

September 1988

# Paul G. Dembling



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**GAO**

History Program

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September 1988

Paul G. Dembling



# Preface

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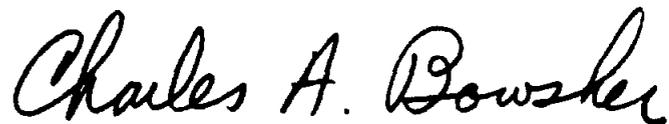
The General Accounting Office (GAO) was established by the Budget and Accounting Act of 1921. Since then, new legislation and modified policies have been adopted that enable GAO to meet the needs of the Congress as it comes to grips with increasingly complex governmental programs and activities.

GAO has a History Program within its Office of Policy to ensure that the basis for policy decisions and other important events are systematically recorded for posterity. The program should benefit the Congress, future Comptrollers General, other present and future GAO officials, GAO's in-house training efforts, and scholars of public administration.

A primary source of historical data is the written record in official government files. A vital supplement contributing to a better understanding of past actions is the oral history component of the program. Key governmental officials who were in a position to make decisions and redirect GAO's efforts are being interviewed to record their observations and impressions. Modern techniques make it possible to record their statements on videotapes or audiotapes that can be distributed to a wider audience, supplemented by written transcripts.

Paul G. Dembling has had a distinguished federal career spanning 36 years. During 9 of these years, from 1969 to 1978, he served as GAO's General Counsel. On January 5, 1988, present and former GAO officials (see p. vi) interviewed Mr. Dembling on videotape at GAO headquarters in Washington, D.C. This document is a transcript of the videotape. Although a number of editorial changes have been made, GAO tried to preserve the flavor of the spoken word.

Copies of the videotape and this transcript are available to GAO officials and other interested parties.



Charles A. Bowsher  
Comptroller General  
of the United States

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# Biographical Information

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## Paul G. Dembling

Mr. Dembling served as General Counsel of the United States General Accounting Office (GAO) from 1969 to 1978. He was born on January 11, 1920, in Avenel, New Jersey, but was brought up in Rahway, New Jersey. Mr. Dembling received his B.A. cum laude with special honors in economics and his M.A. from Rutgers University. He obtained his Juris Doctor from the George Washington University Law School, where he served as an editor of the Law Review and where he later became a professional lecturer at the National Law Center.

Mr. Dembling entered the federal service in 1942 with the War Department and served in various industrial relations capacities. He joined the National Advisory Committee for Aeronautics in 1945 and became successively its Special Counsel, Legal Advisor, and General Counsel. After enactment of the 1958 National Aeronautics and Space Administration [NASA] Act, of which he was a principal drafter, he served as Assistant General Counsel, Chairman of the NASA Inventions and Contributions Board, Director of Congressional Relations, Deputy General Counsel, and General Counsel of NASA. From 1964 to 1969, Mr. Dembling also was a member of the U.S. Delegation to the United Nations Legal Subcommittee and assisted in the drafting of various space treaties.

After leaving GAO in 1978, Mr. Dembling assumed his present position as partner in the Washington, D.C., office of the Philadelphia and New York law firm of Schnader, Harrison, Segal, & Lewis.

Mr. Dembling is a member of the Bars of the District of Columbia, the U.S. Claims Court, the U.S. Court of Appeals for the District of Columbia Circuit, the U.S. Court of Appeals for the Federal Circuit, and the Supreme Court of the United States. He is the recipient of the Army's Civilian Meritorious Award and NASA's highest award—the Distinguished Service Medal—and the National Civil Service League Award.

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# Interview With Paul G. Dembling

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## Introduction

Mr. Eschwege

Good morning, Mr. Paul Dembling, and welcome back to the General Accounting Office [GAO] where you spent about 9 years as General Counsel, from 1969 to 1978. For the record, I want to introduce again Milton Socolar, Special Assistant to the Comptroller General, whom you know well, and Roger Trask, who is the Chief Historian of GAO.

We want to talk about your career here at GAO, but before we get into the details, we would like to get you to give us some background: where you were born, where you went to school, and all these other activities that you were involved in before you came to the General Accounting Office.

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## Biographical Data

Mr. Dembling

You want me to start with the early days in New Jersey?

Mr. Eschwege

Right.

Mr. Dembling

Well, I was born in Rahway, New Jersey, actually in Avenel. I attended Rahway High School and then went on to Rutgers University.

Rutgers University—as Milt had asked earlier—at that time was not a state-supported school and was not the State University. It had been founded in 1766, 10 years before the Declaration of Independence, as one of the colonial colleges, and it was sponsored by the Dutch Reform Church. So when I attended Rutgers, it was a school that was privately endowed.

Many of us fought the idea of its becoming a state university when that option was opened to it. I liked school so well that I stayed there for 6 years. After receiving my bachelor's degree, I continued and received my master's degree. I had a teaching fellowship for the last 2 years I was there, which involved me with the sociology department working

When I left the War Department, the Department of the Army—I was in the Transportation Corps—I decided that I was going to go to law school. Once I started law school, I went right through; I went evenings while working during the day. Once I decided that that was what I was going to do, I did it in 2 years and 9 months.

Mr. Eschwege

This was at George Washington [GW] University Law School?

Mr. Dembling

Yes, George Washington University Law School. I went every night in the week, and then I went summers too. I went right through. I always recognized that you had to do well, so I served as an editor on the Law Review. By that time, I was already at the National Advisory Committee for Aeronautics [NACA].

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## Involvement in Aeronautics and Space Effort

I had switched from the War Department over to NACA, and in NACA, I was doing industrial relations work. I thought that I would be doing that kind of work for a long period of time. I was labor editor of the GW Law Review. The first article published in the Law Review was on picketing as protected by the First Amendment.

I then moved into the legal field when the General Counsel of NACA left. They had a couple of people they were trying out in the legal field, and I was one of those to whom they were assigning legal work.

Mr. Eschwege

By this time, the war was over, when you got to NACA?

Mr. Dembling

The war was over, yes. I had gone to NACA at the end of 1946.

Mr. Trask

Was your service in the War Department as a military person or a civilian?

Mr. Dembling

It was in the Transportation Corps, which was a newly formed corps, and surprisingly, it had more ships than the Navy Department because it handled all of the troop transports. The reason for the wage surveys was that the ships were manned by civilians and rates of pay had to be established for those civilians. We were doing wage surveys and keeping

recognized as one of the principal drafters of the NASA Act, for which I'm very proud.

Not much changed in that act from the time that it left my desk until it was passed, with a couple of exceptions, and those two exceptions were later repealed.

Mr. Socolar

I remember your telling me how you went through GAO opinions to make sure that in drafting that piece of legislation, anything that became a problem for other agencies would not become a problem for NASA.

Mr. Dembling

Exactly. If you look at the functions that are stated for NASA in that act, I can point out pretty much where most of it came from. And, as Milt indicated and reminded me, I've used this as a technique for writing legislation for governmental agencies. I went through every volume of GAO decisions, and where GAO had said to an agency, "You can't do this because you don't have the words that permit you to do that," I added the required words.

Where GAO had said the words used were not right, I made sure they were corrected. And so at the end, NASA had more authority than any other agency in this city.

Mr. Eschwege

Did this also put you in contact at the early stage with some people in the General Accounting Office?

Mr. Dembling

Yes. I talked to some people in the General Counsel's office and people in the Legislative Reference Section and, of course, to Sadie Jane Davis, who was in GAO. She was probably a friend to every lawyer in town.

Mr. Eschwege

So at NASA then, you were the General Counsel for a while?

Mr. Dembling

I ended up as General Counsel at NACA, and then when NASA was formed, I was assigned certain other duties. I was the first Chairman of the NASA Board of Contract Appeals. The act also established an Inventions and Contributions Board, which is a statutory board to decide on rights to inventions that were made under government contracts. I was the Vice

So I came over that afternoon after work, and Mr. Staats and I sat down in his office. He asked me about how I viewed GAO from the NASA viewpoint. We spent, I guess, about an hour talking, and to be honest with you, at the end of the hour, I really didn't understand what the session had been about because he thanked me very nicely and I left.

Maybe a week or so later, he called me and said that the chat was such an interesting one and asked whether I would come back and meet with him and Bob Keller. At that time, when I walked in, I had no misapprehension as to what he was saying. He said, "Bob Keller, as you know, has been designated or is being designated Deputy Comptroller General. There is a vacancy as General Counsel. We would like you to accept the job of General Counsel, and let's talk about it a little bit."

That day, we spent maybe 2 hours talking about GAO, its background, and so forth. It was at that meeting that I told him that I'd had another offer from the private sector. A multinational company had asked me to become its Washington counsel, coordinating all of its division counsels that did a lot of work in town. Two of its people were retiring—one who was handling its executive agencies and one who was handling its legislative work on the Hill.

I had been Director of Legislative Affairs, handling congressional relations for NASA for close to 3 years also. So the background was there, and I was considering that position. I told Mr. Staats that I would consider it because I hadn't expected that offer at that time with him. I went back and thought about it and talked to some people and then accepted.

Mr. Eschwege

Had you known Mr. Staats before this first meeting?

Mr. Dembling

Well, I wouldn't say that I knew him very well, but I had met him because of cases we'd had from NASA. I'd met him in connection with meetings that I attended with Mr. Webb. I met him through public administration groups and that sort of thing.

Bob Keller and I had had quite a bit of business. I'd been General Counsel at NASA, and I'd been General Counsel at NACA. We had a lot of activity, and, in fact, there were some problems that we threw at GAO even before the problems arose and needed a solution.

From that time on, I was kidded occasionally when I'd say, "this is not a legal matter;" somebody would remind me that I'd made the comment that I was General Counsel. That's the way that came about, and I think it was one of the fellows that had worked for you, Bernie Sacks, that had raised it and complained about it at the time.

Mr. Eschwege

Well, I really didn't complain about it myself because I felt if you found something that was not right, you ought to let us know.

Mr. Dembling

In fact, later on, you were very supportive when we set up the special studies group, and I'll tell you that story whenever you wish. But you were very supportive in that role, so I recognized that you were not somebody who resisted comments from our office.

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## Relationship With the Comptroller General and His Deputy

But going back to the question that you asked as to my relations with the Comptroller General and the Deputy Comptroller General. One of the things that I was concerned about when I came on-board was—well, there were several things. One was that I recognized that I was the first upper-level hire that had been brought in by Mr. Staats.

Mr. Staats forgot that, I think, in his oral history, but that's all right.

Mr. Eschwege

It depends on what you considered upper-level hires.

Mr. Dembling

Upper level, yes.

Mr. Eschwege

How high up is "upper?"

Mr. Dembling

Yes.

Mr. Eschwege

You certainly were right at the very top.

