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MEMORANDUM FOR: Don I. Wortman
Deputy Director for Administration

STATINTL

[Redacted]

Deputy Director of Personnel Policy, Planning, & Management

STATINTL

[Redacted]

Special Assistant to the General Counsel for Intelligence Community Affairs

STATINTL

[Redacted]

Associate General Counsel

STATINTL

FROM:

[Redacted]

Assistant Legislative Counsel

SUBJECT: S. 1340, the "Department of Justice Litigation Improvement Act"

1. Subject Bill was recently introduced by Senator Max S. Baucus (D., MT) and has been referred to the Judiciary Committee. No companion piece has been introduced in the House.

2. Senator Baucus accompanied the introduction of the Bill with an "introductory statement" which sheds some light on the motives behind the Bill. According to Senator Baucus, S. 1340 "will enhance and make more efficient the [litigation] role of the Department of Justice, while insuring that Congress will be able to perform more effective oversight of how abuses are being addressed." In a word the central focus of the Bill appears to be "to increase the efficient and effective operation of Federal litigation resources."

3. While this Bill is of primary interest to DOJ, there are provisions which we should examine from a CIA/Intelligence Community (viz., intelligence equities) perspective:

--copy of CIA - DOJ written "litigation" agreement to be made available to House and Senate Judiciary

Committees via Attorney General; Query: does such an agreement exist?; does each entity within the Intelligence Community have a separate agreement?;

--Attorney General to report, at the beginning of each (new) Congress, with regard to a number of items having to do with such litigation agreements (subsection (d), page 3);

--the Section 5 (page 7) Attorney General "status of cases" reports which must include, among other things, the agency program involved and "a brief description of the nature of the case." Note also Paragraph 5(c)(1) which, but for the Paragraph (2) "national security" exemption, would make available the file of any "dead" DOJ case for Judiciary Committee review.

4. In addition to the aforementioned "litigation" provisions, the Bill contains in Section 3 (page 4) an amendment to 18 U.S.C. 207 which would prohibit, for a period of 5 years, Federal employees from accepting outside employment that involves personal participation on a grant or contract with which the employee was substantially involved while a Federal officer. This would expand to the employment area the scope of 18 U.S.C. Section 207 which currently is limited to acting as agent or attorney for or otherwise representing anyone vis-a-vis the government on matters "in which [the former officer or employee] participated personally and substantially..."

could be trouble for us unless worded properly

5. The Bill is obviously not going anywhere in the remainder of the 96th Congress. However, it will in all likelihood reappear in the 97th. In anticipation of its reintroduction, I would ask that, should you deem it necessary, written comments be filed with this office no later than 12 November 1980.

STATINTL

Assistant Legislative Counsel

5479

Attachments

96TH CONGRESS
2D SESSION

S. 3140

To amend title 28 of the United States Code with respect to the litigation authority of the Attorney General, to amend title 18 of the United States Code, to require the Attorney General to report on Federal case management, to require the Attorney General to provide status reports on certain cases referred to the Department of Justice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23 (legislative day, JUNE 12), 1980

Mr. BAUCUS introduced the following bill; which was read twice and referred to the Committee on the Judiciary.

A BILL

To amend title 28 of the United States Code with respect to the litigation authority of the Attorney General, to amend title 18 of the United States Code, to require the Attorney General to report on Federal case management, to require the Attorney General to provide status reports on certain cases referred to the Department of Justice, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SHORT TITLE

2 SECTION 1. This Act may be cited as the "Department
3 of Justice Litigation Improvement Act".

4 LITIGATION AUTHORITY OF THE ATTORNEY GENERAL

5 SEC. 2. (a) Section 516 of title 28, United States Code,
6 is amended by inserting "(a)" immediately before "Except as
7 otherwise authorized".

8 (b) Section 516 of such title is amended by adding at the
9 end thereof the following new subsections:

10 "(b) The Attorney General shall submit to the Commit-
11 tees on the Judiciary of the Senate and the House of Repre-
12 sentatives a copy of each written agreement between the De-
13 partment of Justice and another agency affecting the litiga-
14 tion authority of the Department for particular categories of
15 cases. Each agreement shall be submitted no later than thirty
16 days before the agreement is effective.

