who paid the firm more than $5,000 in a year only if that partner actually performed legal services for that client. This section only requires reporting of compensation for services which an individual performed for an employer other than the Federal Government.

Subsection (b) of section 303 provides a procedure for reporting the general category of amount of an asset, liability, transaction in securities of any business entity or in commodities futures, or the purchase or sale of real property. With respect to any of these items which have to be reported under paragraphs (3) through (6) of subsection (a),

the individual must indicate which of the following categories the actual amount or value of the item being reported is within:

(A) not more than $5,000,
(B) greater than $5,000 but not more than $15,000,
(C) greater than $15,000 but not more than $50,000, or
(D) greater than $50,000.

The purpose of using this procedure is that many items do not have a readily ascertainable fair market value. The general category of the value of an item will give the public sufficient information about the financial interest involved without placing on the reporting individual the burden of determining the exact value of each item.

Paragraph 2 of subsection (b) makes it clear that with respect to the value of items other than those required to be reported under paragraphs (3) through (6) of subsection (a), the actual or fair market value of these items must be reported. This provision specifically refers to items which have to be reported under paragraphs (1) and (2) of subsection (a)—items of income and items received in kind. For example, if an individual receives $364.78 in dividends from a corporation, the individual must report the exact amount of dividends received. With respect to items received in kind, it is more difficult to assign an exact value to the item; however, the individual must report his best estimate of the actual fair market value of the item.

Subsection (c) states that a reporting individual must report the financial information required by paragraphs (1) through (7) in subsection (a) not only with respect to the reporting individual but also with respect to the individual's spouse, any of the individual's dependents, or any item received or held by the individual and his spouse jointly, the individual and dependents jointly, or the spouse and any of the dependents jointly, or by any person acting on the individual's behalf. Thus, the spouse and dependents of a government employee required to file a financial statement must report their incomes, the assets they hold, their liabilities and other financial interests required of the government employee. The requirement that any of the financial interests required to be reported which are held or received by a person acting on behalf of the government employee must also be reported requires, for example, the reporting of interest held by a bank assigned to receive income for an employee or a trust created for the benefit of the employee.

SECTION 304—FILING OF REPORTS

Section 304 describes the procedures to be used in the filing of public financial statements.

Section 304(a)(1) requires all persons holding public office who are required to file a financial statement to do so by May 15 of each year with the Comptroller General. This provision centralizes in one place the financial statements of the 15,000 individuals covered by this Act.

In addition, this section requires most individuals to file a duplicate copy of their financial statement with their agency head simultaneously with their reporting to the Comptroller General. The following are exempt from the filing of a duplicate statement with an agency

head: the President, Vice President, Members of Congress, justices and judges of the U.S., officers and employees of the Senate, House of Representatives and all courts of the U.S., heads of agencies, Presidential appointees in the Executive Office of the President who are not subordinate to the head of an agency in the Executive Office, and full-time members of a committee, board or commission appointed by the President. Duplicate copies of the financial statements are filed with the agency heads so that the agencies will have the primary duty to review the financial statements and to enforce compliance with reporting and divestiture statutes.

Sections 304(a)(2) and 304(a)(3) require certain officials to file duplicate financial reports with persons or offices other than an agency head. Section 304(a)(2) requires each Member, officer and employee of the Senate to file a duplicate copy with the Secretary of the Senate; each Member, officer and employee of the House of Representatives to file a duplicate copy with the Clerk of the House; and each justice, judge, officer and employee of any court of the United States to file a duplicate copy with the Director of the Administrative Office of the United States Courts.

Section 304(a)(3) requires the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, and each full-time member of a committee, board or commission appointed by the President to file a duplicate copy with the Chairman of the Civil Service Commission. All such duplicate reports must be filed at the same time that the original report is filed with the Comptroller General.

Section 304(a)(4) permits the President to exempt certain individuals involved in intelligence activities from the requirement of filing a report with the Comptroller General. Any individual in the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency or otherwise engaged exclusively in intelligence activities in any agency of the United States may be exempted if the President finds that, due to the nature of the individual's position, public disclosure of a financial report would reveal the reporting individual's identity as an undercover agent of the Federal government. Each individual exempted from this requirement must still file a financial statement with his agency head or with the Chairman of the Civil Service Commission, depending on the requirements of sections 304(a)(1) and (3). The President is not given authority to exempt employees of entire intelligence agencies *en masse*, but only individuals for whom public disclosure might reveal identity as an undercover agent.

Section 304(b) requires each candidate required to file a financial statement to do so with the Comptroller General within one month after the earliest action which officially makes him a candidate. In other words, the candidate has 30 days to file his financial statement, beginning on the day he first accepts a campaign contribution or on the day he takes action to qualify officially for nomination, whichever comes first.

Section 304(c) sets the date of filing a financial report for individuals who cease to occupy a position requiring the filing of a financial

statement. An individual who leaves government service prior to May 15 of any year must file a financial report by May 15, for the preceding calendar year and for that part of the present calendar year during which he held the same position. An individual who leaves government service after May 15 of any year must file a financial statement on the last day he occupies his position. The statement must cover that part of the present calendar year during which he held the government position. Thus, an individual employed in the Department of Agriculture at level GS–19 who leaves government service on January 30, 1977, must file a financial statement by May 15, 1977, to cover the period January 1, 1976 through January 30, 1977. If the same individual did not leave government service until June 30, 1977, his statement submitted by May 15, 1977, would cover the period January 1, 1976 through December 31, 1976 and his statement submitted on June 30, 1977, would cover the period January 1, 1977 through June 30, 1977.

Section 304(d) authorizes the Comptroller General to grant extensions of time for filing reports. This provisions does not establish any specific length of time for any extension which may be authorized, but leaves it to the discretion of the Comptroller General to grant "reasonable" extensions. This provision specifically states, however, that in no case may the total of all extensions granted to any individual exceed 90 days.

The Comptroller General's authority to grant extensions also applies to employees who leave government service after May 15 and are unable to file their financial reports on the last day they hold office.

SECTION 305—FAILURE TO FILE OR FALSIFYING REPORTS; PROCEDURE

Section 305 describes the procedures to be followed when an individual files false information on his financial report or fails to file a financial report as required by this act.

Section 305(a)(1) establishes a penalty of a fine of any amount up to $10,000 or imprisonment for up to a year, or both, for any individual who willfully fails to file a financial report or who willfully files false information on a financial report as required by this act.

Section 305(a)(2) authorizes the Attorney General to bring a civil court action against any individual who fails to file a required financial report or who fails to file any required information on a financial report he does file. The Attorney General may bring such an action in any district court of the United States. The court then has the authority to assess a penalty against the individual in any amount not to exceed $5,000.

Section 305(b) requires all agency heads and other persons who are designated to receive duplicate copies of financial reports to submit to the Comptroller General an annual list of those individuals required to file financial statements with them. The agency heads and all other persons designated to receive duplicate copies of financial reports are also required by this section to submit quarterly to the Comptroller General a list of individuals covered by this title who have begun or terminated employment with their agency. The quarterly report should also include the names of employees who, as a result of promotions, are for the first time required to file public financial disclosure reports under this title. The persons required to submit these lists to the Comptroller General are the head of each agency, with respect to the employees under him; the Clerk of the House of Representatives, with respect to any Member, officer or employee of the House of Representatives; the Secretary of the Senate, with respect to any Member, officer or employee of the Senate; and the Director of the Administrative Office of the United States Courts, with respect to any justice, judge, officer or employee of any court of the United States.

Section 305(c) directs the Comptroller General to refer to the Attorney General the name of any individual he believes has filed a false report or has filed no report at all. The Comptroller General must refer to the Attorney General the name of any individual he "has reasonable cause to believe" has violated the reporting requirements of this act. The Comptroller General is not given the responsibility to conduct investigations of possible violations of the reporting requirements of this act except to the extent that he must conduct audits pursuant to section 306(f)(2).

This section further provides that if the individual whose name is referred to the Attorney General is suspected of violating the reporting provisions of this act is a Member, officer, or employee of the Senate or House of Representatives, then the Comptroller General must, at the same time he refers the matter to the Attorney General, also refer the matter to the Senate Select Committee on Standards and Conduct or the House Committee on Standards of Official Conduct, whichever is appropriate.

Section 305(d) authorizes the President, Vice President, either House of Congress, the Director of the Administrative Office of the United States Courts, the head of an agency of the Civil Service Commission to take appropriate personnel or other action against any individual who fails to comply with the reporting requirements of this act. This section is in addition to the criminal and civil penalties provided in section 305.

SECTION 306—CUSTODY AUDIT OF AND PUBLIC ACCESS TO REPORTS

Section 306 describes procedures for the custody and auditing of and public access to the financial reports required by this act.

Section 306(a) directs the Comptroller General to make each report he receives available to the public within 15 days of the day he receives the report. He is further directed to provide a copy of any report to any person who requests one orally or in writing.