Mr. Dembling

It was a statutory position, but I was concerned about that because of my knowledge of the feelings in GAO generally. Most of the people had

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Mr. Dembling

That's right.

Mr. Socolar

If you'll recall, prior to your becoming General Counsel, the Office of the General Counsel functioned virtually without staff meetings. I remember very distinctly your instituting the practice of periodic meetings with your upper-level staff. My recollection is in that period, when staff was getting accustomed to a new General Counsel, it all worked out very, very well. I think the staff really enjoyed some of the innovations that you put into practice.

Mr. Dembling

I remember that that was going to be another problem or a concern of mine. You're absolutely right. If you'll recall, I started to go to work on getting individual offices for all of the lawyers. I got promotions to grade 15 for nonsupervisory attorneys. Until that time, there were no GS-15s who did not also have some supervisory activities. So we fought that through the Civil Service Commission. When we got the approval from the Civil Service Commission, I sent in nine positions to be elevated to GS-15. Even our own Director of Personnel came down to the office and said, "We thought you meant only one or two people." I said, "There is nothing that says one or two people; look at what the classification sheet said."

Also, with regard to the support staff, we tried to get grade 7s for the secretaries, if you remember. All of those things were moving forward in order to create an environment that would be wholesome and easy to work in.

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## Relationship With the Deputy General Counsel

Mr. Eschwege

Well, you also had a couple of Deputy General Counsels. One was Jed Welch, and then, soon after he left, Milt Socolar became your Deputy. How did you view that role? At one time, I believe, the incumbent in that office paid most of his attention to the procurement area and was not really a general Deputy.

Mr. Eschwege

That Deputy role then sort of changed, didn't it?

Mr. Dembling

Well, yes. I also wanted it to be understood that the Deputy role would be a full Deputy. I look at a Deputy always as an alter ego. I don't look at a Deputy as someone who does the things that you don't want to do or as being sort of on the sidelines.

So Milt and I served in an alter ego position. Any time that I wasn't available, Milt could speak for me and we saw eye to eye on most things. I don't think we ever had a real dispute over a policy matter or a decisional matter or anything else with regard to the office.

So I felt perfectly comfortable in that role, and I felt that he would represent the office exactly as I would represent the office. I had no problem whatsoever.

Mr. Eschwege

Well, we felt it was a good relationship. In fact, in the days when people still smoked, I remember you borrowing cigarettes from each other in meetings.

Mr. Dembling

Well, not only that, but I remember when we both gave up smoking, we then kept a pack in the conference table. We'd have to get up from our desks and walk over to the middle conference table so we could get to it.

Mr. Socolar

Right. And do you remember your wife wondering why you had cigarettes in your pocket?

Mr. Dembling

Yes.

Mr. Socolar

And your response was that you were holding them...

Mr. Dembling

For Milt. Yes, I used to sneak a smoke after a while. I didn't smoke at home, and that was a problem.

As a result of that, I sort of felt, well, let's try a group that would not also have to write decisions for the outside. I could understand the attorney's priority in trying to get out decisions on questions that were being raised by agencies or by protesters, and as a result, the attorneys were not paying much attention to the questions that were being raised by the audit divisions.

I formed a group whose members would just deal with the audit divisions. They would work with them; they would work either side by side on audits or they would be able to respond at the time that the audit division wanted a response.

The divisions didn't have to write down their questions. They could ask them informally. If they needed a formal response, then we would put it through the process. But initially, they would get an instant response. To see how this worked, we worked with the divisions initially—several of the divisions—and Mr. Eschwege was one of those who said, "Okay, assign somebody to us on this audit." I remember Vic [Victor] Lowe was another division chief who also cooperated in that. We tried it although we didn't have very many people in there. The other thing we did was we said, "Okay, if we are servicing the audit divisions and we are helping you, then we expect you to cooperate," and we would work together.

When a lawyer came back to me and said, "The audit group is going off to California to visit a site and I think I ought to go," I didn't have any basis to make a decision as to whether that lawyer should go with the audit group or not.

I went to the division chief and said, "Do you think it's important for our lawyer to accompany the audit team?" If he said yes, I then said to him, "Is it important enough for you to pay for him to go?" And so the travel and transportation was paid out of the audit division budget because that was the only way I knew that the lawyer was servicing the division chief and that he meant what he said when he said, "Yes, he's very helpful," or "She's very helpful."

Mr. Eschwege

It worked out well. You called that group the Special Studies and Analysis Section [SSA]?

Mr. Dembling

Yes.

too; I believe the bills were assigned to the divisions and then they had to funnel the comments through your office.

Mr. Dembling

We felt that that was a good way of handling it. I had found that that was really based on the technique we used in NASA where the operating divisions over there felt resentful if they weren't called upon to provide comments on legislation. I felt that here again it was logical for the audit divisions to make their initial comments because they were the ones that were doing the audits in those fields.

If we had a health bill, while we could comment on the legal aspects of the bill, to make it substantive and fully meaningful, we had to really go back to the divisions and have their input. We worked very well together on that. Then in testimony when the Hill would call for representation to discuss the matter, both the lawyer and the representative of the audit division testified. So it worked out well.

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## Planning and Ethics Role

Mr. Eschwege

There's another hat you wore. You were a member of the Program Planning Committee [PPC]. Mr. Staats insisted that the General Counsel be a member of the Program Planning Committee. That too, I think you will agree, helped in getting you close to the work of the divisions and getting the divisions to know better what your views were on those various matters that were discussed during the meetings of the PPC.

Mr. Dembling

Right. It was helpful in the sense that it gave an insight as to what the divisions were thinking about, and it brought about a better working relationship among the division directors and General Counsel.

Mr. Socolar

If you'll recall, those Program Planning Committee meetings really brought the various divisions to the fore in terms of a review of their work and keeping their work before the Comptroller General or the Deputy Comptroller General.

But he did want to have their slate clean so that he could appoint them. What he did was to introduce them to me and say, "Dembling, as our General Counsel, is the Chairman of our Conflicts of Interest and Ethics Group and when he writes me a memorandum telling me that all of the problems have been solved with regard to conflicts of interest, then I'll be able to appoint you. I don't want to know your holdings because I may make comments or decisions that may affect your interests or prior interests and I don't want to know about that at the time." So that is the background; it was an interesting function over here.

Secondly, back when I was at law school, I wrote a two-part article on conflicts of interest, and it was an interesting piece of work, long before the subject became popular. It was written in 1950-51, so it was a long time before. I'd always had an interest in that field because of the problems that you have, not only legal problems, but the appearance of conflict and how far you would have to go.

I must say, just as an aside, that the Science and Technology Committee, which is the oversight committee for the National Science Foundation, recommended, just recently, that it get independent counsel and review its conflict-of-interest program. The Committee went out to look for somebody to do that and asked me to do it. I've just finished a review of the National Science Foundation conflict-of-interest regulations, its operations, and so forth. The Chairman of the House Committee, Roe, and the Ranking Minority Member, Lujan, both were satisfied with the report that was rendered and turned over to them.

The Foundation, at the present time, is going through the process of making changes that were recommended.

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## Relationship With Congressional Sources

Mr. Eschwege

Well, there were, of course, other relationships outside GAO with the Congress and its committees and with the executive agencies. I don't know how much we want to get into the Congress and committees because we're later on going to be talking more about some of your testimony that you gave before the Congress. But is there anything overall that you want to discuss about that or the relationship of the General

Then what we did was to put them on computers and set it up by congressional districts. So we had a record of all of the contracts and sub-contracts down through the second tier by congressional district. When a Congressman called us up and asked why we didn't have any contracts in his district, we'd push the button and we'd look and we'd say, "Oh, he's got \$8 million in his district." And I'd go up and I'd meet with him with a list of the contracts and say to him, "Look, here's what we're doing in your district; you shouldn't be complaining about it. And the contract employs, you know, about 8,000 people and so forth."

That was very effective. I tried to do something like that over here [GAO] in terms of where we were involved in activities, but it really didn't work. We didn't have enough activities of that kind.

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## Dealing With the Executive Branch

Mr. Eschwege

Can we discuss the relationship of GAO's General Counsel with the executive agencies, and there I am particularly talking about their own General Counsels, as well as anyone else around there. One in particular that I'm interested in—and this is sort of a compound question—is the Attorney General, because GAO has had some problems in that area in the past and maybe even currently.

Mr. Dembling

Well, with regard to the relationship with the executive agency General Counsels, I was active in the Federal Bar Association. There was a place where one got to see other General Counsels, even if there was no particular business to transact.

When I got here, I was told over and over again that the prior Comptroller General forbade anyone from going out, speaking at organizations, mingling with other organizations, and so forth. And Jed Welch had told me that whenever he went out, he would have to really smuggle his way out because it was forbidden for him to carry on such activities.

Early on, I went to Staats and Keller and said, "Are you following the same policies?" because I felt that it was necessary to really carry the word of GAO. We were not the ogres that we were perceived to be or

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Mr. Dembling

Well, I always pointed out that we wrote more decisions in 1 year than the Attorney General had written in the whole lifetime of the Attorney General's office.

Many people didn't realize that we were issuing about 5,000 decisions a year. Sure, some of them were minor decisions, but they were decisions. Many people did not realize that most of the decisions that were issued with regard to funding and expenditures and, of course, whether an agency could carry on a program or not were really GAO decisions.

So there may have been a slight resentment with regard to that function that otherwise might have been carried on by the Office of Legal Counsel at the Justice Department. But in connection with the Office of Legal Counsel, I again made it my point to get to know them and to at least work with them so that there was not a feeling that we were doing their work and encroaching on their function.

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Bid Protests

There were a number of legal counsels in the Attorney General's office that we got to work with quite well; there was no big problem. The major problem that we confronted with the Attorney General's office was the bid protest area. Because we were rendering decisions that the agencies were following, the Attorney General's office took the position that that was wrong; that this was an encroachment on the executive function; that, therefore, it was unconstitutional; and, besides, the agencies were foolish in accepting our recommendations.

The point that we always made was that the agencies liked it this way. I know that when I was at NASA, the Congress would ask us for a determination and, when NASA made the determination, that wasn't always good enough for the Congress. But, if GAO made it, it was their agent that was making the determination. They accepted it without any problem.

So, as I said earlier, NASA sent over problems to GAO even before we had to. We recognized that the agencies liked that determination being made by GAO. Second, in the bid protest area, one of the people who took it upon himself to carry forward the fight was the Deputy Assistant Attorney General, Irv Jaffe.

What I then did was to debate with him around the country at every seminar. If he were on a program, I used to call up and say, "I want to have the GAO view expressed also, and I'll be willing to attend and speak on that program." And so before Federal Bar Association seminars;

I think that a lot of people sort of said, "Well, let's get it settled once and for all." But my own feeling has been that it gave the opponent something to shoot at. It gave the people something to carry into court. I think the Ameron decision in favor of GAO was the right decision; it is up on certiorari and I don't know where it might go. I hope it comes out that it is not a function that is unconstitutional.

