

Deputies' Meeting, 20 February 1962

ACTION MEMORANDUM #4

TO: Colonel White

Following your briefing this morning on the recent memorandum issued by the President to the heads of executive departments and agencies concerning conflicts of interest on the part of advisors and consultants to the Government, the Director asked that you have Mr. Houston continue the study in this area he is presently making in conjunction with the IG. After the study is completed and Mr. Houston has discussed with the Department of Justice any problems we may have, the Director would like to be further advised.

The Director saw no objection to your amending our present regulations to incorporate mention of consultants and advisors, and stated that he himself had raised with the White House the question of any possible conflicts of interest on the part of the Killian Board. He noted that no action is required by this Agency in that regard as the General Counsel of the White House is studying that particular situation.

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Assistant to the Director

cc: General Counsel (Added by DD/S on 2/21/62)

PRESIDENT ISSUES CODE OF CONDUCT FOR U.S. ADVISERS

White House's Memorandum
Seeks to Clarify Role of
Scientific Consultants

11 FEB '62

WOULD AVOID CONFLICT

Government Will Insist on
Being Told of Private
Interests of Its Aides

Text of memorandum from
President, Page 60.

CPYRGHT W. FINNEY
Special to The New York Times.

WASHINGTON, Feb. 10.—The White House issued today new "standards of conduct" designed to prevent scientific and other advisers from using their Governmental positions for personal gain.

The "strict rules of behavior" were contained in a Presidential memorandum to all Government agencies directing them to take administrative steps to assure compliance with conflict-of-interest laws and regulations by advisers and consultants to the Government.

The new rules strengthen present regulations by requiring advisers to keep the Government informed about their private financial interests. They would also be specifically enjoined against using their "inside information" as Government advisers for "private gain."

At the same time, the memorandum modifies present laws and regulations by granting the advisers a special exemption under the conflict-of-interest laws.

First Broad Policy

The memorandum represents

U.S. ADVISERS GET CODE OF CONDUCT

CPYRGHT
Continued From Page 1, Col. 1

ingly into work on Government research contracts and their use as Government advisers presented a possible violation of the conflict-of-interest laws.

Civil-War Era Laws

As the White House noted in its announcement, these laws, many dating to the Civil War period, were enacted long before the modern Government practice of making widespread use of consultants and advisers.

The laws were particularly designed to prevent Government employees from using their position or influence to help Government contractors. The attempt to apply these laws to part-time advisers and consultants proved "inconsistent" and "confusing," the White House announcement pointed out.

The Administration has proposed a modernization and strengthening of these laws last year. The legislation would set up special provisions to deal with the problems of part-time consultants and advisers.

The legislation was approved by the House last year and is now pending in the Senate Judiciary Committee. The Administration is hopeful that the legislation will be approved finally by Congress this session.

In the meantime, the White House said, "it has become necessary to resolve the uncertainties of the existing statutes and to reassure those who are apprehensive that innocent conduct may be deemed wrongful."

Since the conflict-of-interest problem began to receive public attention in recent months, many scientists have suggested that they resign as consultants in view of their other work.

The new "standards of conduct" are particularly designed to give assurance to these scientists that they can continue as Government advisers.

While applying to all Government advisers or consultants, the new rules were designed especially for scientists.

Essentially, the new rules modify the interpretation of the applicability of the laws and to set up strict rules for conduct outside the laws.

Until now it had been the general interpretation of the courts and Government lawyers that any person appointed as an adviser to the Government became, in effect, a Government

Under a new interpretation by the Justice Department, however, it has been decided that part-time advisers should have a special exemption from the full force of this criminal statute.

The White House disclosed that the President had received an interpretation from Attorney General Robert F. Kennedy that the conflict-of-interest law should apply to "intermittent employees," such as advisers, only "on those days on which they are actually employed by the Government."

This interpretation was reached only after considerable legal debate within the Government. In some quarters it was argued that this special exemption for part-time advisers only compounded the basic, underlying problem that advisers could use their "inside information" to assist their private employers.

The Administration sought to meet this problem by setting up "strict rules of behaviour" governing conduct not covered by the conflict-of-interest laws.

Must List Interests

One of these rules specifies that at the time of his appointment the adviser must file with the Government a statement listing his private employment, salary, his financial interests, including the names of concerns he serves in any capacity, and the names of companies in which he holds any securities of "significant financial value." During the time he serves, the individual must keep this information up to date.