Section 306(b) authorizes the Comptroller General to require any person receiving a copy of a financial report to supply his name and address and the name of the organization, if any, on whose behalf he is requesting the report. The Comptroller General is also authorized to assess a fee to cover the cost of copying and mailing the report. The fee should not be set to include costs such as the salaries of employees involved in the copying or mailing. The Comptroller General may waive or reduce this copying fee if he determines that such an action would be in the public interest because furnishing the information could be considered as primarily benefiting the public. This

waiver or reduction provision is modeled after a similar provision in the Freedom of Information Act.

Section 306(c) makes it unlawful for any person to inspect or obtain a copy of a financial report from the Comptroller General for any unlawful or commercial purpose, for the purpose of determining or establishing an individual's credit rating, or for use directly or indirectly in the solicitation of money for any political, charitable or other purpose.

Paragraph (2) of this subsection authorizes the Attorney General to bring a civil action against any person who inspects or obtains a copy of any financial disclosure report for any purpose prohibited in paragraph (1). The Attorney General is authorized to bring such an action in any district court of the United States. The court may assess the person a penalty in any amount up to $1,000.

Section 306(d) directs the Comptroller General to maintain each financial disclosure report he receives under this title on file for 5 years during which time the report must be available for public inspection. The Comptroller General is directed to destroy a report five years after it was filed with the Comptroller General.

Section 306(e)(1) directs the House of Representatives, the Senate, the Director of the Administrative Office of the United States Courts, the Chairman of the Civil Service Commission, and the head of each agency to establish mechanisms for the review of the financial reports submitted by their officers and employees. Existing laws or regulations with respect to conflicts of interest or confidential information of officers or employees of the House of Representatives, the Senate, the United States Courts or each agency should be applied when the financial disclosure statements are reviewed. Thus, if an agency regulation requires divestiture of a conflicting financial interest and a financial disclosure report reveals such a conflict, the agency regulation should be enforced. Rules or regulations relating to financial conflicts of interest which may be enacted in the future should also be applied during this review.

This section makes it clear that the filing of public financial disclosure reports is not a substitute for, but is in addition to and an aid to existing conflict of interest rules and regulations.

Section 306(e)(2) requires the Comptroller General to comply with any subpoena for financial disclosure information filed with the Comptroller General pursuant to any law or resolution served in connection with a pending criminal case in any competent court in which a Member, officer, or employee of the Senate is a defendant or in any proceeding before a grand jury of any competent court in which alleged criminal conduct by a Member, officer, or employee of the Senate is being investigated. Under this provision confidential financial disclosure forms required of all Members, officers, and employees compensated at a rate of $15,000 or more will be available to a court in certain circumstances. While much of the information available on the confidential financial disclosure forms will be publicly available under this title, these forms will still be the chief source of information on income, assets, liabilities, business connections, and gifts of any Senate employee earning more than $15,000 annually but less than the rate of pay for GS–16 grade employees. This information

should be automatically available to any court or grand jury investigating alleged criminal conduct of such an individual and no "legislative privilege" should apply to these documents.

Section 306(f)(1) requires the Comptroller General to conduct random audits of not more than 5 per cent of the financial reports submitted to him in any given year under this act. The audit is to determine whether the information included on the financial report is complete and accurate.

Sections 306(f)(2) and (3) specifically require audits of the financial statements of the President, Vice President and Members of Congress. The Comptroller General is directed to audit the reports of the President and Vice President at least once during each term (Section 306(f)(2)). The Comptroller General is directed to audit the financial reports of each Member of Congress at least once during each six-year period beginning after the date of enactment of this act.

Section 306(f)(4) gives the Comptroller General the power to require by subpoena whatever books, papers, or other documents he may need to conduct an audit. It also permits the Comptroller General to invoke the aid of any district court of the United States in enforcing the subpoena and allows the district court having jurisdiction over the person to whom the subpoena is directed at to issue an order requiring the production of any documents subpoened and to punish by contempt of court any person failing to obey such an order of the court. Any subpoena issued under this provision must be issued and signed by the Comptroller General. This subsection gives the Comptroller General the authority necessary to conduct a full and complete audit of the financial disclosure reports.

SECTION 307—SEPARABILITY

Section 307 is a separability clause which provides that if any part or application of this title is found to be invalid, then the remainder of the title or the application of the title in other circumstances will not be affected.

SECTION 308—AUTHORIZATION

Section 308 authorizes such funds to be appropriated for each fiscal year through October 30, 1981 as may be necessary to carry out the provisions of this act.

VI. Changes in Existing Law

In compliance with subsection 4 of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in Roman):

Chapter 4 of Title 2, United States Code

[§ 118 Actions against officers for official acts.

In any action brought against any person for or on account of anything done by him while an officer of either House of Congress in

the discharge of his official duty, in executing any order of such House, the United States attorney for the district within which the action is brought, on being thereto requested by the officer sued, shall enter an appearance in behalf of such officer; and all provisions of the eighth section of the Act of July 28, 1866, entitled "An Act to protect the revenue, and for other purposes", and also all provisions of the sections of former Acts therein referred to, so far as the same relate to the removal of suits, the withholding of executions, and the paying of judgments against revenue or other officers of the United States, shall become applicable to such action and to all proceedings and matters whatsoever connected therewith, and the defense of such action shall thenceforth be conducted under the supervision and direction of the Attorney General.]

CHAPTER 53 OF TITLE 5, UNITED STATES CODE

§ 5315 Positions at Level III

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(19) Assistant Attorneys General [(9)] *(10)*

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CHAPTER 161 OF TITLE 28, UNITED STATES CODE

§ 2403 Intervention by United States; constitutional question.

In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, [and for argument on the question of constitutionality] *and for argument in favor of the constitutionality of such act.* The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts of law relating to the question of constitutionality.

CHAPTER 32 OF TITLE 39, UNITED STATES CODE

§ 3210 Franked mail transmitted by the Vice President, Members of Congress, and congressional officials.

* * * * * * *

(b)(1) The Vice President, each Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), [and the Legislative Counsels of the House of Representatives and the Senate] *the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel*, may send, as franked mail, matter relating to their official business, activities, and duties, as intended by Congress to be mailable as franked mail under subsection (a) (2) and (3) of this section.

(2) If a vacancy occurs in the Office of the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of

Representatives (other than a Member of the House), [or the Legislative Counsel of the House of Representatives or the Senate] *the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel*, any authorized person may exercise the franking privilege in the officer's name during the period of the vacancy.

* * * * * * *

§ 3216 Reimbursement for franked mailings

(a) The equivalent of—

(1) postage on, and fees and charges in connection with, mail matter sent through the mails—

(A) under the franking privilege (other than under section 3219 of this title), by the Vice President, Members of and Members-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), [and the Legislative Counsels of the House of Representatives and the Senate] *the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel;* and

(B) by the surviving spouse of a Member of Congress under section 3218 of this title;

(2) those portions of fees and charges to be paid for handling and delivery by the Postal Service of Mailgrams considered as franked mail under section 3219 of this title;

shall be paid by a lump-sum appropriation to the legislative branch for that purpose and then paid to the Postal Service as postal revenue. Except as to Mailgrams and except as provided by sections 733 and 907 of title 44, envelopes, wrappers, cards, or labels used to transmit franked mail shall bear, in the upper right-hand corner, the sender's signature, or a facsimile thereof.

* * * * * * *

§ 3219 Mailgrams

Any mailgram sent by the Vice President, a Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of Representatives (other than a Member of the House), [or the Legislative Counsel of the House of Representatives or the Senate] *the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel*, and then delivered by the Postal Service, shall be considered as franked mail, subject to section 3216(a)(2) of this title, if such Mailgram contains matter of the kind authorized to be sent by that official as franked mail under section 3210 of this title.

VII. ROLLCALL VOTE IN COMMITTEE

In compliance with section 133 of the Legislative Reorganization Act of 1946, as amended, the rollcall vote taken during committee consideration of this legislation is as follows:

Final passage: Ordered reported; 8 yeas—0 nays

Yeas (8)	Nays (0)
Metcalf	
Chiles	
Nunn	
Ribicoff	
Percy	
Javits	
Roth	
Weicker (Proxy)	
Jackson	
Muskie	
Glenn	
Allen	

VIII. Estimated Costs

In accordance with section 252(c) of the Legislative Reorganization Act of 1970 (Public Law 91–510), the Committee estimates that the costs of implementation of S. 495 would be as follows:

TITLE I

This Title reorganizes the Department of Justice. There should be no additional cost as a result of this Title.

TITLE II

The Office of Congressional Legal Counsel will require the following expenditures:

Fiscal year:	
1977	$450,000
1978	455,000
1979	460,000
1980	465,000
1981	470,000

However, it is the best estimate of the Committee that these amounts are equal to what is spent by the Department of Justice in its representation of Congress and the House of Representatives and the Senate in paying private counsel. Therefore, Title II should result in no additional cost.