Now, it had been covered several times before but tangentially. It had been covered in a case called Brookfield by Judge Holtzoff, who said, "Well, there are executive functions, congressional functions, and I don't worry about it."

Judge Harold Leventhal also covered it in a couple of his cases, in Steinthal and Wheelabrater, and again said that there was no reason for him to look at the constitutionality of the protest. I was satisfied with that.

There was one disadvantage, and that was you really couldn't move forward with a lot of activity.

Mr. Socolar

I guess the great disadvantage was in not being able to afford relief to those protesters who had a just cause.

Mr. Dembling

That's right.

Mr. Socolar

But where their procurements had progressed too far to take any corrective action, CICA does provide an element of relief for them.

Mr. Dembling

Yes but not complete relief.

Mr. Socolar

No.

Mr. Dembling

The other aspect was that CICA does provide authority for GAO to suspend contracts and suspend a performance. So it does provide additional aspects. But, in the past, when GAO ruled in favor of a contractor and when, on those rare occasions, the agency didn't want to follow it, it could be taken into court. I don't know of a case that was taken into

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## Managing the Staff and the Workload

Mr. Eschwege

Okay. I think we've talked about these different relationships. Is there anything else that you want to talk about concerning these relationships? If not, we could move into the area of what I call staff and task management, which you've touched upon already.

You talked briefly before about some changes with respect to staff management. I'd like to get into that a little bit more in terms of how you went about recruiting lawyers and training them, how you changed your promotion policy, and how you rotated the lawyers around. I did notice that when you came to GAO, you had a legal staff, professional lawyers, of about 104 people. When you left, I think it had increased to about 135 lawyers. Obviously, there was an increase in the workload that required that.

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## Recruiting Lawyers

Mr. Dembling

One of the things that I had noted in the recruiting of lawyers was that there hadn't been any organized program. I tried to organize recruiting teams to go out to schools to recruit at the law schools themselves. We set up teams of lawyers within the Office to go out to recruit people from the law schools and to tell them what GAO did, because unfortunately not many schools know about GAO and even less is known in the legal arena as to what GAO does.

I used to make many comments to my administrative law professor friends that they didn't even teach in administrative law the fact that there was a GAO and that probably GAO had more impact on federal administrative law than any other forum whatsoever.

So we tried to get the word out, so to speak, and to recruit directly on the law school campuses. It was very successful and very effective. Milt ran that program for many years after we got it started, and it went very well. I think also we got a different caliber of lawyer in. We also kept track of the people that we were getting in by geographic areas and by law schools.

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Mr. Dembling

We tried to get women, and I must say that at one time we probably had a better percentage of women lawyers than any other agency's General Counsel staff.

I mentioned the summer program. There was always a summer program in GAO, but we didn't know in OGC [Office of the General Counsel] when we would have vacancies because that was a factor of something in the personnel scheme given to GAO from the Civil Service Commission at that time.

I then felt that what I ought to do was to take 4 full-time positions that had been allocated to the office, break each position up into 4 3-month periods, and therefore, we would have 16 summer clerks. In other words, 4 times 4 gives you 16, and we went out and early on recruited summer interns for our programs, which were then the basis for our permanent recruitment.

In other words, we could take a look at them during the summer; they could take a look at us. And that became a good method of recruitment. But I was asked many times, "How can you go out so early in the year to recruit summer people when nobody else knows how many positions we're going to have in the summertime?" I told them I just took four positions that were regularly allocated. I could have had four attorneys in those positions, but we left them vacant in order to make sure that we had a good summer program.

If you were recruiting in May or June for summer people, you were too late. You had to recruit in the prior December or January at the latest. If you didn't know how many vacancies you had, there was no point in really recruiting. So that was a good technique that was used.

Mr. Trask

These were law students?

Mr. Dembling

Yes, law students in their second year.

Mr. Trask

What was the competition with private industry or private law firms?

Mr. Dembling

We had a great deal of competition, and we had to convince them that they ought to take a summer to at least take a look at us. That was the

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Mr. Dembling But you're saying that if one were, indeed, being terminated for incompetence, that is still the case, or you're saying that it's still not the case?

Mr. Socolar Well, you know, under the system, you can remove anybody who's incompetent, lawyer or nonlawyer. It's just that the whole thing has come closer together than in an earlier date.

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## Rotation and Training

Mr. Eschwege Well, you talked about rotating the summer interns and giving them some orientation and training. What about what I would call your permanent staff of lawyers? What did you do for them?

Mr. Dembling We tried to do the same. When new lawyers came into the office, we tried to set up a program where they would rotate and get a feel for the various divisions of work we had in the office. We would assign them initially to personnel or transportation or contracting, and then at the conclusion of a certain period of time (and that varied—it was a year and then later it was a little shorter than that), we tried to determine where they had done best, where they might fit in best, and in what specialty we needed people.

That was something that we worked out with the Associate General Counsels and the Assistant General Counsels. The people were evaluated on most of the assignments that they had received during the year. At the end of that, Milt Socolar usually would sit down with the Associate and Assistant General Counsels and try to work out where they might best fit, where they had an affinity for the work, where they had done well, where they had written well, and that sort of thing. It worked out very well, I think.

Mr. Eschwege So that also provided some on-the-job training, so to speak?

Mr. Dembling That's right.

that were alike and to maintain a pretty good supervision and direction over them.

As you say, it did provide Associate General Counsel levels above the Assistant General Counsel levels.

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## Improving the Quality of Decisions

Mr. Eschwege

One thing that I remember well and that was extremely well-received by the divisions was that you introduced a certain clarity of language into the kinds of decisions and memorandums that you sent down to the divisions. Especially in this Special Studies Group that you had, you tended up front to tell the reader when you gave a reply what the answer was and then go into the detail of how you arrived at that answer. I thought that was a real good innovation that you'd made then.

Mr. Dembling

Well, I found that many times the division directors didn't really care how we got to a result. What they really were interested in initially and what they wanted to read was what the result was. So what we did was put the result up first. We gave you the answer to your question, and then if you wanted to read the rest of the material as to how we got there and if it would help in an audit report, you would have it. Also, we would put the details into an attachment so that you didn't have to read through the whole mass of material in order to get there.

I must say that Milt and I recognized that we had to work on the clarity of language, and we worked at it. It was not done just by issuing an edict and saying that you have to write more clearly. We had to really rework lots of decisions. We actually had classes within the General Counsel's office regarding writing more clearly, writing to the point, and expressing the thoughts that were necessary in order to lead the reader to the conclusion expressed. We wanted to get away from as much legal jargon as possible.

Mr. Eschwege

I think this problem of writing clearly was not unique to the General Counsel, and it is still a concern in the General Accounting Office among our auditors and evaluators, as well. As for managing the work load of

to be aware of and that maybe we ought to discuss so we could see where we were going to go.

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## Impact of New Legislation

Mr. Eschwege

Okay. I jotted down a few examples of new legislation that came along during the period that you were in the General Accounting Office. To the extent that it affected your operation in the Office of the General Counsel, I thought you might want to comment on it. The first one I would suggest would be the Federal Election Campaign Act of 1971, which sort of got us into presidential politics and was also a factor in the Watergate episode.

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## Federal Election Campaign Act of 1971

Mr. Dembling

And the forerunner of the Federal Election...

Mr. Eschwege

Yes, of the Federal Elections Commission that came along in 1974.

Mr. Dembling

Right.

Mr. Eschwege

I'm not sure that we sought that particular legislation.

Mr. Dembling

In fact, we opposed it and said that we should not be the ones that performed this function, but Mr. Staats' view was that if we were going to get it, we were going to do the best job we could with it. The position of GAO at the time that we testified was that we didn't seek that function, but the Congress was insisting that somebody had to do it, and they wanted to entrust that function to GAO; so that's how we got the function. When we got it, we recognized that it was going to be heavily laced with legal aspects. Mr. Staats said, "Let's decide how we're going to

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Mr. Dembling

...was involved. The reason that was a traumatic situation was, first, that Elmer Staats had worked for Maurice Stans when Stans was Director of the Bureau of the Budget and Elmer Staats was either Deputy or an Assistant Director of the Bureau.

Second, Sam Hughes had worked for Maurice Stans, and Sam Hughes was head of the Legislative Reference Service over there, the office that cleared all legislative comments that agencies wanted to make to the Hill. The Republican National Convention was being held in Miami at the time. The question was, should GAO representatives go down there and address the problem with him? Who should go and how should it be handled? Eventually, it was determined that Sam Hughes would go down and Bob Higgins would accompany him.

There were conversations back and forth, and it was determined that, yes, there was an involvement. A question, of course, was how was that going to be expressed. I do remember that when Sam Hughes and Bob Higgins were due back, Elmer Staats called me and said that they were going to be coming back to report on this; he asked me to join him in his office.

I went into his office. When Sam Hughes came in, there was a look of apprehension on both their faces when Sam Hughes said to Elmer Staats, "I got to tell you that it's true." There was a moment there when you could see they were sorry that it had actually happened that way.

I remember that vividly because of the interaction of the players at the time.

Mr. Eschwege

I think it got some media coverage too.

Mr. Dembling

Oh, yes, it got lots of media coverage.

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## Commission on Government Procurement

Mr. Eschwege

Another piece of legislation that I know involved you was the establishment of the Procurement Commission and the subsequent deliberations

I worked very heavily on that and it took a lot of time, as Milt Socolar will attest, because he then had to carry forward a lot of the work in the office. We worked with the various task groups, and we provided a lot of information.

GAO was probably the one organization that had the most knowledge about what the Commission was working on and, therefore, provided a lot of the information to the Commission.

Mr. Eschwege

Now, when those recommendations came out—and I don't think we want to get into the details of them—but did GAO then push to get them implemented?

Mr. Dembling

Well, there were 149 recommendations. Some were legislative and some were administrative. GAO was given the task of providing the monitorship as to how those recommendations were being implemented.

The Government Operations Committee asked GAO to follow up on the recommendations and to provide it with a report—I think it was annually—as to how the executive branch was carrying out those recommendations. It was probably a good study, and there was a lesson to be learned on how to follow up on recommendations. Other commissions that are appointed in this town just render their reports and put them on the shelf, where they gather dust, and nothing is done.

This follow-on technique was a very effective one. As a result, a couple of pieces of legislation were enacted. One was the creation of the Office of Federal Procurement Policy. The second was the Contract Disputes Act of 1978, which tried to summarize and to pull together all of the remedies that were and should be in effect for contractors and the government in connection with contract disputes.