At present, it has not been the practice of Government agencies to demand such financial information.

Another of the rules specifies that an adviser may not use "inside information for private gain for himself or persons with whom he has family, business or financial ties." The adviser also may not accept any offer of private employment "which he has reason to believe is motivated by his connection with the Government, unless he resigns from his Government position."

The latter provision is designed to curb the prevalent practice of Government contractors to hire Government advisers as "consultants," partly because of their advance knowledge about the direction of Government research contracts.

The new code also emphasizes that in his Governmental capacity an adviser must not consider any matter involving a business concern or private organization in which he has a financial interest. He is also prohibited from giving advice

NEW YORK TIMES, SUNDAY, FEBRUARY 11, 1962.

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Text of Code for Advisers

Special to The New York Times.
WASHINGTON, Feb. 10—
Following is the text of the
White House announcement today of President Kennedy's
memorandum to all departments and agencies on the
"conflict of interest" problems
of advisers and consultants:

The President today issued a memorandum to the heads of all executive departments and agencies, directing them to take administrative steps to assure compliance with existing statutes, rules and regulations governing conflicts of interest problems of advisers and consultants who serve in an intermittent or temporary capacity. This memorandum is of particular significance to those engaged in advising or consulting in research and development on a part-time basis. Hundreds of outstanding scientists and engineers who are regularly employed in industrial organizations, universities or research firms are consulted by the Government research and development. This has given rise to questions concerning inter-relationships between a consultant's services to the Government and private interests of his own or of his regular employer. The conflicts-of-interest statutes antedate the widespread use of part-time consultants and advisers by the Government and have therefore proved inconsistent in some instances and confusing in others.

Legislation designed to amend these statutes is pending in the Congress. In the meantime, it has become necessary to resolve the uncertainties of the existing statutes and to reassure those who are apprehensive that innocent conduct may be deemed wrongful. The memorandum establishes general standards of conduct.

Code Section Cited

Included in the regulations provided by the memorandum are the following:

1. Section 281 of Title 18 of the United States Code in general precludes a Member of Congress, a department head or other "officer or employee" of the Government from representing other persons before the Government departments and agencies for compensation. This statute, first enacted in 1864, sought to prevent the exercise of undue influence by members of Congress and persons regularly employed by the Government. The President has received an opinion from the Attorney General which concludes that the statute applies to all intermittent employees on those days on which they are actually employed by the Government. It also applies during the entire period of their availability for Government service to intermittent employees whose actual employment by the Government comprises a substantial portion of their time. A consultant or adviser who spends 40 per cent or more of his time in actual Government employment is considered by the memorandum issued by the President to be employed for a substantial portion of his time by the Government.

2. The memorandum also points out that a consultant or adviser, whether he serves the Government more or less than 40 per cent of his time, is barred from prosecuting or assisting in the prosecution of another person's claim against the Government during his period of availability for Government service, and for two years thereafter.

3. The memorandum disqualifies any consultant or adviser from performing any governmental duties involving the transaction of business with a business firm or other organization by which he is employed, or to which he renders consultant services, or in which he has a financial in-

terest. Moreover, the consultant or adviser may not render any advice in the course of his Government service which will have a direct and predictable effect upon the interests of such firm or organization.

Rules of Behavior

4. The memorandum establishes strict rules of behavior with regard to conduct not interest statutes. No consultant or adviser may use inside information for private gain for himself or persons with whom he has family, business or financial ties; nor may he accept any offer of private employment which he has reason to believe is motivated by his connection with the Government, unless he resigns from his Government position. He may not use his position to coerce, or give the appearance of coercing, any other person to provide any financial benefit to himself or to any person with whom he has family, business or financial ties. And he is not to receive or solicit gifts if he has reason to believe they would not be made for his Government position, or if the acceptance of the gift would result in, or appear to result in, the loss of his complete independence or impartiality.

5. Finally, at the time of his appointment, the consultant or adviser must supply the department or agency with a statement of his private employment, remuneration, financial interests, including the names of all businesses and other organizations which he serves in any capacity, and the names of the companies in which he holds security and other interests having a significant financial value. This information must be kept current during the time he is employed.