TITLE III

The General Accounting Office estimates that implementation of Title III will cost $5 million dollars a year for each of the fiscal years from FY 1977 to FY 1981. The vast majority of the cost is for the conducting of audits of financial disclosure statements. The cost of all provisions in Title III except the audit requirement would cost less than $100,000 in each of the fiscal years from FY 1977 to FY 1981.

ADDITIONAL VIEWS OF SENATOR LOWELL P. WEICKER, JR.

S. 495, the Watergate Reorganization and Reform Act, represents a most effective safeguard against future abuses of our governmental system. Because of the dedication of the Chairman and Ranking Member this committee has moved with determination to report balanced, effective and enforceable legislation.

It is now more than four years since what came to be known as "Watergate" was planned, executed, and almost succeeded. The Select Committee on Presidential Campaign Activities and the House Judiciary Committee long ago closed the record of their proceedings. The nation has a new Administration and is preparing for another presidential election.

The media, the public, and most of our leaders are all too willing to say that sensational revelations and successful prosecutions are enough. Some say that our memories will keep us free.

However, it is not now, nor has it ever been, our memories which keep us free. It is the Constitution and the laws of the nation which safeguard our liberties and our rights as citizens. It is the procedures which emanate from law, the public's access to government, and the public's knowledge of government which keeps us free.

Through a Division of Government Crimes and procedures to appoint a temporary special prosecutor, S. 495 bolsters these laws. If Watergate taught us anything at all it was that there are some fundamental weaknesses within our law enforcement and criminal justice agencies—weaknesses which are the by-product of political processes and which lent themselves to political pressures inconsistent with democracy and equal justice under law. A new Assistant Attorney General, who is removed from dependence upon the political fortunes of Presidents and Vice Presidents, and the appointment of a temporary special prosecutor, for the extraordinary case involving high-level government officials, will lend both strength and credence to the existing system. The new Assistant Attorney General must be an individual of impeccable integrity and superior qualifications. The Senate, in its confirmation proceedings, must verify that nominees to this vital office are indeed beyond reproach and will fulfill the requirements and responsibilities of office with determination and dedication to the highest principles of law.

Equally as important as provisions to strengthen the law enforcement agencies of government are the financial disclosure requirements in Title III of the Act. Financial disclosure is another step toward open government and increased public awareness regarding those in whom their trust is placed.

Government service is an honor which carries enormous responsibilities of public trust. It is an honor which carries extraordinary ob-

ligations and sacrifices including lesser privacy than those in the private sector enjoy. For those of us who have willfully chosen public service, we have every obligation to demonstrate that our judgment is not tainted and our decisions are not clouded by considerations of personal gain.

Gradually, over the last several years, we have proceeded to enact legislation to open the processes of government to public view. We have enacted the Freedom of Information Act, granting the public access to records and documents. We have considered the Government in the Sunshine Act, in an effort to open congressional and agency proceedings to public purview. We are considering reform of the federal lobby laws to increase public awareness about pressures which may influence legislation.

Financial disclosure legislation is a natural extension of these efforts for it allows the American people another tool by which to judge the integrity of government through examination of the personal financial interests of those who make decisions.

By adopting financial disclosure legislation we are placing ourselves in the spotlight. The rest is up to the public to judge. The American people have been spectators in this process for too long and the time has come for them to express themselves. We will not have any greater ethics or any greater excellence in the Oval Office, in the Senate, or in the House of Representatives than we have in the voting booths of this country. We can give the people the facts concerning our financial dealings. It is up to the electorate to judge the merits.

For these reasons, S. 495 constitutes more than Watergate Reform. The enactment of this legislation means more to the country than the recollection of national pain. It extends beyond the good intentions and high qualifications of any single President or Attorney General to the protection of those rights, freedoms and principles which have made our nation great. It establishes procedures and responsibilities for federal law enforcement, along with tools to increase public awareness regarding politicians and government officials.

Watergate Reform is not for the past or for the present. Our memories may indeed keep us free today. It is for unborn generations who will never know first hand how close a democracy came to oligarchy.

LOWELL P. WEICKER, JR.

TEXT OF S. 495, AS REPORTED

A BILL to establish certain Federal agencies, effect certain reorganizations of the Federal Government, and to implement certain reforms in the operation of the Federal Government recommended by the Senate Select Committee on Presidential Campaign Activities, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Watergate Reorganization and Reform Act of 1976".

TITLE I—AMENDMENTS TO TITLE 28, UNITED STATES CODE

REORGANIZATION OF THE DEPARTMENT OF JUSTICE

SEC. 101. (a) Title 28, United States Code, is amended by adding after chapter 37 the following new chapter:

"Chapter 39—DIVISION OF GOVERNMENT CRIMES AND APPOINTMENT OF TEMPORARY SPECIAL PROSECUTOR

"§ 591. Establishment of Division of Government Crimes

"(a) There is established within the Department of Justice the Division of Government Crimes which shall be headed by the Assistant Attorney General for Government Crimes (hereinafter referred to in this chapter as the 'Assistant Attorney General') who shall be appointed by the President, by and with the advice and consent of the Senate, for a term coterminous with that of the President making the appointment.

"(b) An individual shall not be appointed Assistant Attorney General if such individual has, during the five years preceding such appointment, held a high level position of trust and responsibility while serving on the personal campaign staff or in an organization or political party working on behalf of the campaign of an individual who was elected to the office of President or Vice President.

"(c) The confirmation by the Senate of a Presidential appointment of the Assistant Attorney General shall constitute a final determination that such officer meets the requirements under subsection (b).

"(d) While serving as Assistant Attorney General, an individual shall not engage in any other business, vocation, or employment.

"(e) The Attorney General, at the beginning of each regular session of the Congress, shall report to the Congress on the activities and operation of the Division of Government Crimes for the last preceding fiscal year, and on any other matters pertaining to the Division which he considers proper, including a listing of the number, type, and nature of the investigations and prosecutions conducted by such Division and the disposition thereof, and any proposals for new legislation which the Attorney General may recommend. Such report shall be made public except that the Committee on the Judiciary of the House of Representatives or the Committee on the Judiciary of the Senate may on its own initiative, or upon the request of the Attorney General, seal portions of the report related to uncompleted and ongoing investigations.

"§ 592. Jurisdiction

"(a) The Attorney General shall, subject to the provisions of section 595, delegate to the Assistant Attorney General jurisdiction of

(1) criminal violations of Federal law committed by any elected or appointed Federal Government officer or employee who is serving or has served at any time during the preceding six years in a position compensated at a rate equivalent to or greater than level III of the Executive Schedule under section 5314 of title 5, United States Code; (2) criminal violations of Federal law committed by any elected or appointed Federal Government officer or employee, other than those described in paragraph (1), who is serving or has served at any time during the preceding six years, if such violation is directly or indirectly related to the official Government work or compensation of such officer or employee; (3) criminal violations of Federal law committed by a special Federal Government employee, as defined under section 202 of title 18, United States Code, in the course of his employment by the Government, who is serving or has served at any time during the preceding six years: (4) criminal violations of Federal laws relating to lobbying, campaigns, and election to public office committed by any person; and (5) any other matter which the Attorney General refers to the Assistant Attorney General. Any jurisdictional grant of authority which is inconsistent with this paragraph is hereby superseded.

"(b) For the purpose of subsection (a) of this section, the six-year period referred to shall be computed from the date on which (1) the Assistant Attorney General makes a reasonable effort to notify an individual described in such subsection in writing that such individual is the subject of an investigation of a possible violation of a Federal law, or (2) such individual is informed of his indictment, whichever is earlier.

"(c) Any information, allegation, or complaint received by any officer or employee of any branch of Government relating to any violation specified in subsection (a) of this section shall be expeditiously reported to a local United States Attorney or to the Attorney General. Such United States Attorney shall expeditiously inform the Attorney General in writing of the receipt and content of such information, allegation, or complaint.

"§ 593. Final decision by the Attorney General

"The Attorney General shall supervise the Assistant Attorney General in the discharge of his duties.

"§ 594. Standard for appointment of temporary special prosecutor

"(a) If the Attorney General, upon receiving information, allegations, or evidence of any Federal criminal wrongdoing, determines that a conflict of interest as defined in subsection (c), or the appearance thereof, may exist if he participates in any investigation or prosecution resulting from such information, allegations, or evidence, the Attorney General within thirty days after the receipt thereof shall file a memorandum with the division of three judges of the United States Court of Appeals for the District of Columbia, as described in section 49 of this title (hereinafter in this chapter referred to as the 'court') containing—

"(1) a summary of the information, allegations, and evidence received and the results of a preliminary investigation or evaluation thereof by any Federal investigative agency;

"(2) a summary of the information relevant to determining whether a conflict of interest, or the appearance thereof, exists;

"(3) a finding by the Attorney General, based upon all information known to the Department of Justice, as to whether the information, allegations, and evidence summarized as required under paragraph (1) are clearly frivolous, and therefore, do not justify any further investigation or prosecution, and any other comments or recommendations by the Attorney General; and

"(4) a decision, if any, by the Attorney General to disqualify himself and to appoint a temporary special prosecutor under section 595.