Mr. Eschwege

I think in connection with that—we were going to get to it later—you did testify on the Contract Disputes Act. I think there was at least a move on at that point to formalize the GAO bid protest procedure, as well as to give GAO subpoena power that we felt, I believe—I may be wrong—we didn't think we needed for that purpose at the time.

that was unusual. Every administration from George Washington's time on had really impounded funds that had been appropriated by the Congress.

This was a way for the Congress and the executive branch to deal with programs that maybe were overfunded or whose funds were not actually needed at the time. There was an understanding between the Congress and the executive branch that this would be done. So every President impounded funds. This was not unusual.

The difference was that when the Nixon administration started to impound total appropriations for total programs, the Congress said that it was improper and that it should not be done. At that point, a series of lawsuits was filed. Regarding the 24 cases that I remember, I think the courts decided every one the way we had done and decided that there was an obligation to carry forward that program in the way that the Congress had appropriated.

But, as I say, the Congress was not upset until there was an effort to do away with an entire agency or program. As long as you took a piece of the program or a piece of an agency, it wasn't a big problem, but when you started to dissolve agencies, that's when they moved into enacting the Impoundment Act. We were pretty active in helping them draft it and in working with them once they had indicated that they wanted to move forward in the way that they did.

Mr. Socolar

Do you remember, Paul, in connection with the Impoundment Control Act, how we became embroiled in the middle of a controversy between the House and the Senate as to how the act should be interpreted?

Mr. Dembling

I do.

Mr. Socolar

And, as I recall, we had a rather tough time fashioning a decision. We certainly wound up not meeting the satisfaction of both Houses. We tried. We finally wound up taking the position that the House took...

Mr. Dembling

That's correct.

she recognized the authority as one in which the Secretary should not have impounded the funds.

But since Lynn was now over at the Executive Office, he forbade her to settle the case. Therefore, it was carried forward, and it wasn't until we were on the courthouse steps that the case actually was settled. We were sorry because at that point, we thought that we had a very good case, and we would have been delighted to carry it forward to see what the courts would have done with it.

Mr. Eschwege

So we initiated...

Mr. Dembling

We initiated the action. We were required to initiate the action under the Impoundment Control Act, and we were encouraged to initiate the action by the Congress, which said you have to take action; the act requires you to bring an action if the executive branch does not carry forward the instructions under the act and does not follow your recommendations.

Our recommendation was that the impoundment was not one that was valid, and, therefore, we had to bring the action.

Mr. Socolar

You say the case was settled, actually the administration caved in...

Mr. Dembling

Yes, right.

Mr. Socolar

The funds were released. Had they not been released and had the case gone to trial, we might have had an earlier version and perhaps a different version from what came out in the Bowsher v. Synar case, because constitutional issues were wrapped up in that controversy...

Mr. Dembling

That's right. The issue was whether the functions under the Impoundment Control Act were really executive functions or whether the Comptroller General should carry them out. But, at that time, we felt that it was a better case in which to bring forward the constitutional issues, so we were a little disappointed in not seeing it carried forward.

The bid protest function started as that kind of function, where there was no standing to sue, for example, by someone who felt aggrieved. This was true in a variety of other cases. There were cases regarding whether we should take jurisdiction over nonappropriated fund activities. That's been covered, by the way, in CICA, so we don't have to worry about that any longer.

I felt all along that we should take jurisdiction over nonappropriated fund activities, over foreign military sales, over contracts under grants; I felt, primarily because there were no forums in which to adjudicate the rights of the individuals who felt aggrieved, that GAO was a logical place to do it.

GAO had the support or at least expressed an image of being nonpartisan, and it was objective and it didn't have a role to play on either side. So I felt that GAO ought to exert its jurisdiction over those areas.

Now, we then had a whole series of problems facing us as to whether we were exercising executive functions rather than so-called legislative functions. The problem always was in definition. It was recognized in the statute early on that there was really a mix and that GAO carried on a lot of so-called executive functions. Approval of accounting systems, for example, is certainly not a legislative function as such. There were lots of other activities. I just cite something that is outside the legal realm to show that the question of GAO jurisdiction spreads into the other areas.

So these issues were present, and we always had to move around them and try to indicate either that we were not exercising an executive function, pure and simple, or that there was a mixture of authorities anyway. As I've mentioned before, some of the courts recognized that they were a mixture, and they were not concerned about it.

This was certainly true in the Court of Appeals in this district, and it was true in the District Court in this district. Some of the other districts didn't necessarily agree with that. But we always felt that there was that authority and that we should exercise it, unless somebody told us that we should not.

With regard to the relationship of Board of Contract Appeals decisions and decisions that were rendered by GAO just at the time, I recall the so-called S&E case. It involved an Atomic Energy Board of Contract Appeals decision. GAO had been asked to pay a claim, and GAO disagreed

## Access-to-Records Problems

Mr. Eschwege

That's okay. The General Counsel helped the divisions on occasion when they had access-to-records problems. I know of one particular case myself that you and I had to wrestle with over at the Department of Agriculture, I think, or later at the Commodity Futures Trading Commission.

But there were other cases involving drug firms, the Federal Deposit Insurance Corporation, and the international arena especially—the State Department and the Economic Stabilization Fund and so on. Do you recall any of that?

Mr. Dembling

I remember. I even recall a couple over at NASA where for one reason or another, NASA did not want to give up some of the records because they didn't know how they were going to be used. I went over to talk with them, and we worked out a condition under which we would get those records. We didn't have to bring action against them.

We tried many times to do it on an informal basis where I would call the General Counsel. What we found was when an audit division went into an agency and the division was denied access to records, it usually was in a program activity where an operating individual was denying access for one reason or another.

We felt that sometimes we could get access if we pointed out to the General Counsel that we had authority and that he could save himself a lot of trouble by rendering up the records on an informal basis. You and I worked on a couple of those kinds of situations.

But there were others that didn't want to give up the records. The drug cases were a prime example of that, and we were getting ready to bring action in the courts to obtain access to the records when the drug companies went into court themselves, primarily because they wanted to divide the cases. They brought them in different jurisdictions, hoping that there would be different rulings so that if they lost in one jurisdiction, they might win in another. The differences in verdicts would permit them to appeal to the Supreme Court eventually, and that's what they did.

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Mr. Socolar                      That's right. We differed with the CIA [Central Intelligence Agency] on that.

Mr. Dembling                      That's right.

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### Class Action Law Suits

Mr. Eschwege                      Now, about 1973, we had some class action suits. One in particular that you, I'm sure, got involved in was with the case down in the Transportation and Claims Division. You had lawyers assigned to this, and that went on for quite a while. I don't know whether it was resolved before you left.

Mr. Dembling                      Well, it was actually settled after I left, but it went on for a long time.

Mr. Socolar                      You were still in GAO, I think, when we had Bob Evers head up the task force to analyze all of the records. We were working with the Department of Justice to see how we would proceed. And we ultimately concluded that we ought to settle the case.

Mr. Dembling                      That was after my time.

Mr. Socolar                      That was after your time?

Mr. Dembling                      Right. We were still involved with the lawsuit that actually spilled over into the Office of the General Counsel. There was a lawsuit and also a reverse discrimination lawsuit in our office. So we had a problem that spilled over into our office as a result of the Transportation Division's lawsuit.

Mr. Eschwege                      Can either one of you describe briefly the issue that was involved? Was it a matter of lack of promotions or...

had been an advocate of the Philadelphia Plan, was going to be the spokesman for the Labor Department.

GAO was invited to participate, and Elmer Staats and Bob Keller told me to go and represent GAO. I prepared myself by reading the materials in the files. I also spoke with Harold Greene, who by that time was a judge on the Superior Court. Maybe he was Chief Judge by that time. He had been very active in drafting the Civil Rights Act when he was in the Justice Department.

I remember vividly his telling me that our ruling was perfectly sound. He said that it was in keeping with the Civil Rights Act and that Hubert Humphrey had actually spoken against this kind of activity under the act. He provided me with material from the Congressional Record and some of the other materials that had been written when he, Harold Greene, had worked with both Senator Everett Dirksen and Senator Humphrey in fashioning the final version of the Civil Rights Act.

Judge Greene was working for Attorney General Bobby Kennedy at the time and was one of the drafters of the act. He assured me that there was no problem, "Except," he said, "that if it gets carried into court, you're not going to win." And he was right.

He said that the environment was such that the court couldn't rule against the Philadelphia Plan, though on the basis of the Civil Rights Act and everything else, it was a correct approach.

Now, what's interesting also is that Larry Silberman and I used to see each other after that. Many years later, he wrote a letter to The Wall Street Journal that said that he was wrong regarding the Philadelphia Plan and that he wished that he had taken a different tack when he was such an advocate of it. He is now on the Court of Appeals, as you know, here in the District and was considered or was on the list for appointment to the U.S. Supreme Court in this latest go-round.

Mr. Eschwege

Maybe because I'm not a lawyer and a little naive, what you said before concerns me a little bit. Even though the court thought that the way GAO had decided was the way to go, it would bend the rules?

Mr. Dembling

No, no. What I said was...

## Public Health Service Hospitals

Mr. Socolar

Well, Paul, I think that what Henry did was to just review the span of your tenure as General Counsel. These are a number of cases that have particular significance, and we thought you might like to comment about some of them. And, as Henry said, the first one on the list is a series of decisions concerning the closing of Public Health Service hospitals.

Mr. Dembling

Also, while I know you want to talk about testimony later, not only did that involve a series of decisions as to whether it was proper for the Health, Education, and Welfare Department to close the Public Health Service hospitals, it was also the subject of testimony. This subject continued to be an issue for a long period of time and had the interest of lots of Senators and Congressmen because there were Public Health Service hospitals all around the country.

The ruling essentially said that HEW did not have authority to close the entire system. They could close some of the hospitals, but the way the law was structured, it was necessary to maintain a system. The law went back to the early days of the Republic—as I recall, something like in the late 1700s or maybe early 1800s, when the system was set up.

The system could be several hospitals, and they could close down most of them. But there was this avenue that people came to rely on, and, therefore, a system had to be maintained. There was at one time, by the way, an effort to say that if the Public Health Service hospitals were closed, Veterans Administration [VA] hospitals could take over the function. Well, the VA hospitals didn't have authority to do that for civilians who had never served in the services.

Secondly, there were not enough vacancies in the VA beds at that time. There was not a system to provide for the things that the Public Health Service hospitals were providing. The law certainly said that there was supposed to be a system, and we held that that system should be continued.

If the Congress, in its wisdom, wanted to do away with the system, it could pass legislation saying so.

more appropriate to be helpful in terms of the interest of the government than to sort of hide behind jurisdictional issues and not respond to such questions.

Mr. Dembling

I still feel that way. Let me add that I feel strongly about the fact that GAO ought to involve itself where there is no other forum. There was another example of not having a real forum. The outside parties providing the tankers would have had to do something in order to get into the courts.