INTEREST CONFLICT IN RESEARCH AREA STUDIED IN HOUSE

New Inquiry Turns to Heads
of Private Companies
That Serve Pentagon

QUESTIONNAIRES MAILED

Leaders of Concerns Exempt
From Federal Regulations
Queried About Holdings

By JOHN W. FINNEY
Special to The New York Times.
WASHINGTON, Feb. 12 — A

Congressional investigating subcommittee has begun an inquiry into a potential conflict-of-interest problem that involves directors of nonprofit research corporations serving the Defense Department.

The subcommittee of the House Armed Services committee is seeking to determine whether there is a potential conflict between the privileged advisory roles the individuals hold as directors of Government-sponsored corporations and their private financial and business interests.

In examining the nonprofit corporations, the subcommittee is touching upon an aspect of the scientific conflict-of-interest problem not covered by the new "standards of conduct" issued by the White House on Saturday.

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Exempt From Regulations

The Administration's new conflict-of-interest regulations apply only to persons serving as advisers or consultants to the Government, although the nonprofit corporations serve as research agencies of the Government, they have a private status and are not subject to the conflict-of-interest laws and regulations.

In recent days, the House subcommittee, headed by Representative F. Edward Hebert, Democrat of Louisiana, has sent out questionnaires to members of the boards of directors of some of the leading nonprofit research corporations created and supported by the Defense Department.

One of the principal purposes of the questionnaire is to ascertain the financial interests of the directors of the nonprofit organizations in companies holding military contracts. Included in the questionnaire, made available by one of its recipients, is this question:

"Do you now own or have you purchased or sold for your own account or for the account of others, any stocks or bonds or securities or shares or property of any nature, or any interest in any corporation, organization or entity having any contractual relationship with the military establishment while a trustee or director of this corporation."

List of Stocks Sought

If the answer is in the affirmative, the respondent is asked to list the securities held, state when purchased or sold and name the dealer handling the transaction.

Lawyers serving on the boards of directors are asked to say whether they or their law firms represent any contractors doing business with the Defense Department.

A covering letter points out that the subcommittee is "con-

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HOUSE UNIT OPENS CONFLICTS STUDY

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cerned with the cost, efficiency and effectiveness of these "relationships." But in an allusion to the conflict-of-interest problem, the letter also states that the subcommittee is seeking to determine "whether existing laws, if any, cover such activities as may be disclosed by the inquiry."

The nonprofit corporations, which have sprung up in increasing numbers in the past decade, have an unusual privileged status in their relationship with the Government.

They were set up primarily to assemble teams of scientists that the military believed it could not recruit under the pay limitations of the civil service.

Perform Varied Services

The employees are exempt from the legislation, such as conflict-of-interest laws, applying to Government officials. However, these corporations perform many functions that would normally be carried out by Government research agencies.

Among other things, they do long-range research, planning for the military services, review research proposals and provide over-all technical management of research projects awarded to industry.

As was pointed out in a report last year by the House Government Operations Committee, this "intimate and privileged" position enjoyed by the nonprofit corporations poses a "particularly vexing" conflict-of-interest problem.

As advisers and monitors of military programs, the officials and employees of these corporations are in a position to obtain advance knowledge about research contracts to be let by the Defense Department.

Furthermore, the recommendations of the nonprofit groups on research projects can be influential in determining which companies will get the contracts.

The subcommittee earlier had sent out similar questionnaires to more than 150 employees of nonprofit corporations after obtaining reports of stock speculation by some employees.

In now turning to the boards

of directors, the subcommittee is partly concerned about possible stock speculation. It is also interested in the possibility that some of the directors may be in a position to assist companies with which they have private connections in obtaining contracts.

Among the groups receiving the subcommittee questionnaires were the board of directors of two of the largest nonprofit corporations working for the Air Force—the Rand Corporation of Santa Monica, Calif., and the Mitre Corporation of Bedford, Mass.

The Rand Corporation was set up in 1946 to do long-range scientific, military and strategic planning for the Air Force. It employs more than 850 persons and received \$13,888,000 from the Defense Department in the last fiscal year.

The Mitre Corporation, which has close working relationships with the Massachusetts Institute of Technology, was established in 1958 to supervise electronic research projects for the Air Force. It received \$22,844,000 from the Defense Department in the last fiscal year.

The directors of the two corporations are drawn from industrial concerns, universities, public utilities, and large law firms. Chairman of the board of the Rand Corporation is Dr. Frank Stanton, president of the Columbia Broadcasting System. Charles A. Coolidge, a Boston lawyer who was a disarmament adviser in the Eisenhower Administration, is chairman of the board of trustees of the Mitre Corporation.