"(b) Not sooner than thirty days after first notifying the Attorney General of the information, allegations or evidence in his possession of possible criminal wrongdoing, any individual may make a request to the court to decide whether the Attorney General should disqualify himself with respect to a particular investigation by submitting in writing to the court and the Attorney General such information, allegations, or evidence and a summary of the information relevant to determine whether a conflict of interest exists. The Attorney General shall have fifteen days from his receipt thereof to file a memorandum with the court containing the information described in subsection (a) if the Attorney General has not already done so.

"(c) (1) In determining whether a conflict of interest or the appearance thereof exists, the court and the Attorney General shall consider whether the President or the Attorney General has a direct and substantial personal or partisan political interest in the outcome of the proposed criminal investigation or prosecution.

"(2) For the purposes of this section, a conflict of interest, or the appearance thereof, is deemed to exist if the subject of a criminal investigation or prosecution is the President, Vice President, Director of the Federal Bureau of Investigation, any individual serving in a position compensated at level I of the Executive Schedule under section 5312 of title 5, United States Code, any individual working in the Executive Office of the President compensated at a rate equivalent to or greater than level V of the Executive Schedule under section 5316 of title 5, United States Code, or any individual who held any office or position described in this paragraph at any time during the four years immediately preceding the investigation or prosecution.

"(d) (1) If (A) the Attorney General files a memorandum as provided under subsection (a) or (b) which does not include a decision to disqualify himself, or a finding pursuant to subsection (a) (3) that the information, allegations and evidence are clearly frivolous, or (B) the Attorney General fails to make a timely reply as required under subsection (b), the court shall determine whether a conflict of interest, or the appearance thereof, exists. If the court finds such a conflict, or the appearance thereof, it shall appoint a temporary special prosecutor pursuant to section 595, and upon notification in writing of such an appointment the Attorney General shall disqualify himself.

"(2) Upon request of the court, the Attorney General or any other individual shall make available to the court all documents, materials, and memoranda as the court finds necessary to carry out its duties under this section. The court may request participation or argument

from a party other than the Attorney General or may appoint any individual to perform the function described in this subsection.

"(e) If, after finding under subsection (a)(3) that the information, allegations, and evidence of possible criminal wrongdoing are clearly frivolous, the Attorney General receives additional information, allegations, or evidence which, in his opinion, justify further investigation or prosecution, the Attorney General shall within fifteen days after receiving the information, allegations, or evidence, file a memorandum with the court in accordance with subsection (a).

"§ 595. Temporary special prosecutor

"(a)(1) A temporary special prosecutor shall be appointed pursuant to this section—

"(A) by the Attorney General, upon a decision to disqualify himself pursuant to section 594(a)(4); or

"(B) by the court, upon a finding of a conflict of interest, or the appearance thereof, pursuant to section 594(d)(1).

"(2) The court shall notify the Attorney General in writing of any decision under paragraph (1)(B). Any action of the court under this section shall supersede any actions by the Attorney General which are in conflict therewith.

"(3) Whoever appoints a temporary special prosecutor under this section shall specify in writing the matters which such prosecutor is authorized to investigate and prosecute.

"(b) An individual shall not be appointed temporary special prosecutor unless such individual (1) is not serving as an officer or employee of the Federal Government, and (2) meets the requirements of section 591(b).

"(c) The court shall review each appointment of a temporary special prosecutor by the Attorney General under this section to determine whether—

(1) the individual appointed temporary special prosecutor (A) has a conflict of interest, or the appearance thereof, in accordance with section 594(c); or (B) fails to meet the requirements of subsection (b); or

"(2) the jurisdiction defined by the Attorney General is not sufficiently broad to enable the temporary special prosecutor to carry out the purposes of this chapter.

"If the court finds that the appointment is deficient under paragraph (1) or (2), the court shall appoint a temporary special prosecutor pursuant to this section.

"(d)(1) Except as provided under paragraph (2), the authority and powers of any temporary special prosecutor shall terminate upon the submission to the Attorney General of a report stating that the investigation of all matters which the temporary special prosector is authorized to investigate, as set forth pursuant to subsection (a)(3), and any resulting prosecutions have been completed.

"(2) Prior to his submission of the report under paragraph (1), a temporary special prosecutor may be removed from office by the Attorney General only for extraordinary improprieties. Immediately after removing a temporary special prosecutor under this subsection, the Attorney General shall submit to the court a written report specifying with particularity the cause of which such temporary special prosecutor was removed. The court shall make available to the public such report, except that the court may, if necessary to avoid prejudicing the rights under Federal law of any individual, delete or postpone publishing such portions of the report, or the whole report, or any name or other identifying details.

"(3) A temporary special prosecutor or any aggrieved person may bring an action in the United States District Court for the District of Columbia to challenge the action of the Attorney General under paragraph (2) by seeking reinstatement or any other appropriate relief. In any hearing of any such action, the court shall proceed de novo.

"(e) In carrying out the provisions of this section, a temporary special prosecutor shall have, within the jurisdiction specified by the Attorney General or the court in accordance with subsection (a)(3), the same power as the Assistant Attorney General for Government Crimes to act on behalf of the United States, except that the temporary special prosecutor shall have the authority to appeal any decision of a court in a proceeding in which he is a party without the approval of the Solicitor General or the Attorney General. The Attorney General shall make available to the temporary special prosecutor all documents, materials, and memoranda necessary to carry out his duties under this section.

"(f) Upon request by a temporary special prosecutor, the Attorney General shall make available to him the resources and personnel necessary to carry out his duties under this section. If a temporary special prosecutor does not receive the resources and personnel required to perform his duties, said temporary special prosecutor shall inform the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

"§ 596. Disqualification of officers and employees of the Department of Justice

"The Attorney General shall promulgate rules and regulations which require any officer or employee of the Department of Justice, including a United States attorney or a member of his staff, to disqualify himself from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or partisan political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

"§ 597. Expedited judicial review

"(a)(1) Any objection on constitutional grounds by a person who is the subject of an indictment or information to the authority of a temporary special prosecutor appointed under this chapter to frame and sign indictments or informations or to prosecute offenses in the name of the United States shall be raised, if at all, by motion to dismiss the indictment or information. Each such motion shall be made within twenty days of notice of the indictment or information and shall not preclude the making of any other motion under the Federal Rules of Criminal Procedure.

"(2) The district court shall immediately certify any motion under paragraph (1) of this subsection to the United States court of appeals for that circuit, which shall hear the motion sitting en banc.

"(3) Notwithstanding any other provision of law, any determination on the motion shall be reviewable by appeal directly to the Supreme Court of the United States, if such appeal is filed within ten days after such determination.

"(4) Except as provided in this section, no court shall have jurisdiction to consider any objection to the validity of an indictment or information or a conviction based on the lack of authority under the Constitution of a temporary special prosecutor to frame and sign indictments and informations and to prosecute offenses in the name of the United States.

"(5) Notwithstanding any subsequent judicial determination regarding his authority to frame and to sign indictments and informations and to prosecute offenses in the name of the United States, an individual who is appointed as a temporary special prosecutor and anyone acting on his behalf shall be deemed a person authorized to be present during sessions of a grand jury.

"(b)(1) Any person aggrieved by an official act of a temporary special prosecutor may bring an action or file an appropriate motion challenging his constitutional authority under this chapter seeking appropriate relief. Such an action or motion shall be filed within twenty days after the aggrieved person has notice of the act to which he objects. The district court shall immediately certify all questions of the constitutionality of this chapter to the United States court of appeals for that circuit, which shall hear the matter sitting en banc.

"(2) Notwithstanding any other provision of law, any decision on a matter certified under paragraph (1) of this subsection shall be reviewable by appeal directly to the Supreme Court of the United States, if such appeal is brought within ten days of the decision of the court of appeals.

"(c)(1) It shall be the duty of the court of appeals and of the United States Supreme Court to advance on the docket and to expedite to the greatest possible extent the disposition of any motion filed under subsection (a)(1), or any question certified under subsection (b)(1).

"(2) The expedited review procedures of this section shall not apply to any challenge to the constitutionality of any provision of this chapter insofar as any question presented shall have been previously determined by the Supreme Court of the United States notwithstanding that the previous determination occurred in litigation involving other parties.".

(b) The analysis of part II of title 28, United States Code, is amended by adding after the item following chapter 27 the following item:

"39. Division of Government Crimes and Appointments of Temporary Special Prosecutor 591

(c)(1) Section 5315 of title 5, United States Code, is amended by striking out "9" in item (19) and inserting in lieu thereof "(10).