17 "(c) Unless specific statutory authority for litigation re-
18 sponsibility is otherwise provided, the Attorney General shall
19 be the exclusive arbiter for the resolution of any legal dispute
20 between two or more executive agencies or departments, in-
21 cluding a dispute as to which agency or department shall
22 litigate an action, administer a particular program, or regu-
23 late a particular activity.

1 “(d) The Attorney General shall report, at the beginning
2 of each Congress, to the Committees on the Judiciary of the
3 Senate and of the House of Representatives on —

4 “(1) bills or resolutions affecting the litigation au-
5 thority of the Department of Justice, of which the At-
6 torney General is aware, that were introduced in the
7 previous Congress but were not enacted;

8 “(2) the status of litigation authority in the Feder-
9 al Government, including the extent to which agencies
10 other than the Department of Justice are authorized to
11 litigate and whether such agencies are conducting liti-
12 gation by formal or informal agreement with the De-
13 partment of Justice;

14 “(3) the Attorney General's assessment of each
15 agreement between the Department of Justice and an-
16 other agency affecting the litigation authority of the
17 Department for particular categories of cases,
18 including—

19 “(A) a description of any problems relating
20 to any such agreement;

21 “(B) the steps the Attorney General intends
22 to take to remedy those problems; and

23 “(C) any legislative recommendations the
24 Department of Justice may have to improve the

1 coordination of legal activities between the De-
2 partment of Justice and its client agencies; and

3 “(4) the efforts the Attorney General has under-
4 taken in the preceding two years and the efforts the
5 Attorney General expects to undertake during the
6 forthcoming years to coordinate activities and resolve
7 conflicts between the Department of Justice and other
8 Federal agencies, and to increase the efficient and ef-
9 fective operation of Federal litigation resources.”.

10 AMENDMENT TO SECTION 207 OF TITLE 18 OF THE

11 UNITED STATES CODE

12 SEC. 3. Section 207 of title 18, United States Code, is
13 amended—

14 (1) by striking out the dash at the end of para-
15 graph (3) of subsection (c) and inserting in lieu thereof
16 a semicolon and “or”;

17 (2) by inserting immediately after paragraph (3) of
18 subsection (c) the following new subsection:

19 “(d) Whoever, having been an officer or employee of the
20 executive branch of the United States Government, of any
21 independent agency of the United States, or of the District of
22 Columbia, including a special Government employee, know-
23 ingly accepts employment with a business or firm that has a
24 grant or contract in effect, or had a grant or contract in effect
25 within the last five years, with which the officer or employee

1 was involved in any manner, including involvement in the
2 design, preparation, review, award, audit, or evaluation of
3 such grant or contract, and such employment involves per-
4 sonal participation by such officer or employee with respect
5 to such grant or contract during the five-year period immedi-
6 ately following termination of Government employment—”;

7 (3) by redesignating subsections (d) through (j) as
8 subsections (e) through (k), respectively;

9 (4) in subsections (b) and (c), by striking out “as
10 specified in subsection (d) of this section” and inserting
11 in lieu thereof “as specified in subsection (e) of this
12 section”; and

13 (5) in subsection (j), by striking out “subsection
14 (a), (b), or (c) of this section” and inserting in lieu
15 thereof “subsection (a), (b), (c), or (d) of this section”.

16 DEPARTMENT OF JUSTICE REPORT ON FEDERAL CASE

17 MANAGEMENT

18 SEC. 4. (a) The Attorney General shall prepare and
19 submit to the Committees on the Judiciary of the Senate and
20 House of Representatives a systems development plan for the
21 activation and coordination, within the Department of Jus-
22 tice, of compatible, comprehensive case management infor-
23 mation and tracking systems for each of the judicial districts
24 of the United States as described in chapter 5 of title 28 of

1 the United States Code and for each of the divisions of the
2 Department of Justice.

3 (b) The plan shall—

4 (1) determine the functional, informational, and
5 data service requirements of each of the legal divisions
6 of the Department, the United States Attorneys Of-
7 fices, and a representative sampling of key client
8 agencies;

9 (2) from the requirements determines under para-
10 graph (1), identify data that should be uniformly col-
11 lected for purposes of inclusion in the systems, how
12 such data should be defined for purposes of inclusion in
13 and access to the systems;

14 (3) evaluate existing case management informa-
15 tion and tracking systems to determine the responsive-
16 ness of such systems to the requirements determined
17 under paragraphs (1) and (2);

18 (4) assess what data are required to be collected
19 to improve the effectiveness and responsiveness of the
20 existing systems and develop the policies and proce-
21 dures for the collection and generation of such data;

22 (5) have as its goal, maximum service and data
23 quality, retrievability, and utility to the users; and

1 (6) include a timetable for the implementation of
2 such plan, and an assessment of the costs for imple-
3 mentation of such plan.