The outside parties providing the tankers couldn't get an advisory opinion from the courts. The agency couldn't really render an advisory opinion—it was a Navy situation at the time. The only place that the outside parties providing the tankers could get a binding decision—binding with quotes around it perhaps, but at least a decision—was from GAO, which they could use and which the Congress and the agencies would recognize. So my feeling has always been that we should not hide behind either timeliness or something else of that nature; we should try to render a decision on the merits and be helpful to the parties asking and seeking the relief.

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### Authority for Mayaguez Incident

Mr. Socolar

Do you remember the question of the War Powers Resolution that arose in connection with what we did back in the Mayaguez incident, when the U.S. government sought to rescue the crew?

Mr. Dembling

Right. President Ford was accused of violating the War Powers Act because he sent in armed forces to rescue the Mayaguez boat from capture by...

Mr. Socolar

Cambodia.

Mr. Dembling

Fired on by Cambodia. And the question was whether he was acting within his constitutional rights.

included in the rescue missions was okay because they were incidental to the rescuing of Americans.

Mr. Dembling

I said that the President had the right to protect American citizens. I said "American citizens" specifically because they don't have to be native born but American citizens.

It is the same question as today. There are other cases that we had during the Vietnamese conflict that are present today.

Mr. Eschwege

Well, it was an ill-fated attempt, but there was, for example, President Carter's effort to free the hostages in Iran...

Mr. Dembling

Right.

Mr. Eschwege

I guess nobody questioned GAO about that effort.

Mr. Dembling

Well, there was another decision when you talk about the South Vietnamese situation. There had been a limit placed on military equipment going to South Vietnamese troops and there had been a roundup of military equipment in Laos and Cambodia that was shipped over to South Vietnam.

The question was, did this go against the \$700 million limitation? We said, yes, it was military equipment. When you looked at the law, it was pretty clear that it talked about military equipment; this was military equipment; and yes, it went against the limitation.

Now, that's similar to the situation you have in Nicaragua today with the limitations, total military limitations, humanitarian limitations, and so forth.

We also cited a series of statutes where the Congress did put it in the statute. We said, in those cases, the agency must follow what was included in the statute. But where the Congress does not put it in the statute, it need not follow it; it's a recommendation to the agency. However, an agency that is dealing with its appropriations committee and is not following that appropriations committee's edict is putting itself in some jeopardy, from a political standpoint. But that's the agency's problem.

As a result of that decision, we were called to a hearing before the Senate Appropriations Committee. Senator McClellan chaired the Committee. People like Senators Stennis, Proxmire, and Pastore—leading lights of the Senate—were on the Appropriations Committee.

I remember Senator McClellan coming down on me after he gave the introductory statement and after various other questions were asked about the decision itself. He said, "You mean to say, Mr. Dembling, that a conference report has no probative value?" And I said, "No, it has probative value," and I went on to explain this, and Senator Pastore leaned over and he said, "Mr. Chairman, I just want to say that all Mr. Dembling is saying is that if it's in the statute, the agency is bound; if it's not in the statute and it's in the conference report, the agency is not bound. Isn't that all you're trying to say, Mr. Dembling?" I said, "Yes, sir."

And then he went on to say, "You know, John, that when we have the votes, we put it in the statute, and when we don't have the votes, we put it in the conference report." That was a very significant statement.

Mr. Eschwege

But I think what you've said is true, too; putting it into the report does have some value because these agencies have to live with these committees.

Mr. Dembling

Well, that's right, and I said that at the testimony. If you look at the testimony, you'll see it does have a probative value; it indicates the intention of the Congress or at least the Conference Committee. It indicates where they want to go. The agency is going to have to make its peace with the Appropriations Committee or the committee that indicates what it intends should be done.

What was interesting was that the Treasury said, "Well, we've been ordered and we're going to run it until April." This was back in February and we said there was no authority. I went back to check the decision rendered on February 15th. We said, "You have until February 17th in order to remove the Secret Service from protecting the former Vice President."

Mr. Eschwege

I think it was a weekend, Paul.

Mr. Dembling

Maybe that's right. They did stop it.

Mr. Eschwege

We were gracious to give them 2 days.

Mr. Dembling

I remember there was discussion within the Office as to that. It was carried out, and they did remove the protection that was being provided.

Mr. Socolar

That raises an interesting point I might ask you about. The General Accounting Office renders legal opinions with regard to the use of public moneys, and yet often it does just what you've said in this particular case. There is no authority, but we'll let you go for another couple of days. How does that work into your thinking about the role of the General Accounting Office in dealing with public moneys?

Mr. Dembling

Well, I think that GAO has built up, over the 67 years that it's been in business, a reputation for really being the protector or the watchdog of the Treasury. Consequently, I think that all of the parties that are involved in the process really look to GAO to be fair and honest, certainly, and competent in dealing with it.

So when you have a situation like this where you say that it's not valid for the Vice President to be protected by the Secret Service, there is no authority, and the funds should not be expended, it's recognized that there ought to be some leeway there, some equity that comes into play. If it isn't abused and it isn't excessive, then I think that the Congress and the public goes along with GAO, recognizing that.

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Mr. Dembling

There were other decisions that had to do with recess appointments. You always got this when a transition between administrations was being made or when you had vacancies that weren't being filled and questions as to what should be done in such situations. We were involved in lots of those kinds of cases.

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Bristol Electronics Bid  
Protest

Mr. Socolar

There was one case that involved a bid protest decision. It probably was the first time that Chairman Brooks held a hearing on a decision that was rendered in the bid protest area; that was the Bristol Electronics case.

Mr. Eschwege

Yes. You testified on that one.

Mr. Dembling

Yes. We were called up to explain the decision. What had happened in that case was that we had ruled that there was an improper action by the contracting officer and that, consequently, the decision of the contracting officer to award the contract was improper. We said, therefore, that there ought to be a termination for convenience for that contract.

There had been quite a bit of expenditure of moneys by the agency, and the agency said, "We've gone on so far that we should not terminate the contract for convenience under those circumstances." That was a decision that Mr. Keller made. He agreed that, yes, maybe there had been too much expended on it and that, therefore, we ought to hold that it was okay but not to do it ever in advance of expending funds.

Congressman Brooks learned that the recommendation that came out of GAO was different from the decision initially drafted, and he wanted an explanation of why there was a change.

Bob Keller didn't want to testify. I went up to testify and to explain the matter. That was an interesting situation. It was one of the few times where we were asked to explain a decision.

you want to comment on that at all. Also, I didn't want to cut you off if you wanted to comment some more on any other decisions.

Mr. Dembling

No. We issued a couple of blue cover reports. The Office of the General Counsel had responsibility for the Impoundment Control Act. We were to make sure that the Impoundment Control Act operated properly. The audit divisions helped us and supplied us with the substantive information they obtained from the agencies. We felt that we ought to issue reports, and so we issued reports on the Impoundment Control Act. We were in the blue book, the blue cover business.

With regard to some other things that I was pleased with, I felt that there was no compilation of decisions that would be readily accessible to the legal community, and so we developed manuals that we could then give out or at least make available that would indicate precedent-setting cases.

Mr. Eschwege

Was this compilation different from the annual volume of the Comptroller General decisions?

Mr. Dembling

Yes, it was not the annual volume. There was a Transportation Law Manual, a Civilian Personnel Law Manual, a Military Personnel Manual, a Federal Appropriations and Authorization Manual, and a Government Contract Manual. Those were manuals that recited the cases. The manuals were sort of a little textbook in the subject area with the decisions that supported the textual materials. Those were quite helpful, I think, to the legal community.

Mr. Eschwege

I think the audit staff inside GAO used some of them too.

Mr. Socolar

Indeed, they're often cited in court cases.

Mr. Dembling

That's right. They were very good. In addition, I pulled together all the legislation that impacted GAO and explained how that operated. The other resource that GAO had and that would be made available was the legislative histories it collected.



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## Reflections on GAO Career

Mr. Eschwege

Well, you spent 9 years here in GAO and you've now been gone 9 years. Maybe this is a good time to reflect. You've done a lot of reflecting today, but overall, if you were to point to the one, two, or three things that were your top accomplishments that you were particularly proud of, what would they be? There are probably many more.

Mr. Dembling

Well, I was very proud and pleased with the fact that I was active in getting NASA started and being a principal drafter of the NASA Act. I was pleased with the things that we did at NASA and the approach that was taken in NASA where it was not an adversarial relationship that we had with industry, which unfortunately, I see too often in many agencies.

I was proud of my years at GAO. I think that those were great years where I was involved in every activity of the government. I don't know another General Counsel job that is as broad or as exciting or as involved in the activities as this one.

So I look back with a great deal of fondness at my years at GAO, and many times wish I were back here. I think that there's a lot to contribute. I think that that was the satisfaction of the job.

Many times one reflects as to the contributions, and I think that there was a contribution. I think that there was a feeling that one was doing "good," generally, and it was in the public interest; they were exciting times, and I enjoyed it very much.

Mr. Socolar

You're very well-remembered around here. Some of the old timers at the division directorate level who often, I'm told, came to you for advice always found that advice helpful. There were generally one, two, or three people that all of these individuals reflect on that way, and you're always included in that group. So the feeling is mutual.

Mr. Eschwege

He was a lawyer, but we understood him, you see.

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protest case. I had hoped that we could do more of that. I recognize that we were limited in resources and costs and that you couldn't pick and choose which cases to subject to a substantive review.

Mr. Socolar

Occasionally, we got into those. Do you remember the Morton Thiokol protest on the booster engines? That was a huge protest. I remember sitting in the briefing room, and I think there must have been 60 people at that conference.

Mr. Dembling

That's right.

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## Thoughts on Current and Future GAO Role

Mr. Eschwege

Can we talk about the thoughts you have on GAO's current and future role and effectiveness? You've had time to reflect and I know you're still in contact with GAO and its activities. Looking at the Office of the General Counsel, do you see any need for expanding or curtailing its functions?

Mr. Dembling

Well, I again want to make a general statement. When I left, I saw people around town that had left the government and who couldn't let go mentally of the agency.

I felt it was necessary not to try to second-guess when somebody would ask me what I thought about what GAO or the Office of the General Counsel was doing or whether a decision was a particularly bad one or something like that. I never wanted to get involved in that kind of a situation. I never did and never have.

Mr. Eschwege

Well, since Milt followed you, there were no bad decisions.