(2) A temporary special prosecutor shall receive compensation at a per diem rate equal to the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT TEMPORARY SPECIAL PROSECUTORS

SEC. 102. (a) Chapter 3 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 49. Assignment of judges to division to appoint temporary special prosecutors

"(a) The chief judge of the United States Court of Appeals for the District of Columbia shall every two years assign three judges to a division of the United States Court of Appeals for the District of Columbia to determine all matters arising under sections 594 and 595 of this title.

"(b) Except as provided under subsection (f), assignment to the division established in subsection (a) shall not be a bar to other judicial assignments during the term of such division.

"(c) In assigning judges or justices to sit on the division established in subsection (a), priority shall be given to senior retired circuit court judges and senior retired justices.

"(d) The chief judge of the United States Court of Appeals for the District of Columbia may make a request to the Chief Justice of the United States, without presenting a certificate of necessity, to designate and assign, in accordance with section 294 of this title, retired circuit court judges of another circuit or retired justices to the division established under subsection (a).

"(e) Any vacancy in the division established under subsection (a) shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to the division were made.

"(f) No judge or justice who as a member of the division established in subsection (a) participated in a decision of a matter under section 594 or 595 of this title involving a temporary special prosecutor shall be eligible to participate on a circuit court panel deciding a matter which involves such temporary special prosecutor while such temporary special prosecutor is serving in that office or which involves the exercise of the temporary special prosecutor's official duties, regardless of whether he is still serving in that office.".

(b) The table of sections of chapter 3 of title 28, United States Code, is amended by adding at the end thereof the following:

"49. Assignment of judges to division to appoint temporary special prosecutors.".

SEPARABILITY

SEC. 103. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 104. There are authorized to be appropriated for each fiscal year through October 30, 1981, such sums as may be necessary to carry out the provisions of this title.

TITLE II—CONGRESSIONAL LEGAL COUNSEL

ESTABLISHMENT OF OFFICE OF CONGRESSIONAL LEGAL COUNSEL

SEC. 201. (a)(1) There is established, as an office of the Congress, the Office of Congressional Legal Counsel (hereinafter referred to as the "Office"), which shall be headed by a Congressional Legal Counsel; and there shall be a Deputy Congressional Legal Counsel who shall perform such duties as may be assigned to him by the Congressional Legal Counsel and, during any absence, disability, or vacancy in the office of the Congressional Legal Counsel, the Deputy Congressional Legal Counsel shall serve as Acting Congressional Legal Counsel.

(2) The Congressional Legal Counsel and the Deputy Congressional Legal Counsel each shall be appointed by the President pro tempore of the Senate and the Speaker of the House of Representatives from among recommendations submitted by the majority and minority leaders of the Senate and the House of Representatives. Any appointment made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. Any person appointed as Congressional Legal Counsel or Deputy Congressional Legal Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

(3)(A) Any appointment made under this subsection shall become effective upon approval, by concurrent resolution, of the Senate and the House of Representatives. The Congressional Legal Counsel and the Deputy Congressional Legal Counsel shall each be appointed for a term which shall expire at the end of the Congress following the Congress during which the Congressional Legal Counsel is appointed except that the Congress may, by concurrent resolution, remove either the Congressional Legal Counsel or the Deputy Congressional Legal Counsel prior to the termination of his term of office. The Congressional Legal Counsel and the Deputy Congressional Legal Counsel may be reappointed at the termination of any term of office.

(B) The first Congressional Legal Counsel and the first Deputy Congressional Legal Counsel shall be appointed and take office within ninety days after the enactment of this title, and thereafter the Counsel shall be appointed and take office within thirty days after the beginning of the session of Congress immediately following the termination of the Congressional Legal Counsel's term of office.

(4) The Congressional Legal Counsel shall receive compensation at a per annum gross rate equal to the rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code. The Deputy Congressional Legal Counsel shall receive compensation at a per annum gross rate equal to the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b)(1) The Congressional Legal Counsel shall appoint and fix the compensation of such Assistant Congressional Legal Counsels and of such other personnel as may be necessary to carry out the provisions of this title and may prescribe the duties and responsibilities of such personnel. Any appointment made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. Any person appointed as Assistant Congressional Legal Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment. All such employees shall serve at the pleasure of the Congressional Legal Counsel.

(2) For purpose of pay (other than pay of the Congressional Legal Counsel and Deputy Congressional Legal Counsel) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the Senate.

(c) In carrying out the functions of the Office, the Congressional Legal Counsel may procure the temporary (not to exceed one year) or intermittent services of individual consultants (including outside counsel), or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72(a)(i)).

(d) The Congressional Legal Counsel may establish such procedures as may be necessary to carry out the provisions of this title.

(e) The Congressional Legal Counsel may delegate authority for the performance of any function imposed by this Act except any function imposed upon the Congressional Legal Counsel under section 205(b) of this title.

DUTIES AND FUNCTIONS

SEC. 202.(a) Whenever the Joint Committee on Congressional Operations (hereinafter referred to in this title as the "Joint Committee") is performing any of the responsibilities set forth in subsection (b), the Speaker of the House of Representatives, the majority and minority leaders of the House of Representatives, the President pro tempore of the Senate, and the majority and minority leaders of the Senate shall be ex officio members of the Joint Committee.

(b) The Joint Committee shall—

(1) oversee the activities of the Office of Congressional Legal Counsel, including but not limited to, consulting with the Congressional Legal Counsel with respect to the conduct of litigation in which the Congressional Legal Counsel is involved;

(2) pursuant to section 209 of this title, recommend the appropriate action to be taken in resolution of a conflict or inconsistency;

(3) pursuant to section 205(b), cause the publication in the Congressional Record of the notification required of the Congressional Legal Counsel under that section.

(c)(1) Whenever the Congress is not in session, the Joint Committee may, in accordance with the provisions in section 203(b)(2), authorize the Congressional Legal Counsel to undertake its responsibilities under section 203(a) in the absence of an appropriate resolution for a period not to exceed ten days after the Congress or the appropriate House of Congress reconvenes.

(2) The Joint Committee may poll its members by telephone in order to conduct a vote under this subsection.

DEFENDING A HOUSE, COMMITTEE, MEMBER, OFFICER, AGENCY, OR EMPLOYEE OF CONGRESS

SEC. 203. (a) Except as otherwise provided in subsection (b), the Congressional Legal Counsel, at the direction of Congress or the appropriate House of Congress shall—

(1) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or any Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof in which Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency is made a party defendant and in which there is placed in issue the validity of any proceeding of, or action, including issuance of any subpena or order, taken by Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency; or

(2) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or a Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof with respect to any subpena or order directed to Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency.

(b)(1) Representation of a Member, officer, or employee under section 203(a) shall be undertaken by the Congressional Legal Counsel only upon the consent of such Member, officer, or employee. The resolution directing the Congressional Legal Counsel to represent a Member, officer,

(1) defend Congress, a House of Congress, an office or agncy of Congress, a committee or subcommittee, or any Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof in which Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency is made a party defendant and in which there is placed in issue the validity of any proceeding of, or action, including issuance of any subpena or order, taken by Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency; or

(2) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or a Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof with respect to any subpena or order directed to

Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency.

(b)(1) Representation of a Member, officer, or employee under section 203(a) shall be undertaken by the Congressional Legal Counsel only upon the consent of such Member, officer, or employee. The resolution directing the Congressional Legal Counsel to represent a Member, officer, or employee may limit such representation to constitutional issues relating to the powers and responsibilities of Congress.

(2) The Congressional Legal Counsel may undertake its responsibilities under subsection (a) in the absence of an appropriate resolution by the Congress or by one House of the Congress if—

(A) Congress or the appropriate House of Congress is not in session;

(B) the interest to be represented would be prejudiced by a delay in representation; and

(C) the Joint Committee authorizes the Congressional Legal Counsel to proceed in its representation as provided under section 202.

INSTITUTING A CIVIL ACTION TO ENFORCE A SUBPENA OR ORDER

SEC. 204. (a) The Congressional Legal Counsel, at the direction of Congress or the appropriate House of Congress, shall bring a civil action under any statute conferring jurisdiction on any court of the United States to enforce, or issue a declaratory judgment concerning the validity of any subpena or order issued by Congress, or a House of Congress, a committee, or a subcommittee of a committee authorized to issue a subpena or order.

(b) Nothing in subsection (a) shall limit the discretion of—

(1) the President pro tempore of the Senate or the Speaker of the House of Representatives in certifying to the United States Attorney for the District of Columbia any matter pursuant to section 104 of the Revised Statutes (2 U.S.C. 194); or

(2) either House of Congress to hold any individual or entity in contempt of such House of Congress.