4 (c) There are authorized to be appropriated for the fiscal
5 year ending September 30, 1981, \$300,000 for the purposes
6 of development and implementation of a systems develop-
7 ment plan as described in this section.

8 STATUS OF CASES REFERRED TO THE DEPARTMENT OF
9 JUSTICE

10 SEC. 5. (a) Until completion of the planned systems
11 under section 4, the Attorney General shall include in his
12 authorization request to the Committees on the Judiciary of
13 the Senate and the House of Representatives a report on the
14 status of cases referred to the Department of Justice by any
15 Inspector General of an agency.

16 (b) The report required under subsection (a) shall in-
17 clude—

18 (1) the name of the referring agency and the
19 agency program involved;

20 (2) a brief description of the nature of the case,
21 including a citation of the alleged violation;

22 (3) the name of the division within the Depart-
23 ment of Justice or the United States attorney responsi-
24 ble for the handling of the case;

1 (4) the current status of the case, including any
2 action taken with respect to the prosecution of the
3 case, and if no action has been taken, an explanation of
4 why such case was not prosecuted and any administra-
5 tive action recommended; and

6 (5) the result of any court action, if any, including
7 any sentence of imprisonment or fine imposed as a
8 result of such court action and the amount of any resti-
9 tution awarded, if any, and the amount, if any,
10 collected.

11 (c)(1) Except as provided in paragraph (2), the file of
12 any case described in subsection (a), with respect to which
13 further action by the Department of Justice is terminated,
14 shall be available for review by members of the Committees
15 on the Judiciary of the Senate and the House of Representa-
16 tives, and the staff of such committees, after removal from
17 such files of the names and identifiers of any sources or infor-
18 mants, if any, and all grand jury material under an obligation
19 of secrecy required by rule 6(e) of the Federal Rules of
20 Criminal Procedure.

21 (2) The provisions of paragraph (1) shall not apply to
22 any case relating to national security.

and local transit agencies. This is not conventional authorization legislation, the fate of which is in practice determined through the appropriations process. My bill is meant to establish an entitlement to aid to transit agencies so that they can fully comply with a mandate that has been imposed upon them by the National Government. A mandate that I support. But a mandate that cannot in practice be honored unless the Federal Government now accepts the full consequences of the responsibility that it assumed in 1973.

By Mr. TOWER:

S. 3139. A bill to amend the Longshoremen's and Harbor Workers' Compensation Act to provide that in the case of injuries to persons covered by such Act the liability of owners, operators, or charterers of vessels engaged in activities on the Outer Continental Shelf shall be limited to damages attributable to their negligence; to the Committee on Labor and Human Resources.

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

Mr. TOWER. Mr. President, I am introducing today a bill to amend the Longshoremen's and Harbor Workers' Compensation Act to provide that in the case of injuries to persons covered by such act the liability of owners, operators, or charterers shall be limited to damages attributable to their negligence.

This bill is required due to an unintended combination of circumstances. In 1972 extensive amendments to the act were passed which, among other things, first, limited the liability exposure of employers of longshoremen to benefits payable under the amendments, and second, abolished longshoremen claims against shipowners for "unseaworthiness"—a species of liability without fault—while establishing a negligence standard of fault as a predicate of shipowner liability. Unfortunately, court interpretations have indicated that the language of the 1972 amendments to the act permit shipowners to be exposed to 100 percent liability if there is any shipowner negligence, despite any contributory negligence on the part of the employers.

I believe that result is unfair and unintended. The courts have indicated that any relief from this inequity must come from Congress. This bill, the counterpart of which has been introduced in the House by Mr. IRELAND, will provide the necessary relief.