- Mr. Eschwege In the broader area, not just the legal aspects of GAO, you've already commented about how GAO should try and get itself better known as to what it does—but in terms of the kinds of audits and reviews that we make, do you feel that we're going too far or need to expand into some other areas? There's always, for instance, a question as to how far we ought to get into the intelligence activities, but that's just an example.
- Mr. Dembling I don't know. I do get the monthly report that lists all of the reports that are issued. I frequently send for copies. I take a look at most of the procurement reports that are issued. That's what I was referring to; I think GAO is not known nearly well enough as to what it's been covering and how it's been covering it.
- Occasionally, I see some reports that tend to be narrow, but I feel that that may be just the result of a specific request from a congressional committee. I also understand that the numbers have shifted a little bit. There are more congressional requests...
- Mr. Eschwege A lot. It's about 84 to 85 percent congressional request work.
- Mr. Socolar We used to worry when it got to 35 percent.
- Mr. Dembling Well, I don't know. Maybe that will answer your question. Is that figure too high for GAO when it also wants to do work on its own? Or are you starting to be a captive of the Congress totally? I'm not answering or questioning. I'm merely saying that it is something that has to be looked at at the end of the year, when you total up how many of these things that you wanted to do, compared with what you were able to do. Did you achieve what you wanted even though they were mostly congressional requests?
- Mr. Eschwege Well, I no longer speak for GAO either, but I think that it is fair to say that GAO has a planning system now involving the Congress, its committees, and its staff members early on to try and put in those plans the kinds of jobs that GAO wants to do and that the Congress has an interest in. A lot of these requests flow from this interchange of ideas, so, in effect, I would think a good portion of that 84 percent is the kind of work that GAO...

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division meetings and with the Comptroller General that there should not be that proprietary interest on the part of the congressional source.

Mr. Eschwege

Yes, and I think that the 30-day rule is pretty much being observed.

Mr. Dembling

It is observed at the present time, that's right.

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## Conclusion

Mr. Eschwege

Well, I want to thank you for being such an easy subject to have a discussion with for over 3 hours. It's certainly been very interesting. I think it'll be interesting to people within GAO who might not have known you personally; those who, of course, worked alongside you; future Comptrollers General; participants in our training courses; and the public administration students.

Mr. Trask

And, I might add, to the recording of GAO history. This is a very important contribution.

Mr. Dembling

Well, that's interesting.

Mr. Socolar

Thank you very much.

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Mr. Dembling                      Would have done.

Mr. Eschwege                     ...would want to do anyhow.

Mr. Dembling                     That's what I meant. Is there a melding of those kinds of ideas and desires so that you're achieving what you really want to achieve?

Mr. Eschwege                     That's my impression of it right now. Well, we've talked just about everything except—you've even alluded to that—the impact of the Gramm-Rudman-Hollings legislation and subsequent Supreme Court decision. Any particular comment on that one?

Mr. Dembling                     I wasn't surprised by the Gramm-Rudman decision. I had hoped that it would be limited to that function and that it wouldn't spill over into other activities. The problem I see with the Gramm-Rudman decision is that it opens the way for those who oppose GAO to utilize the constitutional question to carry it further into other areas of activities.

Of course, we're talking about the bid protest arena and the Ameron decision that is on cert to the Supreme Court, and so I hope it won't spill over into that arena.

Mr. Eschwege                     Any last words on your part? Anything that we should have brought up but did not and that you would like to bring up?

Mr. Dembling                     I think we covered pretty much everything. I can't think of anything that I had thought over in my mind before I came here that has been omitted.

One thing I do recall. For a long period of time when a report was to be issued that a Congressman or a congressional committee was interested in, it was up to the Congressman or the congressional committee to release that report because they felt that they had a proprietary interest. I recall that Sam Hughes and I argued for a method to release those reports. We wanted immediate release. The compromise, I recall, was to release in 30 days if the Congress did not. But Sam and I lobbied at the

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Mr. Dembling

That's right. I did feel that when I became Chairman of the American Bar Association Public Contract Law Section, there was pressure to get other agencies involved in ruling on bid protests.

I felt that in that case GAO had to move in a direction of making records and documents available and provide for some kind of a discovery process. Of course, I felt for a long time that the authority was always there, but that was something that GAO ought to do and GAO has done it. I think that that is something that GAO is going to have to do even more. It's something that is innovative. It's going to be tough on the Office, but it's necessary in today's environment.

Otherwise, other agencies are going to push for the bid protest authority, and they're going to succeed in the area. I feel, also, that they shouldn't hide under a bushel. I think that there ought to be more explanation of what GAO is doing. I don't know if it should be done across the board because I don't know all of the things, but certainly I feel that GAO has a lot to say to the public. The public ought to know that it does have in GAO a representative, probably the largest ombudsman—which may be a bad term—and GAO ought to make it known. You know, there's a lot of criticism in fraud, waste, and abuse, and GAO doesn't get its rightful position in handling a lot of those actions and in making recommendations to the Hill. I think GAO shouldn't hide it. GAO shouldn't be as modest as it is.

Mr. Eschwege

But we are getting perhaps more press now...

Mr. Dembling

I think it should be done.

Mr. Eschwege

One particular thing happened in 1986. GAO established, you might almost say, reestablished, an Office of Special Investigations under the Office of the General Counsel, largely because of the interest of Congressman Brooks. Have you followed that at all?

Mr. Dembling

I haven't really followed that. I know that it exists, and I know that it happens to be in the Office of the General Counsel. I don't know whether the Office of the General Counsel actually directs its activities, but I have not followed that sufficiently to comment on it.

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Mr. Dembling

Well, I always felt that you had to be a constructive lawyer. You couldn't say to somebody, "This is improper," and have them go away and redo it. My feeling was that if they brought something to my attention that I felt was improper, we should sit down and discuss what they wanted to accomplish and see how we could accomplish it, rather than to say, "Well, this is improper, go back to your redrafting."

Mr. Eschwege

You must have had some disappointments either because you couldn't get your lawyers to do certain things or you just couldn't finish all that you wanted to do. We have to leave the job some time, and, therefore, not all things get done. Were there any particular disappointments in GAO?

Mr. Dembling

Well, I don't know any particular things. I think that one did get a little impatient by the time that some things took to get through the system. For example, I mentioned the termination-for-convenience actions. I would have liked to have seen those handled earlier.

I started something else in connection with the substantive review. We didn't have the facilities or resources to get involved in substance reviews of protests where the protester would allege that his way of doing something was better than that of the one to whom the contract was awarded.

We did that in one case where we actually hired the National Bureau of Standards to review a matter where the Air Force was trying to decide on a Link trainer. I say Link trainer because Link had been always the one that had provided the simulated training apparatus for pilots. Honeywell wanted to get involved in the program. Honeywell bid, as I recall, about \$30 million less than the other side, and the Secretary of the Air Force, who had been Deputy Administrator for NASA and whom I had worked with over at NASA, called me. He said, "I want you fellows to decide this one, and I don't want to give it a lick and a promise because I'm going to have to go to the Hill and tell them why I'm spending \$30 million more for awarding it to the other contractor or whether I'm going to go with \$30 million less. They need to understand the project; and they need to understand the situation."

I called around town to get advice, and I finally got the National Bureau of Standards to agree to send engineers to Wright-Patterson Field to analyze the situation. Its report is attached to the decision in that bid

offers made previously where, if I wanted to make money, I should have gotten out a long time before.

But they made an interesting offer. They were interested in setting up a Washington office. They were interested in committing themselves to a Washington office. They said, "We're interested in you, not because we think that you can bring us work or business,"—I told them I wasn't interested in becoming a hustler, so-called—but they said, "Well, you had had an interesting career. You had a background in the legislative arena, in the executive, and the legislative departments." I'm one of the few people who was General Counsel of three agencies.

So they said, "Why don't you join us?" And I argued with them, myself, and others for about 6 months before I decided that well, 9 years—maybe it was time to move on. So that was the reason.

Mr. Eschwege

Well, I didn't mean to imply that you are retired because you're still there. I called you there a couple of times and you're there all the time. So I know you're still active. Are you still teaching law too?

Mr. Dembling

No, I decided to retire from that arena after 22 years. I still teach some courses. I give a course in government contract law, which is a course I give four times around the country. It lasts for 3 days. But I don't teach at GW Law School any longer.

Mr. Eschwege

I see.

Mr. Dembling

I thought that 22 years was enough. I taught the first course, by the way, in international law of air and space that was given in the country, so I was pleased with that.

It collected legislative histories on every bill and act that was passed, going back for at least 50 years. That was a tremendous resource. What I tried to do was to get that microfiched or microfilmed so it would be available.

For example, anyone wanting to study the Postal Reorganizational Act would have altogether in one place not only the testimony but the reports, the letters, and everything that dealt with that act, and it was a tremendous resource.

Sometimes it was the only legislative history available in the country. When the American Bar Association started to write some materials on the antitrust acts, the only place it could obtain the information was GAO; it sent in several lawyers, and we made that available to them.

I felt, "Wouldn't it be wonderful to make that available to people throughout the country? We could even sell the compilations." The same thing applied to procurement. I asked why we didn't publish all of the procurement decisions or all of the decisions. I was told that there was a limit imposed by law for one volume of decisions.

I said, "Well, what we could do is have one volume and have separate subvolumes." Certainly the procurement decisions were not available; there were a lot that were called "unpublished." Those were the ones that never appeared in the annual volume. But those were very good decisions, and I felt they should be known to the procurement community.

I went to the Government Printing Office to see what it could do to print them. The staff told me that it was going to cost me \$50,000 a year and they couldn't put them out in a timely fashion. So what I did was I had a procurement solicitation (an RFP [request for proposal]) written and advertised it to the legal publishing community. I said to the community, "We will provide you the decisions, and we would like for you to have them available on a timely basis to the procurement legal community as long as you don't charge too much for them; we'll oversee that."

Two companies finally started to print them. At the present time, only one is left. It is known as Comptrollers Procurement Decisions (CPD). That has been a real godsend to both the lawyers practicing in the field and even in GAO. The index has been excellent, and it's been a remarkable piece of work.

Just to digress, there were other aspects with regard to decisions that I was pleased with. For years, GAO, in the bid protest arena, considered that cases were either valid or invalid. Therefore, an award of a contract was legal or illegal.

If it was illegal, that meant you had to cancel the contract. If you canceled the contract, that meant that if there had been any funds expended to the contractor, it had to return the funds. Here was this poor contractor that was not involved in the improper decision that had been made by the contracting officer being penalized for that kind of improper action.

So my feeling was that we should not talk about “legal” and “illegal.” Why not talk about contracting officers’ actions as being proper or improper? Then we could say we could terminate for convenience. It took me a couple of years, but we finally sold that idea that we could consider actions as improper by the contracting officer. We then started to recommend that an award of a contract be terminated for convenience.

That meant that you stopped it at the time that there was a decision to stop it, and the contractor didn’t have to pay back any obligations that had been incurred prior to that time.