INTERVENTION OR APPEARANCE

SEC. 205. (a) The Congressional Legal Counsel, at the direction of Congress, shall intervene or appear as amicus curiae in any legal action pending in any court of the United States or of a State or political subdivision thereof in which—

(1) the constitutionality of any law of the United States is challenged, the United States is a party, and the constitutionality of such law is not adequately defended by counsel for the United States; or

(2) the powers and responsibilities of Congress under article I of the Constitution of the United States are placed in issue.

(b) The Congressional Legal Counsel shall notify the Joint Committee of any legal action in which the Congressional Legal Counsel is of the opinion that intervention or appearance as amicus curiae by Congress is necessary to carry out the purposes of subsection (a).

Such notification shall contain a description of the legal proceeding together with the reasons that the Congressional Legal Counsel is of the opinion that Congress should intervene or appear as amicus curiae. The Joint Committee shall cause said notification to be published in the Congressional Record for the Senate and House of Representatives.

(c) The Congressional Legal Counsel shall limit any intervention or appearance as amicus curiae in any action involving a Member, officer, or employee of Congress to constitutional issues relating to the powers and responsibilities of Congress.

IMMUNITY PROCEEDINGS

SEC. 206. The Congressional Legal Counsel, at the direction of the appropriate House of Congress or any committee of Congress, shall serve as the duly authorized representative of such House or committee in requesting a United States district court to issue an order granting immunity pursuant to section 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6005).

ADVISORY AND OTHER FUNCTIONS

SEC. 207. (a) The Congressional Legal Counsel shall advise, consult, and cooperate—

(1) with the United States Attorney for the District of Columbia with respect to any criminal proceeding for contempt of Congress certified pursuant to section 104 of the Revised Statutes (2 U.S.C. 194);

(2) with the Joint Committee on Congressional Operations in identifying any court proceeding or action which is of vital interest to Congress or to either House of Congress under section 402(a)(2) of the Legislative Reorganization Act of 1970 (2 U.S.C. 412(a)(2));

(3) with the Comptroller General, General Accounting Office, the Office of Legislative Counsel of the Senate, the Office of the Legislative Counsel of the House of Representatives, and the Congressional Research Service, except that none of the responsibilities and authority granted by this title to the Congressional Legal Counsel shall be construed to affect or infringe upon any functions, powers, or duties of the Comptroller General of the United States;

(4) with any Member, officer, or employee of Congress not represented under section 203 with regard to obtaining private legal counsel for such Member, officer, or employee;

(5) with the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Parliamentarians of the Senate and House of Representatives regarding any subpena, order, or request for withdrawal of papers presented to the Senate and House of Representatives or which raises a question of the privileges of the Senate or House of Representatives; and

(6) with any committee or subcommittee in promulgating and revising their rules and procedures for the use of congressional investigative powers and questions which may arise in the course of any investigation.

(b) The Congressional Legal Counsel shall compile and maintain legal research files of materials from court proceedings which have involved Congress, a House of Congress, an office or agency of Congress, or any committee, subcommittee, Member, officer, or employee of Congress. Public court papers and other research memoranda which do not contain information of a confidential or privileged nature shall be made available to the public consistent with any applicable procedures set forth in such rules of the Senate and House of Representatives as may apply and the interests of Congress.

(c) The Congressional Legal Counsel shall perform such other duties consistent with the purposes and limitations of this title as the Congress may direct.

DEFENSE OF CERTAIN CONSTITUTIONAL POWERS

SEC. 208. In performing any function under section 203, 204, or 205, the Congressional Legal Counsel shall defend vigorously when placed in issue—

(1) the constitutional privilege from arrest or from being questioned in any other place for any speech or debate under section 6 of article I of the Constitution of the United States;

(2) the constitutional power of each House of Congress to be judge of the elections, returns, and qualifications of its own Members and to punish or expel a Member under section 5 of article I of the Constitution of the United States;

(3) the constitutional power of each House of Congress to except from publication such parts of its journal as in its judgment may require secrecy;

(4) the constitutional power of each House of Congress to determine the rules of its proceedings;

(5) the constitutional power of Congress to make all laws as shall be necessary and proper for carrying into execution the constitutional powers of Congress and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof;

(6) all other constitutional powers and responsibilities of Congress; and

(7) the constitutionality of statutes enacted by Congress.

CONFLICT OR INCONSISTENCY

SEC. 209. (a) In the carrying out of the provisions of this title, the Congressional Legal Counsel shall notify the Joint Committee and any party represented or entitled to representation under this title, of the existence and nature of any conflict or inconsistency between the representation of such party and the carrying out of any other provisions of this title, or compliance with professional standards and responsibilities.

(b) Upon receipt of such notification, the Joint Committee shall recommend the action to be taken to avoid or resolve the conflict or inconsistency. The Joint Committee shall cause the notification of conflict or inconsistency and the Joint Committee's recommendation with respect to resolution thereof to be published in the Congressional

Record of the appropriate House or Houses of Congress. If Congress or the appropriate House of Congress does not direct the Joint Committee within fifteen days from the date of publication in the Record to resolve the conflict in another manner, the Congressional Legal Counsel shall take such action as may be necessary to resolve the conflict or inconsistency as recommended by the Joint Committee. Any instruction or determination made pursuant to this subsection shall not be reviewable in any court of law.

(c) The appropriate House of Congress may by resolution authorize the reimbursement of any Member, officer, or employee who is not represented by the Congressional Legal Counsel as a result of the operation of subsection (b) or who declines to be represented pursuant to section 203(b) for costs reasonably incurred in obtaining representation. Such reimbursement shall be from funds appropriated to the contingent fund of the appropriate House.

PROCEDURE FOR DIRECTION OF CONGRESSIONAL LEGAL COUNSEL

SEC. 210. (a) Directives made pursuant to sections 203(a), 204(a), 205(a), and 206, of this title shall be made as follows:

(1) Directives made by Congress pursuant to sections 203(a), 204(a), and 205(a) of this title shall be authorized by a concurrent resolution of Congress.

(2) Directives made by either House of Congress pursuant to sections 203(a), 204(a), and 206 of this title shall be authorized by passage of a resolution of such House.

(3) Directives made by a committee of Congress pursuant to section 206 of this title shall be in writing and approved by an affirmative vote of two-thirds of the members of the full committee.

(b)(1) A resolution or concurrent resolution introduced pursuant to subsection (a) shall not be referred to a committee, except as otherwise required under subsection (c)(1). Upon introduction or when reported as required under subsection (c)(2), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution or concurrent resolution. A motion to proceed to the consideration of a resolution or concurrent resolution shall be highly privileged and not debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(2) If the motion to proceed to the consideration of the resolution or concurrent resolution is agreed to, debate thereon shall be limited to not more than five hours, which shall be divided equally between, and controlled by, those favoring and those opposing the resolution or concurrent resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution or concurrent resolution shall be in order, except an amendment pursuant to section 203(b) to limit representation by the Congressional Legal Counsel to constitutional issues relating to the powers and responsibilities of Congress. No motion to recommit the resolution or concurrent resolution shall be in order, and it shall not be in order to

reconsider the vote by which the resolution or concurrent resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of the resolution or concurrent resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the resolution or concurrent resolution shall be decided without debate.

(c) It shall not be in order in the Senate or House of Representatives to consider a resolution to direct the Congressional Legal Counsel to bring a civil action pursuant to section 204(a) to enforce or secure a declaratory judgment concerning the validity of a subpena or order issued by a committee or subcommittee unless (1) such resolution is reported by a majority vote of the members of such committee or committee of which such subcommittee is a subcommittee, and (2) the report filed by such committee or committee of which such subcommittee is a subcommittee contains a statement of—

(A) the procedure followed in issuing such subpena;

(B) the extent to which the party subpenaed has complied with such subpena;

(C) any objections or privileges raised by the subpenaed party; and

(D) the comparative effectiveness of bringing a civil action to enforce the subpena, certification of a criminal action for contempt of Congress, and initiating a contempt proceeding before a House of Congress.

(d) The extent to which a report filed pursuant to subsection (c)(2) is in compliance with such subsection shall not be reviewable in any court of law.

(e) For purposes of the computation of time in sections 202(c)(1) and 209(b)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period.

(f) For purposes of this title, when referred to herein, the term "committee" shall include standing, select, special, or joint committees established by law or resolution and the Technology Assessment Board.

(g) The provisions of this section are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and, as such, they shall be considered as part of the rules of each House, respectively, and such rules shall supersede any other rule of each House only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(h) Any directive to the Congressional Legal Counsel to bring a civil action pursuant to section 204(a) of this title in the name of a

committee, or subcommittee of Congress shall constitute authorization for such committee, or subcommittee to bring such action within the meaning of any statute conferring jurisdiction on any court of the United States.