By Mr. BAUCUS:

S. 3140. A bill to amend title 28 of the United States Code with respect to the litigation authority of the Attorney General, to amend title 18 of the United States Code, to require the Attorney General to report on Federal case management, to require the Attorney General to provide status reports on certain cases referred to the Department of Justice, and for other purposes; to the Committee on the Judiciary.

S. 3141. A bill to reform certain practices relating to Government contracts; to the Committee on Governmental Affairs.

DEPARTMENT OF JUSTICE LITIGATION IMPROVEMENT ACT AND PUBLIC CONTRACT ACCOUNTABILITY ACT

Mr. BAUCUS. Mr. President, for the past several months, various oversight subcommittees of the House and Senate and the General Accounting Office have been looking into how Federal agencies use outside contractor and consultants. The general outline of this story is well known. Increasingly, Federal agencies have been going outside their operations to the private sector for a substantial part of their work product. Billions of dollars in public funds are spent annually by Federal agencies for these services.

This by itself is not wrong. Most contractors and consultants providing assistance to Federal agencies are legitimate firms seeking to make a fair profit by fulfilling specific Government needs that may not or cannot be fulfilled in-house by Federal agencies. However, as has been amply shown in recent months, there is a small percentage of contractors who approach the possibility of Government contracting without good faith and without the ability to produce an acceptable work product; motivated solely by a desire to make as big and fast a dollar as possible while producing as little in return as possible.

A series of specific problems has been discovered by the Judiciary subcommittee I chair as well as by Senator Pryor of Arkansas and his Governmental Affairs Subcommittee. What emerges is a picture of abuse that is Government-wide, cumulative and out of control. In effect, certain contractors have become a de facto fourth level of Government. Some have been found making policy and supervising career Federal workers. Others have been found making substantial sums of money from contracts due to the lack of competitive bidding—even though competition is required by statute.

One of the most common afflictions involves the free passage of people from agencies to the private sector. Often a high-level Federal employee with power to enter into or approve contracts will leave the Federal service and reappear promptly in the employ of a private contractor performing work he had approved while a Federal employee. There are a number of variations on this theme, but that is the basic story of what is known as the revolving door. Current conflict of interest laws either allow for this revolving door to continue or simply are not enforced.

Some such abuses go beyond mere waste, inefficiency and the "buddy" system, entering into the realm of civil and criminal fraud. What is required is vigorous oversight by Congress, tough laws and regulations governing such misbehavior and a single standard of enforcement. While many existing laws address some of these problems additional legislation is essential. The pattern of abuse is extensive and no one knows what may be uncovered in the future.

To this end, I have drafted two pieces of legislation. The first is designed to insure that the Department of Justice is capable of monitoring and reporting

back to Congress on the status of both criminal and civil cases as well as an ~~array of cases referred to the Department by its client agencies.~~ Most oversight activities in this area have convinced me it is essential that the Department of Justice closely monitor referrals from client agencies so the investigative ball is not dropped when passed to Justice.

Such tracking capability is not only essential for Congress as it performs its oversight responsibility, but will be important to each agency so that if judicial action is not warranted, the case can be returned promptly to the agency for possible administrative action. All too often nothing is done with a case because too much time has lapsed between opening the investigation and final determination of action. My legislation would:

- First. Assure that Congress is advised of all written agreements between Department of Justice and other agencies affecting litigation authority;
- Second. Determine functional, informational, and data service requirements for Department of Justice, U.S. Attorneys, and Federal agencies;
- Third. Determine status of all criminal and civil fraud cases; and
- Fourth. Allow for access to this information by Senate and House Judiciary Committees and Subcommittees.

Enactment of this measure will not mean any interference whatsoever in the handling of cases. It will not mean there will be a new capability on the part of appropriate committees of Congress and agencies to monitor information, laws and regulations governing civil and criminal fraud, false claims, gift solicitation and other violations of the practices between the Federal Government and private contractors.

This bill also contains one additional critical reform. Presently, section 17 of title 18 of the United States Code prohibits a former Federal employee from acting as an agent or attorney for any other person besides the United States in connection with any proceeding, including contract matters before the United States, that he substantially participated in while a Federal employee.

My amendment would prohibit Federal employees from accepting such employment for a period of 5 years after they have personally participated in a contract or contract with which the employee was substantially involved while a Federal officer. This amendment will help prevent the unscrupulous Government contract or project officer from giving a contract to a specific company in exchange for employment.