I think that was innovative because it really encouraged the contracting community to come forward to seek our advice on these contract awards, because it felt that to hold a contract illegal and, therefore, void was very difficult. As we lawyers say, “void abinitio” meant it never existed; if it didn’t exist, no moneys should have changed hands.

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## Issuing Manuals and Other Products

Mr. Eschwege

I think we’ve pretty much covered the congressional testimony, too, which I had listed separately. You covered it in your discussion of the Impoundment Control Act, the Bristol Electronics case, and so on. Just one other thing I wanted to mention, and that was that you made a special effort to put out some manuals and guides and to occasionally issue your own GAO blue cover report on some subjects. I don’t know whether

If, on the other hand, we had gone along and said, "Okay, until April," I don't think that would have been bought. There are similar matters where GAO gets involved and where GAO is trusted. I think that that's what has developed over the years, that GAO is trusted in these areas to represent the best interest of the general public.

Mr. Socolar

Yes, I think so too. Often there is a decision where GAO, in the terms that you just described, feels that it would be inequitable to apply retroactively. It simply announces that for the future, this is what the rule is going to be, rather than to cause too much pain about the past. Do you recall the case involving General Haig when he was serving as both Vice Chief of Staff and as Assistant to the President?

Mr. Dembling

Yes, that was another case that caused some controversy. It was a case that was the forerunner of a series regarding whether certain officials in the government could be appointed to certain positions pending confirmation, whether vacancies could occur, how long the vacancies could exist, and so forth.

The General Haig situation occurred, as I recall, when Haldeman and Ehrlichman resigned. General Haig was moved in to be a Special Assistant to the President. The question was, was he moved into a civilian position even though he was a General in the Army?

We went back to the Army to ask them to explain this and to explain whether he was entitled to the salary payments that he was receiving as a General occupying a civilian position. What the Army explained was that he was temporarily assigned to the White House. At the time that he was still on duty with the Army, he was not occupying the Haldeman position that had been vacated, and he was not serving as a Special Assistant to the President under that condition. He had been sent in only as a "temporary" individual.

Only at the time that he retired from the Army was he assigned or picked up as a Special Assistant, and that made it proper.

Mr. Socolar

Are there any other particular decisions like that?

There were other cases also that involved that same consideration, and we held the same way—that as long as a requirement was not in the statute, it was not absolutely, positively binding.

Mr. Socolar

You see, what a lot of people and the Senators failed to grasp, at least initially, is that a great deal of use is made of legislative history in interpreting statutes; so the question was, why not in this case? The distinction really is that legislative history can be used and should be used to interpret what is in the statute but not to put something in that's not there to begin with. That was the distinction we were making.

Mr. Dembling

We pointed out later on, even in that decision, that legislative histories should be used also where there's ambiguity. In other words, where something is not clear in the legislation, you can use the legislative history to indicate the intent of the enactor.

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### Questioning Payments Involving Top Officials

Mr. Socolar

We also had cases that related to some high officials within government, for example, providing security for the prior Vice President of the United States, Mr. Agnew. Do you recall that?

Mr. Dembling

Yes, I remember that one because it generated a lot of media concern. President Nixon had indicated to the Secretary of the Treasury that the Secret Service should continue to protect Spiro Agnew who had just resigned as Vice President. The question was raised with us as to whether it was proper for a former Vice President to be protected by the Secret Service.

The act that provides the authority for the Secret Service to protect high officials states that an incumbent President, an incumbent Vice President, and a Vice President-Elect are all protected, but not a former Vice President. He was a former Vice President, and the protection was not authorized.

## Adhering to Provisions in Congressional Reports

- Mr. Socolar I thought it was rather interesting how as an arm of the Congress, GAO came out in the "LTV decision." Would you speak to that?
- Mr. Dembling Yes. The LTV decision was one of several, if you recall, where the question came up as to whether a congressional report is entitled to be followed or should be followed by an agency.
- The situation in the LTV protest was that the Navy had made an award to McDonnell-Douglas for the building of a new aircraft. The Congress, or at least the Senate, had recommended in a report, and I guess it was in the conference report, that the Navy pick up the aircraft design that the Air Force had already spent a lot of money researching and developing.
- The Navy did not follow that suggestion. Of course, the protest was brought on a series of other issues, but the issue that we're addressing now is the issue of whether the agency is obligated to follow what the conference committee says in its report.
- Mr. Socolar I think actually it was a little more than a suggestion.
- Mr. Dembling Yes, it was.
- Mr. Socolar The funds were available only for picking up the Air Force plane.
- Mr. Dembling Right, but the requirement was not in the statute. It was only in the conference report. We were asked what the effect of that was. We held both in the decision and later in testimony before the Committee that a conference report is merely a recommendation or a suggestion or maybe stronger but that if the requirement is not in the statute, it is not a requirement and a direction by the Congress.

Mr. Eschwege

Was this an American Merchant Marine ship?

Mr. Dembling

This was an American merchant ship flying the American flag.

Mr. Eschwege

Not a military ship?

Mr. Dembling

It was a civilian vessel. The question was, did he have authority under the Constitution to protect the rights of American citizens and how far could he carry the authority to send armed forces at that time to recapture the ship?

There had been lots of controversy on this, and lots of constitutional scholars had written on it. I recall at least one memorandum that we had received from the Hill. Senators were asking the Comptroller General for a review of that prior decision where we had said that while there was a balancing, in this case he had a right to do what he had done and he had not violated the War Powers Act.

Such leading lights as Professor Raoul Berger held that there was no constitutional right. In a memorandum that justified our ruling to the Comptroller General, which was then passed on to the Hill, we went into a lengthy constitutional discussion as to why Professor Berger was incorrect and why even the Assistant Legislative Counsel on the Hill was incorrect. We felt that it was a correct exercise of the presidential power.

Mr. Eschwege

Would the same principle be involved if we had some hostages today in a foreign country?

Mr. Dembling

Yes, absolutely, exactly the same principle.

Mr. Socolar

As I recall it, back in those days, it also involved the extent to which that constitutional authority could be applied in rescuing American nationals and citizens versus rescuing others not related to the United States. I think that there was a differentiation there in connection with some rescues from Vietnam. We concluded on another use of the War Powers Resolution that the fact that some foreign individuals were

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Mr. Socolar

I think it was sort of a classical legal problem in the sense that there clearly was authority to administer the hospitals, and that included closing hospitals. Happily, we weren't required to decide precisely where the line was, but we concluded, as I recall too, that there was a fair amount of leeway, that hospitals could be closed, but that closing down the system was on the other side of that line.

Mr. Dembling

That's right.

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## Financing Nine Tankers

Mr. Socolar

The next case that Henry has listed is in a more traditional mode for GAO because it related to the use of appropriations and the funding of contracts. It relates, I think you'll recall, to the construction and charter hire of nine tanker vessels. You might want to speak to that.

Mr. Dembling

Well, that was also an interesting matter because it involved rendering a decision to outside parties, people who were going to attempt to finance and invest in the construction of these tankers. The question was whether the government should support and provide guarantees for various aspects of it. For example, there was provision that the government would lease the tankers for a set number of years.

There was a question also about whether we should be rendering decisions to outside parties in this regard. These were individuals who were going to be involved in the matter or try to involve the government. While we held that the proposed arrangement was not a proper way to construct these vessels because it was trying to elicit guarantees or to ensure guarantees from the government that were not proper, the situation was also unique because we were rendering advice to outside parties.

Mr. Socolar

I remember that when you came into the General Counsel's position, GAO was rather strict, not only in this kind of case but also, I recall, with regard to questions raised by labor unions. It was your view that it was



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Mr. Socolar

There were quite a few minorities, blacks, in the Transportation Division who found it very difficult to get above grade 7. Many had come in as grades 3 and 4 and sort of topped out at grade 5. Eventually with the Civil Rights Movement, there was a movement within the Transportation Division to get that changed. When programs were initiated and the basic conditions didn't seem to change very much, a class action suit was brought led by a fellow named Otha Miller. He had a college degree from the University of Michigan, as I recall. He claimed, as a grade 5, that he was being discriminated against by not getting any of the promotions. After we reviewed all of the evidence, we concluded that it would probably serve the ends of justice and be much more wise to settle the case. We entered into a stipulated settlement agreement that the court approved, and we very faithfully carried out that agreement for a period of about 3 years.

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## The Philadelphia Plan Decision

Mr. Eschwege

GAO made a decision on the Philadelphia Plan, I believe, just before you came here. But, obviously, it was such a profound decision and created some controversy. Therefore, I think you felt at least the aftereffects of that decision. You might want to talk about that a little bit.

Mr. Dembling

Yes, the Philadelphia Plan had been instituted in Philadelphia; it provided for an affirmative action program in the construction industry. The question, of course, was whether it was legal, whether it comported with the Civil Rights Act, and whether it was a viable program to be carried on.

We were asked whether it was proper for government agencies to adhere to that program. Just before I came here, the decision of GAO had been rendered to the Hill, which had asked GAO for a ruling. [GAO ruled against the program.]

When I got here, the first notice I had of it was that a New York Bar Association program was going to discuss the pros and cons of the Philadelphia Plan, the legislation, our decision, and the program generally. Laurence Silberman, who was Solicitor of Labor at the time and who

There were a series of drug cases in the Second Circuit and in the Fifth Circuit, and I don't know where else. At least in those two circuits and in the District of Columbia Circuit, they differed in their rulings, and so it eventually ended up at the Supreme Court.

Mr. Eschwege

There was one thing that I thought was kind of interesting in the case that you and I worked on in the Commodity Futures Trading Commission. We had been in there before and had done a complete audit. Here was the second time after 2 or 3 years, and somebody got the idea that maybe GAO doesn't have authority to the records because there was a provision in the act which said that they can't disclose...

Mr. Dembling

Private.

Mr. Eschwege

...individual transactions in the market activities. I don't know how you worked it out, but we got access and it was fine.

Mr. Dembling

Yes, what I remember was that they held that they were confidential records, and we said we didn't need the records by name. We didn't care who was the trader. What we wanted were the records themselves, and we agreed that they could code the trading transactions, as I recall.

That was a compromise that I offered to them, and they said it was okay under those circumstances.

Mr. Eschwege

And I think when we got done, we threw the coding key away.

Mr. Socolar

One area where we had access-to-records problems for a long time was with the Internal Revenue Service, and we eventually got legislation to clear that up, unlike in the banking area. I don't think we ever really pursued access in the banking area. That was just...

Mr. Dembling

The intelligence areas also were...

with the Board's ruling and felt that the contractor was not entitled to the payment.

At that time, the Attorney General agreed with GAO, and the Attorney General also said that the decision should not be recognized, that the contractor should not be paid, and that the Board of Contract Appeals decision was not a proper one and should not be honored.