ATTORNEY GENERAL RELIEVED OF RESPONSIBILITY

SEC. 211. (a) Upon receipt of written notice that the Congressional Legal Counsel has undertaken, pursuant to section 203(a) of this title, to perform any representational service with respect to any designated action or proceeding pending or to be instituted, the Attorney General shall—

(1) be relieved of any responsibility with respect to such representational service;

(2) have no authority to perform such service in such action or proceeding except at the request or with the approval of the Congressional Legal Counsel or either House of Congress; and

(3) transfer all materials relevant to the representation authorized under section 203(a) to the Congressional Legal Counsel.

(b) The Attorney General shall notify the Congressional Legal Counsel with respect to any proceeding in which the United States is a party of any determination by the Attorney General or Solicitor General not to appeal any court decision affecting the constitutionality of a statute enacted by Congress within such time as will enable the Congressional Legal Counsel to intervene in such proceeding pursuant to section 205.

PROCEDURAL PROVISIONS

SEC. 212. (a) Permission to intervene as a party or to file a brief amicus curiae under section 205 of this title shall be of right and may be denied by a court only upon an express finding that such intervention or filing is untimely and would significantly delay the pending action.

(b) The Congressional Legal Counsel, the Deputy Congressional Legal Counsel or any designated Assistant Congressional Legal Counsel, shall be entitled, for the purpose of performing his functions under this title, to enter an appearance in any such proceeding before any court of the United States without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this paragraph shall not apply with respect to the admission of any person to practice before the United States Supreme Court.

(c) Nothing in this title shall be construed to confer standing on any party seeking to bring, or jurisdiction on any court with respect to, any civil or criminal action against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of Congress, or any officer, employee, office, or agency of Congress.

(d) In any civil action brought pursuant to section 204 of this title, the court shall assign the case for hearing at the earliest practicable date and cause the case in every way to be expedited. Any appeal or petition for review from any order or judgment in such action shall be expedited in the same manner.

JURISDICTION OF CONGRESSIONAL ACTIONS

SEC. 213. (a) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1364. Congressional actions

"(a) The District Court for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, over any civil action brought by Congress, a House of Congress, or any authorized committee or joint committee of Congress, or any subcommittee thereof, to enforce, or secure a declaration concerning the validity of, any subpena or order issued by Congress, or such House, committee, subcommittee, or joint committee to any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or other materials ofany kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof. This section shall not apply to an action to enforce, or secure a declaration concerning the validity of, any subpena or order issued to an officer or employee of the Federal Government acting within his official capacity.

"(b) The Congress, or either House of Congress, any committee, subcommittee, or joint committee of Congress commencing and prosecuting a civil action under this section may be represented in such action by such attorneys as it may designate.

"(c) A civil action commenced or prosecuted under this section may not be authorized pursuant to the Standing Order of the Senate 'authorizing suits by Senate Committees' (S. Jour. 572, 70–1, May 28, 1928).".

(b) The analysis of such chapter 85 is amended by adding at the end thereof the following new item:

"1364. Congressional actions.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 214. (a) Section 3210 of title 39, United States Code, is amended—

(1) by striking out "and the Legislative Counsels of the House of Representatives and the Senate" in subsection (b)(1) and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel"; and

(2) by striking out "or the Legislative Counsel of the House of Representatives or the Senate" in subsection (b)(2) and inserting in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel".

(b) Section 3216(a)(1)(A) of such title is amended by striking out "and the Legislative Counsels of the House of Representatives and the Senate" and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel".

(c) Section 3219 of such title is amended by striking out "or the Legislative Counsel of the House of Representatives or the Senate"

and inserting in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel".

(d) Section 8 of the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and sixty-six, and for other purposes", approved March 3, 1875, as amended (2 U.S.C. 118), is repealed.

(e) The first sentence in section 2403 of title 28, United States Code, is amended by striking out "and for argument on the question of constitutionality" and inserting in lieu thereof "and for argument in favor of the constitutionality of such act".

SEPARABILITY

SEC. 215. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 216. There are authorized to be appropriated for each fiscal year through October 30, 1981, such sums as may be necessary to carry out the provisions of this title. Amounts so appropriated shall be disbursed by the Secretary of the Senate upon vouchers signed by the Congressional Legal Counsel, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

TITLE III—GOVERNMENT PERSONNEL; FINANCIAL DISCLOSURE REQUIREMENTS

DEFINITIONS

SEC. 301. As used in this title—

(1) the term "agency" means each authority of the Government of the United States;

(2) the term "commodity future" means commodity future as defined in sections 2 and 5 of the Commodity Exchange Act, as amended (7 U.S.C. 2 and 5);

(3) the term "Comptroller General" means the Comptroller General of the United States;

(4) the term "dependent" means dependent as defined in section 152 of the Internal Revenue Code of 1954;

(5) the term "employee" includes any employee designated under section 2105 of title 5, United States Code, and any employee of the United States Postal Service or of the Postal Rate Commission;

(6) the term "immediate family" means—(A) the spouse of an individual, (B) the child, parent, grandparent, grandchild, brother, or sister of an individual or of the spouse of such individual, and (C) the spouse of any individual designated in clause (B);

(7) the term "income" means gross income as defined in section 61 of the Internal Revenue Code of 1954;

(8) the term "Member of Congress" means a Senator, a Representative, a Resident Commissioner, or a Delegate;

(9) the term "officer" includes any officer designated under section 2104 of title 5, United States Code, and any officer of the United States Postal Service or of the Postal Rate Commission;

(10) the term "security" means security as defined in section 2 of the Securities Act of 1933, as amended (15 U.S.C. 77b);

(11) the term "transactions in securities and commodities" means any acquisition, transfer, or other disposition involving any security or commodity;

(12) the term "uniformed services" means any of the armed forces, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

(13) the term "political contribution" means a contribution as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431); and

(14) the term "expenditure" means an expenditure as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

INDIVIDUALS REQUIRED TO FILE REPORT

SEC. 302. (a) Any individual who is or was an officer or employee designated under subsection (b) shall file each calendar year a report containing a full and complete financial statement for the preceding calendar year if such individual has occupied the office or position for a period in excess of ninety days in such calendar year.

(b) The officers and employees referred to in subsection (a) are—

(1) the President;

(2) the Vice President;

(3) each Member of Congress;

(4) each justice or judge of the United States;

(5) each officer or employee of the United States who is compensated at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS–16 under section 5332(a) of title 5, United States Code; and

(6) each member of a uniformed service who is compensated at a rate equal to or in excess of the monthly rate of pay prescribed for grade O–6, as adjusted under section 1009 of title 37, United States Code.

(c) Any individual who seeks nomination for election, or election, to the office of President, Vice President, or Member of Congress shall file in any year in which such individual has—

(1) taken the action necessary under the law of a State to qualify for nomination for election, or election, or

(2) received political contributions or made expenditures, or has given consent for any other person to receive political contri-

butions or make expenditures, with a view to bringing about such individual's nomination for election or election, to such office, a report containing a full and complete financial statement for the preceding calendar year.

CONTENTS OF REPORTS

SEC. 303. (a) Each individual shall include in each report required to be filed by him under section 302 a full and complete statement, in such manner and form as the Comptroller General may prescribe, with respect to—

(1) the amount and source of each item of income, each item of reimbursement for any expenditure, and each gift or aggregate of gifts from one source (other than gifts received from any member of his immediate family) received during the preceding calendar year which exceeds $100 in amount or value, including any fee or other honorarium received for or in connection with the preparation or delivery of any speech, attendance at any convention or other assembly of individuals, or the preparation of any article or other composition for publication;

(2) the fair market value and source of any item received in kind (other than items received in kind from any member of his immediate family), including, but not limited to, any transportation or entertainment received, during the preceding calendar year if such fair market value for such item exceeds $500;

(3) the identity and the category of value, as designated under subsection (b), of each asset, other than household furnishings or goods, jewelry, clothing, or any vehicle owned solely for the personal use of the individual, his spouse, or any of his dependents, held during the preceding calendar year which has a value in excess of $1,000 as of the close of the preceding calendar year;

(4) the identity and the category of amount, as designated under subsection (b), of each liability owed which is in excess of $1,000 as of the close of the preceding calendar year;

(5) the identity, the category of amount, as designated under subsection (b), and date of any transaction in securities of any business entity or any transaction in commodities futures during the preceding calendar year which is in excess of $1,000;

(6) the identity and the category of value, as designated under subsection (b), of any purchase or sale of real property or any interest in any real property during the preceding calendar year if the value of property involved in such purchase or sale exceeds $1,000;

(7) any patent right or any interest in any patent right, and the nature of such patent right, held during the preceding calendar year; and

(8) a description of, the parties to, and the terms of any contract, promise, or other agreement between such individual and any person with respect to his employment after such individual ceases to occupy his office or position with the Government, including any agreement under which such individual is taking a leave of absence from an office or position outside of the Government in order to occupy an office or position of the Government,

and a description of and the parties with any unfunded pension agreement between such individual and any employer other than the Government.