This first bill will enhance and make more efficient the role of the Department of Justice, while insuring that the press will be able to perform more effective oversight of how agencies are run and addressed.

My second bill, will be referred to the Governmental Affairs Committee. It addresses a series of loopholes by the way Federal procurements are handled. These loopholes have allowed today's situation to come into being. Federal procurement is often sloppy and noncompetitive. Exceptions are often the order of the day

when it comes to scrupulous adherence to bidding laws and regulations. By simply tightening up the way bids and procurements are handled, many evils can be curbed or substantially reduced.

One area of concern involves advertising for bids on Government contracts. Presently, there need be no public advertisement for bids if the contract is under \$10,000; if work must be done in an emergency situation; when only one source of supply or service is available and when the services are to be performed by the contractor in person, and are either of technical nature or are under Government supervision and paid for on a time basis. The latter exemption would be eliminated under my bill.

Another area of concern deals with lack of competition in letting Federal contracts. Large numbers of Federal contracts are let noncompetitively on a sole-source basis; one of the worst abuses we have found. Some agencies let a majority of outside contracts on this basis. I propose in this second bill to eliminate the exception from competition for all personal or professional services, for services to be rendered by any educational institution, and for developmental or research work.

Substantial numbers of contracts involve advance payments or full payment before an acceptable work product is delivered and approved by the Federal agency. My bill provides for no payment on any Federal contract worth more than \$100,000 that will amount to more than two-thirds of the total contract price, until the Federal Government has received an acceptable work product at an agreed-to price.

Many agencies contract out work they are able to perform in-house with career Federal workers. It is too easy to bypass a hiring freeze by contracting out work. My legislation would require all agencies to conduct a survey in-house to definitely determine that the task cannot be performed within the Federal organization.

Still another widespread abuse is the vague contract that does not adequately specify what goods and services are to be provided. The bill requires specificity in contract agreements.

Finally, there is the question of line items in agency budgets for outside contractors. Because there is no current requirement to delineate beforehand what an agency proposes to spend on outside contracting and consulting, many Federal organizations have been able to operate in such a manner as to compound abuses already described. This bill would make it mandatory for all agencies to devote a line item in budget submissions to proposed expenditures for outside work.

I do not believe in overutilizing the legislative process. These measures are the product of significant amounts of oversight and investigative work. Each specific reform outlined in these bills address well-documented abuses. Each would save the taxpayers substantial sums of money. No element in the contracting or consulting industry can or should quarrel with them. Competition would be enhanced, efficiency would be increased, oversight would protect the

public interest and many abuses would almost certainly be reduced. The bills are intended to complement the already well-advanced, excellent initiatives commenced by Senator Pryor and Congressman Harris. Both are overdue for enactment. I offer them for my colleague's consideration.

I do not expect this legislation to pass this Congress. I offer it for discussion purposes and to serve as a backdrop for contracting hearings I will chair this Thursday. Through these and subsequent hearings I expect to test the viability and utility of this legislative proposal. Hopefully, this legislation can be tested and improved and be ready for enactment by the 97th Congress.

Mr. President, I ask unanimous consent that both bills be printed in the Record at this point.

There being no objection, the bills were ordered to be printed in the Record, as follows:

S. 3140

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Department of Justice Litigation Improvement Act".

LITIGATION AUTHORITY OF THE ATTORNEY GENERAL

Sec. 2. (a) Section 518 of title 28, United States Code, is amended by inserting "(a)" immediately before "Except as otherwise authorized".

(b) Section 518 of such title is amended by adding at the end thereof the following new subsections:

"(c) The Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a copy of each written agreement between the Department of Justice and another agency affecting the litigation authority of the Department for particular categories of cases. Each agreement shall be submitted no later than thirty days before the agreement is effective.

"(c) Unless specific statutory authority for litigation responsibility is otherwise provided, the Attorney General shall be the exclusive arbiter for the resolution of any legal dispute between two or more executive agencies or departments, including a dispute as to which agency or department shall litigate an action, administer a particular program, or regulate a particular activity.