The potential conflict-of-interest problem confronting the nonprofit corporations has been recognized by officials of the Aerospace Corporation of El Segundo, Calif. This corporation was established in 1960 to provide technical management for the Air Force's Ballistic Missile Division.

Among the regulations adopted by the corporation was a provision that a trustee would keep all other trustees informed about his industrial connections and stockholdings or other interests in any company, doing or likely to do contract work for the Ballistic Missile Division.

Pledged To Secrecy

Each trustee was also enjoined from taking part in any action or recommendation involving any company in which he had an interest. Furthermore, each trustee is pledged not to make available to any company information obtained as a result of his Aerospace position.

The Aerospace regulations are being viewed within Congress and the Executive Branch as a possible model code of conduct to be adopted for other nonprofit groups and for advisers and consultants to the Government.

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12/26
Scientists and the Government

President Kennedy has done well to issue a memorandum clarifying and strengthening the rules governing possible conflicts of interests among part-time advisers or consultants to the Government. The chief group the President had in mind consists of the many scientists whose main employment is with a private corporation, research institute or university, but who also help advise the Government. Since the advice these part-time scientific advisers give influences decisions totaling many billions of dollars annually, it is clear that there are possibilities of abuse and conflict of interest where a given individual wears both a governmental and a private hat during different portions of a week. And rumor has suggested that some persons in these situations have used their Government connection to enrich themselves and their private employers.

The need for the President's memorandum testifies eloquently to the new and sharply more important position now occupied by scientists in our national life. Even as recently as two decades ago, the scientist was thought of primarily as a sort of absent-minded professor who puttered around in an obscure laboratory studying things that could hardly interest practical men. Today every business man and every scientist knows that the most practical thing in the world may be a new scientific principle which could revolutionize war, promote space travel or lead to the cure of a major ailment. Scientists today, in short, are an élite whose findings have profoundly revolutionized the world and are continuing to transform it.

Useful as the President's memorandum is, it is clearly but a stop-gap. The real problem is that the Government cannot employ full time all the scientists it needs to make all the many com-

plex scientific decisions that must be made. One reason is the absolute shortage of top-notch scientists, a shortage which afflicts both Government and private industry. Another reason is that present salary regulations put Government agencies at a decided disadvantage in competing for able scientists against non-Governmental institutions. A step that badly needs taking is to increase the Government's competitive power in this area by permitting substantial increases in the salaries the Government can offer high scientific talent.

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POST 12 Feb 62

Consultant 'Conflicts' Rules Cited

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Associated Press

President Kennedy issued a memorandum yesterday establishing general standards of conduct to prevent conflict of interest problems among part-time advisers and consultants.

Among other things, the rules bar such consultants or advisers from using inside information for personal gain and require the listing of security holdings and other financial interests.

The memorandum, addressed to the heads of all departments and agencies, directed administrative steps to assure compliance with existing laws and regulations.

The White House announcement said it is "of particular significance to those engaged in advising or consulting in research and development on a part-time basis."

The statement noted that the Government, in trying to solve research and development problems, calls on the talents of "hundreds of outstanding scientists and engineers who are regularly employed in industrial organizations, universities or research firms . . .

"This has given rise to questions concerning interrelationships between a consultant's services to the Government and private interests of his own or of his regular employer."

Present law precludes members of Congress, department heads and other Government employees from representing other persons for compensation before Federal departments and agencies.

The White House said Attorney General Robert F. Kennedy has ruled that this statute applies to all part-time employees on days when they are actually employed by the Government and also during their entire period of availability for Government service when their actual employment comprises a substantial portion of their time.

The presidential memorandum ruled that the "substantial portion" provision should apply to any consultant or adviser who spends 40 per cent or more of his time in actual Government employment.

All consultants and advisers are barred from prosecuting another person's claim against the Government until two years after they quit; and from handling or giving advice on any Government matters involving their employers, clients or firms in which they have financial interests.

Other regulations cover the acceptance of gifts or the taking of new jobs which might result from their connections with the Government.

Finally, the memorandum stipulates that a consultant or adviser, at the time of his appointment, must supply the department or agency with a statement of his private employment, his pay, financial interests, security holdings, and any other interests having a significant financial value.

This information must be kept current during the time of his employment.