Each individual designated under paragraphs (5) and (6) of section 302(b) shall also include in such report the identity of any person other than the Government, who paid such individual compensation in excess of $5,000 in any of the five years prior to the preceding calendar year and the nature and term of the services such individual performed for such person. The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(b)(1) For purposes of paragraphs (3) through (6) of subsection (a), an individual need not specify the actual amount or value of each asset, each liability, each transaction in securities of any business entity or in commodities futures, or each purchase or sale required to be reported under such paragraphs, but such individual shall indicate which of the following categories such amount or value is within—

(A) not more than $5,000 ,
(B) greater than $5,000 but not more than $15,000,
(C) greater than $15,000 but not more than $50,000, or
(D) greater than $50,000.

(2) Each individual shall report the actual amount or value of any other item required to be reported under this section.

(c) For purposes of paragraphs (1) through (7) of subsection (a), an individual shall include each item of income or reimbursement and each gift received, each item received in kind, each asset held, each liability owed, each transaction in commodities futures and in securities, each purchase or sale of real property or interest in any real property, and each patent right or interest in any patent right held by him, his spouse, or any of his dependents, or by him and his spouse jointly, him and any of his dependents jointly, or his spouse and any of his dependents jointly, or by any person acting on his behalf.

FILING OF REPORTS

SEC. 304. (a)(1) Each individual required to file a report under section 302(a), other than an individual excepted under paragraph (3) of this subsection, shall file such report with the Comptroller General not later than May 15 of each year. Each such individual, other than the President, Vice President, a Member of Congress, a justice or judge of the United States, any officer or employee of the Senate or the House of Representatives or any court of the United States, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, or each full-time member of a committee, board, or commission appointed by the President, shall file a copy of such report with the head of the agency in which such individual

occupies any office or position at the same time as such report is filed with the Comptroller General.

(2) Each Member, officer, and employee of the House of Representatives and the Senate required to file a report under section 302(a) shall file a copy of such report with the Clerk of the House of Representatives and the Secretary of the Senate, respectively, and each justice, judge, officer, and employee of any court of the United States shall file a copy of such report with the Director of the Administrative Office of the United States Courts at the same time as such report is filed with the Comptroller General.

(3) The head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, and each full-time member of a committee, board, or commission appointed by the President, shall file a copy of such report with the Chairman of the Civil Service Commission at the same time such report is filed with the Comptroller General.

(4) The President may exempt any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged exclusively in intelligence activities in any agency of the United States from the requirement to file a report with the Comptroller General if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would reveal the identity of an undercover agent of the Federal Government. Each individual exempted by the President from such requirements shall file such report with the head of the agency in which he occupies an office or position or, if an individual described in subsection (a)(3), with the Chairman of the Civil Service Commission.

(b) Each individual required to file a report under section 302(c) shall file such report with the Comptroller General within one month after the earliest of either action which such individual takes under section 302(c) (1) or (2).

(c)(1) Any individual who ceases prior to May 15 of any calendar year to occupy the office or position the occupancy of which imposes upon him the reporting requirement contained in section 302(a) shall file such report for the preceding calendar year and the period of such calendar year for which he occupies such office or position on or before May 15 of such calendar year.

(2) Any individual who ceases to occupy such office or position after May 15 of any calendar year shall file such report for the period of such calendar year which he occupies such office or position on the last day he occupies such office or position.

(d) The Comptroller General may grant one or more reasonable extensions of time for filing any report but the total of such extensions shall not exceed ninety days.

FAILURE TO FILE OR FALSIFYING REPORTS; PROCEDURE

SEC. 305. (a)(1) Any individual who willfully fails to file a report as required under section 302, or who knowingly and willfully falsifies or fails to report any information such individual is required to report

under section 303, shall be fined in any amount not exceeding $10,000, or imprisoned for not more than one year, or both.

(2) The Attorney General may bring a civil action in any district court of the United States against any individual who fails to file a report which such individual is required to file under section 302 or who fails to report any information which such individual is required to report under section 303. The court in which such action is brought may assess against such individual a penalty in any amount not to exceed $5,000.

(b) The head of each agency, the Clerk of the House of Representatives with respect to any Member, officer, or employee of the House of Representatives, the Secretary of the Senate with respect to any Member, officer or employee of the Senate, and the Director of the Administraive Office of the United States Courts with respect to any justice, judge, officer, or employee of any court of the United States shall submit annually to the Comptroller General a complete list of individuals who are required to file a report under section 302 and shall submit at the close of each calendar quarter a list of individuals who have begun or have terminated employment with such agency, the House of Representatives, the Senate, or any court in such calendar quarter.

(c) The Comptroller General shall refer to the Attorney General the name of any individual the Comptroller General has reasonable cause to believe has failed to file a report or has falsified or failed to file information required to be reported. In addition, if such individual is a Member, officer, or employee of the Senate or the House of Representatives, the Comptroller General shall refer the name of such individual to the Senate Select Committee on Standards and Conduct or the Committee on Standards of Official Conduct of the House of Representatives, whichever is appropriate.

(d) The President, the Vice President, either House of Congress, the Director of the Administrative Office of the United States Courts, the head of each agency or the Civil Service Commission may take any appropriate personnel or other action against any individual failing to file a report or information or falsifying information.

CUSTODY AND AUDIT OF, AND PUBLIC ACCESS TO, REPORTS

SEC. 306. (a) The Comptroller General shall make each report filed with him under section 305 available to the public within fifteen days after the receipt of such report from any individual and provide a copy of such report to any person upon a written or oral request.

(b) The Comptroller General may require any person receiving a copy of such report under subsection (a) to supply his name and address and the name of the person or organization, if any, on whose behalf he is requesting such copy and to pay a reasonable fee in any amount which the Comptroller General finds necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. The Comptroller General may furnish any copy of such report without charge or at a reduced charge if he determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the public.

(c)(1) It shall be unlawful for any person to inspect or obtain a copy of any report—

(A) for any unlawful purpose;

(B) for any commercial purpose;

(C) to determine or establish the credit rating of any individual; or

(D) for use directly or indirectly in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action in any district court of the United States against any person who inspects or obtains such report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such individual a penalty in any amount not to exceed $1,000.

(d) Any report received by the Comptroller General shall be held in his custody and made available to the public for a period of five years after receipt by the Comptroller General of such report. After such five-year period, the Comptroller General shall destroy any such report.

(e)(1) The House of Representatives, the Senate, the Director of the Administrative Office of the United States Courts, the Chairman of the Civil Service Commission, and the head of each agency shall make provisions to assure that each report shall be reviewed in accordance with any law or regulation with respect to conflicts of interest or confidential financial information of officers or employees of the House of Representatives, the Senate, the United States courts or each such agency or in accordance with rules and regulations as may be prescribed.

(2) Notwithstanding any law or resolution, whenever in any criminal case pending in any competent court in which a Member, officer, or employee of the Senate is a defendant, or in any proceeding before a grand jury of any competent court in which alleged criminal conduct of a Member, officer, or employee of the Senate is under investigation, a subpena is served upon the Comptroller General of the United States directing him to appear and produce any reports filed pursuant to any financial disclosure requirement then and the Comptroller General shall—

(a) if such report is in a sealed envelope unseal the envelope containing such report and have an authenticated copy made of such report, replace such report in such envelope and reseal it, and note on such envelope that it was opened pursuant to this paragraph in response to a subpena, a copy of which shall be attached to such envelope, and

(b) appear in response to such subpena and produce the authenticated copy so made.

For purposes of this paragraph, the term "competent court" means a court of the United States, a State, or the District of Columbia which has general jurisdiction to hear cases involving criminal offenses against the United States, such State, or the District of Columbia, as the case may be.

(f)(1) The Comptroller General shall, under such regulations as he may prescribe, conduct on a random basis audits of not more than 5 per centum of the reports filed with him under section 304(a)(1).

(2) The Comptroller General shall audit during each term of an individual holding the office of President or Vice President at least one report filed by such individual under section 304(a)(1) during such term.

(3) The Comptroller General shall, during each six-year period beginning after the date of enactment of this Act, audit at least one report filed by each Member of the Senate and the House of Representatives during such six-year period.

(4)(A) In conducting an audit under paragraph (1), (2), or (3), the Comptroller General is authorized to require by subpena the production of books, papers, and other documents. All such subpenas shall be issued and signed by the Comptroller General.

(B) In case of a refusal to comply with a subpena issued under subparagraph (A)—

(i) the Comptroller General is authorized to seek an order by any district court of the United States having jurisdiction of the defendant to require the production of the documents involved; and

(ii) such district court may issue such order and enforce it by contempt proceedings.

SEPARABILITY

SEC. 307. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held inavild, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 308. There are authorized to be appropriated for each fiscal year through October 30, 1981, such sums as may be necessary to carry out the provisions of this title.

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