"(d) The Attorney General shall report, at the beginning of each Congress, to the Committees on the Judiciary of the Senate and of the House of Representatives on—

"(1) bills or resolutions affecting the litigation authority of the Department of Justice, of which the Attorney General is aware, that were introduced in the previous Congress but were not enacted;

"(2) the status of litigation authority in the Federal Government, including the extent to which agencies other than the Department of Justice are authorized to litigate and whether such agencies are conducting litigation by formal or informal agreement with the Department of Justice;

"(3) the Attorney General's assessment of each agreement between the Department of Justice and another agency affecting the litigation authority of the Department, for particular categories of cases, including—

"(A) a description of any problems relating to such agreement;

"(B) the steps the Attorney General intends to take to remedy those problems; and

"(C) any legislative recommendations the Department of Justice may have to improve

the coordination of legal activities between the Department of Justice and its constituent agencies; and

"(4) the efforts the Attorney General has undertaken in the preceding two years, and the efforts the Attorney General expects to undertake during the forthcoming year, to coordinate activities and resolve conflicts between the Department of Justice and other Federal agencies, and to increase the efficient and effective operation of Federal litigation resources."

AMENDMENT TO SECTION 207 OF TITLE 18 OF THE UNITED STATES CODE

Sec. 3. Section 207 of title 18, United States Code, is amended—

(1) by striking out the dash at the end of paragraph (3) of subsection (c) and inserting in lieu thereof a semicolon and "

(2) by inserting immediately after paragraph (3) of subsection (c) the following new subsection:

"(d) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, knowingly accepts employment with a business or firm that has a grant or contract in effect, or had a grant or contract in effect within the last five years, with which the officer or employee was involved in any manner, including development in the design, preparation, review, award, audit, or evaluation of such grant or contract, and such employment involves personal participation by such officer or employee with respect to such grant or contract during the five-year period immediately following termination of Government employment—

(3) by redesignating subsection (d) through (j) as subsections (e) through (k), respectively;

(4) in subsections (b) and (c), by striking out "as specified in subsection (d) of this section" and inserting in lieu thereof "as specified in subsection (e) of this section"; and

(5) in subsection (j), by striking out "subsection (a), (b), or (c) of this section" and inserting in lieu thereof "subsection (a), (b), (c), or (d) of this section".

DEPARTMENT OF JUSTICE REPORT ON FEDERAL CASE MANAGEMENT

Sec. 4. (a) The Attorney General shall prepare and submit to the Committee on the Judiciary of the Senate and House of Representatives a systems development plan for the activation and coordination, within the Department of Justice, of comprehensive case management information and tracking systems for each of the judicial districts of the United States as defined in chapter 5 of title 28 of the United States Code and for each of the divisions of the Department of Justice.

(b) The plan shall—

(1) determine the functional, informational, and data service requirements of each of the legal divisions of the Department of Justice, the United States Attorneys Offices, and a representative sampling of key client agencies;

(2) from the requirements determined under paragraph (1), identify data that should be uniformly collected for purposes of inclusion in the systems, how such data should be defined for purposes of collection, and access to the systems;

(3) evaluate existing case management information and tracking systems to determine the responsiveness of such systems to the requirements determined under paragraphs (1) and (2);

(4) assess what data are required to be collected to improve the effectiveness and responsiveness of the existing systems and develop the policies and procedures for the collection and generation of such data.

(5) have as its goal, maximum service and data quality, retrievability, and utility to the users; and

(6) include a timetable for the implementation of such plan, and an assessment of the costs for implementation of such plan.

(c) There are authorized to be appropriated for the fiscal year ending September 30, 1981, \$300,000 for the purposes of development and implementation of a systems development plan as described in this section.

STATUS OF CASES REFERRED TO THE DEPARTMENT OF JUSTICE

Sec. 5. (a) Until completion of the planned systems under section 4, the Attorney General shall include in his authorization request to the Committees on the Judiciary of the Senate and the House of Representatives a report on the status of cases referred to the Department of Justice by any Inspector General of an agency.

(b) The report required under subsection (a) shall include--

(1) the name of the referring agency and the agency program involved;

(2) a brief description of the nature of the case, including a citation of the alleged violation;

(3) the name of the division within the Department of Justice or the United States Attorney responsible for the handling of the case;

(4) the current status of the case, including any action taken with respect to the prosecution of the case, and if no action has been taken, an explanation of why such case was not prosecuted and any administrative action recommended; and

(5) the result of any court action, if any, including any sentence of imprisonment or fine imposed as a result of such court action and the amount of any restitution awarded, if any, and the amount, if any, collected.

(c) (1) Except as provided in paragraph (2), the file of any case described in subsection (a), with respect to which further action by the Department of Justice is terminated, shall be available for review by Members of the Committees on the Judiciary of the Senate and the House of Representatives, and the staff of such committees, after removal from such files of the names and identifiers of any sources or informants, if any, and all grand jury material under an obligation of secrecy required by Rule 6 (e) of the Federal Rules of Criminal Procedure.

(2) The provisions of paragraph (1) shall not apply to any case relating to national security.

S. 3141

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Public Contract Accountability Act of 1980".

ADVERTISEMENTS FOR PROPOSALS FOR PURCHASES AND CONTRACTS

Sec. 2. (a) Section 3709 of the Revised Statutes (41 U.S.C. 5) is amended by striking out "so certified, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under government supervision and paid for on a time basis" and insert in lieu thereof "so certify".

(b) Section 302(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(a); 63 Stat. 333) is amended--

(1) by striking out paragraphs (4) and (5);

(2) by redesignating paragraphs (6) through (9) as paragraphs (4) through (7), respectively;

(3) by striking out paragraphs (10) and (11); and

(4) by redesignating paragraphs (12) through (15) as paragraphs (8) through (11), respectively.

(c) Section 2304(a) of title 10 of the United States Code is amended--

(1) by striking out paragraphs (4) and (5);

(2) by redesignating paragraphs (6) through (10) as paragraphs (4) through (8), respectively;

(3) by striking out paragraph (11);

(4) by redesignating paragraphs (12) and (13) as paragraphs (9) and (10) respectively;

(5) by striking out paragraph (14); and

(6) by redesignating paragraphs (15), (16) and (17) as paragraphs (11), (12) and (13), respectively.

RESTRICTIONS AND CONDITIONS WITH RESPECT TO ADVANCE PAYMENTS

Sec. 3. (a) Section 205 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255; 63 Stat. 396) is amended--

(1) in subsection (b), by striking out "the unpaid contract price" and inserting in lieu thereof "the unpaid contract price or, for a contract in an amount in excess of \$100,000, two-thirds of the total contract price";

(2) by adding at the end thereof the following new subsection:

"(d) (1) Prior to making any progress payments under a contract in an amount in excess of \$100,000 which would cause the total amount of progress payments made under such contract to exceed 65 percent of the contract price, the agency which is a party to the contract shall conduct an audit of the funds expended and the work performed under the contract. The agency shall examine the expenditure of funds to determine if the amount of funds expended is reasonable in relation to the work performed, and shall examine the work performed under the contract to determine if such work meets the specifications included in the contract and is satisfactory to the agency.

"(2) In the case of an agency in which there is an Inspector General, the Inspector General shall perform the audit required by this section. In the case of an agency in which there is not an Inspector General, the agency shall employ an independent auditor to carry out the audit required by this section.

"(3) Notwithstanding any other provision of law, an agency may not make any progress payments under a contract subject to paragraph (1) which would cause the total amount of progress payments made under such contract to exceed 55 percent of the contract price if the agency determines, as a result of the audit conducted under paragraph (1), that--

"(A) the expenditure of funds under the contract is unreasonable in relation to the work performed;

"(B) the work performed pursuant to the contract does not meet the contract specifications; or

"(C) the work performed pursuant to the contract is not satisfactory to the agency."

(b) Section 2307 of title 10 of the United States Code is amended--

(1) in subsection (b), by striking out "the unpaid contract price" and inserting in lieu thereof "the unpaid contract price or, for a contract in an amount in excess of \$100,000, two-thirds of the total contract price";

(2) in subsection (d), by striking out "Payments" and inserting in lieu thereof "Subject to the limitations provided under subsection (b), payments";

(3) by adding at the end thereof the following new subsection:

"(e) (1) Prior to making any progress payments under a contract in an amount in excess of \$100,000 which would cause the total amount of progress payments made under such contract to exceed 65 percent of the contract price, the agency which is a party to the contract shall conduct an audit of the funds expended and the work performed under the contract. The agency shall examine the expenditure of funds to determine if the amount of funds expended is reasonable in relation to the work performed, and shall examine the work performed under the contract to determine if such work meets the specifications included in the contract and is satisfactory to the agency.

"(2) In the case of an agency in which there is an Inspector General, the Inspector General shall perform the audit required by this section. In the case of an agency in which there is not an Inspector General, the agency shall employ an independent auditor to carry out the audit required by this section.

"(3) Notwithstanding any other provision of law, an agency may not make any progress payments under a contract subject to paragraph (1) which would cause the total amount of progress payments made under such contract to exceed 65 percent of the contract price if the agency determines, as a result of the audit conducted under paragraph (1), that--

"(A) the expenditure of funds under the contract is unreasonable in relation to the work performed;

"(B) the work performed pursuant to the contract does not meet the contract specifications; or

"(C) the work performed pursuant to the contract is not satisfactory to the agency."

(c) Section 2355 of title 10 of the United States Code is amended by striking out "Notwithstanding an law" and inserting in lieu thereof "Subject to section 2307 (d) of this title and notwithstanding an law".

GENERAL LIMITATION ON CONTRACTS FOR SERVICES WHICH ARE READILY AVAILABLE WITHIN THE AGENCY

Sec. 4. (a) (1) Chapter 137 of title 41 of the United States Code is amended by adding immediately after section 2215 the following new section:

§ 2215. Contracts for services readily available

"Notwithstanding any other provision of law, an agency may not enter into a contract for services unless, during the 90-day period prior to the date on which the agency intends to enter into the contract, the agency has conducted a survey within the agency and has determined that such services are not readily available within the agency."

(2) The table of contents for such chapter is amended by adding at the end thereof the following new item:

"2215. Contracts for services readily available".

(b) (1) The Federal Property and Administrative Services Act of 1949 (41 U.S.C. 471 et seq.) is amended by adding at the end of title III the following new section:

CONTRACTS FOR SERVICES READILY AVAILABLE

"Sec. 311. Notwithstanding any other provision of law, an agency may not enter into any contract for services unless, during the 90-day period prior to the date on which the agency intends to enter into the contract, the agency has conducted a survey within the agency and has determined that such services are not readily available within the agency."

(2) The table of contents for title III of such Act is amended by adding at the end thereof the following new item: "Sec. 311. Contracts for services readily available".

ROUTING AND RECORD SHEET

SUBJECT: (Optional) S. 1340, the "Department of Justice Litigation Improvement Act"

FROM: [Redacted] Executive Officer, Office of Information Services 5B2830 Headquarters

EXTENSION

NO. OIS 80-760/1

DATE 20 OCT 1980

STATINTL

TO: (Officer designation, room number, and building)

RECEIVED FORWARDED

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

- 1. ~~Director of Communications~~
- 2. Director of Data Processing
- 3. ~~Director of Finance~~
- 4. ~~Director of Logistics~~
- 5. ~~Director of Medical Services~~
- 6. ~~Director of Security~~
- 7. ~~Director of Training & Education~~
- 8. EO
- 9. DD
- 10. C/MS
- 11.
- 12.
- 13.
- 14.

10/25 [Signature]

23 Oct GD

24 Oct [Signature]

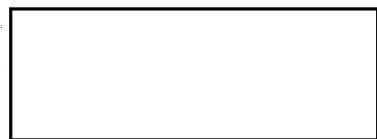
25 Oct [Signature]

STATINTL

I do not believe the DDA would have any problems that would not be problems which OIG must address. Therefore, we do not propose to respond.

If you feel otherwise, feel free to contact me or OIG dir.

STATINTL



Attachment

Multi-add memo from OIG dtd 9 Oct 1980 (OIG 80-2025) Subj: S. 1340, the "Department of Justice Litigation Improvement Act"

8 to all STATINTL

I called [Redacted] and told him that ODP recommends that Senate Baucus' amendment to 18 USC 207 be worded in such a way as to prevent what he is concerned about, i.e., Federal officers awarding contracts to vendors and then leaving govt to work on them, but not preventing rank & file employees from who leave govt from being assigned to contracts with their old agency, e.g. someone on SAFF in non-mgt position leaving to work for [Redacted] on SAFF. Bob made note of my comment.

I also called to his attention that S 1341 which Sen. Baucus also introduced could cause us a lot of grief and that [Redacted] would require proposal services contracts < \$10K to be competitive.

hold for one year in OLC file