That case was carried to the Supreme Court, and the Supreme Court held, according to the majority opinion written by Justice Douglas, that once a Board of Contract Appeals made a decision, it was final; that the Board actually was a designee of the head of the agency under the contract; and that, therefore, the designee was the spokesman for the head of the agency. Therefore, the court held, there should not be any "meddling," which is the word that the Supreme Court used, by GAO or by the Attorney General, and they had no role to play within that arena.

The decision was not one of Justice Douglas's better ones from a writing standpoint, and the dissent, which was written by Justice Brennan and was something like 60 pages, wasn't a very brilliant decision either in my opinion; I say this not because I disagree with the result but because it was not well thought out from a procurement and a legal standpoint.

Nevertheless, that was the decision: that GAO and the Attorney General and nobody else could meddle with the decisions of the Board of Contract Appeals. Now, what happened was that when the Contract Disputes Act was up for consideration, one of the provisions that finally was enacted was the right for a counterclaim to be brought or for a head of an agency who disagreed with the agency's own board to appeal that decision. There was no such right previously. Under S&E, the court said a Board is the spokesman for the head of the agency, his designee. He was the designee indicated in the contract.

The Contract Disputes Act really overturned the S&E decision; it provided agencies with the right to appeal the decision of the Board of Contract Appeals; and it also provided for counterclaims, an authority that had not existed previously.

This was the quid pro quo that was worked out with the procurement community. The contractor obtained authority to bring a dispute case either to the court or to a Board of Contract Appeals, and the government obtained the right to appeal a Board decision. Long answer to your question.

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As Milt says, the settlement was that they had agreed with Secretary Hills' decision to release the funds, or at least she convinced the White House to release the funds and settle the case.

Mr. Eschwege

Just so I understand it, was this a case where they even failed to report the impoundment?

Mr. Dembling

I think they failed to report the impoundment. We indicated that they failed to report the impoundment. We indicated that it was a rescission rather than a deferral. It required statutory authority. They didn't get it, and they said it made no difference; we don't read it the same way, or something like that.

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## Challenges to GAO's Role and Authority

Mr. Eschwege

I see. Okay—now, Milt has already talked a little bit about this. Let's talk about the challenges from time to time that were made to GAO's role and authority—for example, its bid protest procedures—as to whether it is an executive or a legislative branch function. When we wanted to transfer the Transportation Division functions to the executive branch, we asserted that it was an executive function. We still have claims settlement, which apparently has been an issue too. Then there was a particular case involving the Board of Contract Appeals decisions regarding whether or not they were subject to GAO review, and I just thought you might want to talk in this context of GAO occasionally being accused of having executive functions that it shouldn't have.

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## Executive Branch Functions

Mr. Dembling

Well, as an umbrella kind of comment, my feeling always was that GAO should decide the merits of cases and it should involve itself where it could, especially where there were voids and where there were no rights of individuals to carry forward their cases.

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Mr. Socolar ...with regard to the legislation.

Mr. Dembling I recall that as a result of that action, the Chairman of the Budget Committee on the Senate side was quite exercised and continued to be exercised with us for some period of time. It created problems, I gather, in other areas because of that decision.

Mr. Socolar Yes, the difference was fundamentally that the House considered that the deferral provisions provided the authority for deferrals, and the Senate took the opposite view, that nothing in the act gave the administration authority to do anything that it didn't otherwise have.

Mr. Dembling But if you adopted that viewpoint, I recall, that would really hamstring the operations of the executive. That meant he had no authority except rescissions, which were a regular statutory requirement anyway, so it was a problem area.

Mr. Eschwege In connection with the Impoundment Act, we got into a particular case involving Staats versus Lynn, who at that time was the Secretary of Housing and Urban Development [HUD].

Mr. Dembling Well, that had a curious history. Initially, the litigation was Staats versus Ford, but the Justice Department was exercised by the fact that no one sues the President. What they agreed to was that if we would change the defendant to the Secretary of HUD, they would agree that whatever the court held, they would abide by.

Our reason for suing the President was that it was under his authority that the action was taken. There was some appropriation made to HUD for housing activities. The Secretary of Housing and Urban Development, who was James Lynn at the time, under direction supposedly from the White House, withheld or impounded the moneys. Anyhow, the designation was changed from Ford to Lynn.

The rest of the story is of interest because Lynn then moved over to become Director of the Bureau of the Budget and Carla Hills was appointed as Secretary of HUD. She wanted to settle the case because

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Mr. Dembling

Well, I think that we probably felt that we could use it, but I don't think that we could have sold it on the Hill at the time. I think that there was opposition to our obtaining subpoena power, and I think that the opposition convinced the movers on the Hill that we shouldn't have it. So we may have been neutral, but I think we leaned toward getting it if we could.

My argument always was, when I testified and made speeches about it, that even if we didn't use it, it would be an excellent way of getting information that we needed. Maybe we wouldn't actually need to use it if we had it available.

Mr. Eschwege

I think Milt will say that's the way it worked out too, hasn't it?

Mr. Socolar

Yes, eventually we did not get subpoena power directly against federal agencies, but we did get the authority to go into court to seek confirmation of our view that we had a right to access. I think in the 7 or 8 years or so that this authority has existed, we used it in the early days maybe about 20 to 25 times.

Mr. Dembling

But if you look at my testimony, I kept saying that it would be a club in a closet; it would not be used because the fact that it was there was enough, and that they should not be concerned that it was going to be abused.

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## Congressional Budget and Impoundment Control Act of 1974

Mr. Eschwege

Another piece of legislation that I know had an impact not only on the General Counsel, but also on the audit divisions, was the Congressional Budget and Impoundment Control Act of 1974. I know you were here when that happened.

Mr. Dembling

That came about because of the long history of impoundments that had occurred, I guess, in the Nixon administration. But that wasn't anything

of the Commission that obviously dealt with some GAO activities—the bid protest procedures and so on. I think you, along with the Audit Division, provided some assistance. I think also after the report was completed, you got some of those lawyers from the Procurement Commission to join GAO.

Mr. Dembling

Right.

Mr. Eschwege

Were you personally involved with the Procurement Commission?

Mr. Dembling

Yes, I was heavily involved. Mr. Staats was a statutory member of the Commission. The Commission had been established by the Congress. It had representatives from the Senate. It had representatives from the House, and it had public members on the Commission; the public members were appointed by the President.

The House and the Senate members were appointed, of course, by the House and Senate. Chet Holifield was the initial Chairman, and Perkins McGuire was later Chairman.

Mr. Eschwege

Congressman Frank Horton was on it too?

Mr. Dembling

Frank Horton was on it. Jim Webb was on it. But Staats was the only statutory member. And Staats asked me to make sure that I attended every session that the Commission had, so I went to every meeting that the Commission held. At the same time, task forces were established, and they reported to the Commission. At every Commission meeting, I sat and took notes, and sometimes Mr. Staats was there; sometimes he was not. But it made no difference. We conferred frequently on how the activities would impinge on GAO.

It was around that same time that Mr. Staats set up the Procurement Division at GAO, and there was a question as to how that would impact on that. There were a few things that we opted not to comment on because they involved a conflict of interest. Most of the matters discussed involved the policy that should be carried forward or changes in legislation.

organize this," and, if you'll recall, Sam Hughes and Fred Thompson were the head and the Director of the...

Mr. Eschwege

Yes, the Director and Deputy Director...

Mr. Dembling

...of that office, that's right. Then we assigned Bob Higgins as the lawyer to work with them and found soon that it was a full-time job and that he needed help. So we assigned a couple of other lawyers over there. In fact, when the Federal Elections Commission was organized and established by the Congress, those lawyers that worked with Bob Higgins were offered jobs at the Federal Elections Commission and went over there. At least one of them is still over there as an Assistant General Counsel, Brad Litchfield.

It was a period when we had weighty legal decisions and opinions that had to be rendered to the Office.

Mr. Eschwege

These lawyers still worked through your office? Or did they work directly for Sam Hughes?

Mr. Dembling

They were colocated in the Office of Federal Elections. They reported directly to the office down there for administrative purposes and to us for professional purposes. All legal decisions came through us, whereas their time and their leave and so forth were administered by the office down there.

Mr. Eschwege

Now, while we're on that subject, are there any matters involving Watergate that you personally or your General Counsel's office got involved in?

Mr. Dembling

Well, the one that I remember so vividly was the one where there had been an accusation of laundering of money, and the question was whether the former Bureau of the Budget Director, who was involved in the presidential reelection program...

Mr. Eschwege

Maurice Stans.

the Office of the General Counsel, you mentioned before you had over 5,000 decisions. I assume many of those resulted from inquiries from the Congress and the agencies and so on, and, of course, a lot of them were bid protests. Were there any changes made to try and get the work load down?

Mr. Dembling

I was familiar with the work at GAO and I was familiar with the decisions because I had dealt with the decisions. In fact, some years before I got to GAO, I had recommended to a company in town that it start publishing GAO decisions and indexing them, not only the procurement decisions, but other decisions. I believed that they would be able to sell them.

I suggested that to a contractor that was doing work for NASA, a company named Documentation, Incorporated. It was documenting all of the letters and materials and everything else that NASA was doing. So I recognized what the decisional aspects were. But still I didn't feel comfortable enough. So when I came aboard at GAO, I started to read every decision before I signed off on it and before it went forward to be signed by the Comptroller General. That was a self-education process.

After a while, I recognized that I couldn't really review all of those, but that went on for at least the period until Milt became Deputy General Counsel. The reason for that was, as I said, the prior Deputy was not really a complete Deputy. He reviewed the procurement decisions but really didn't review any of the other decisions.

I felt I had to review them, and, second, the reason I did was I wanted to educate myself on the niceties of the cases. When Milt and I started to work together, we found that we had to do something about the vast amount of work that was coming in. We tried to break it down into what he would take care of and what I would take care of, recognizing we would keep ourselves completely informed because, as I said, I always looked at the Deputy as an alter ego; so we had to inform ourselves.

I was attending a lot of meetings that Mr. Staats had, so that took time. We developed a procedure where Milt would review the cases and then call to my attention those that I ought to look at. Not that he had a question necessarily, but we had a code indicating those that I ought to read just to know that they were going through the office, those that I ought to look at where there might be a question, and those that I ought

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Mr. Eschwege

But was there, in addition to that, any other training, classroom training? Were people sent away to conferences and symposiums?

Mr. Dembling

We encouraged training. We had some internal training, and, in fact, as needed, we set up our own government contract program with lawyers who were experienced. What we did was we ran a joint program with the Navy. The Navy General Counsel's office sent people over here, and we conducted the program. We had a bus and we'd carry them over to the Navy. We had an ongoing program that was so successful that the Civil Service Commission wanted to, and then later did, take over that program as a program for training new lawyers in the government contract arena.

Generally, we had people go to seminars and encouraged people to take courses. That worked well too.

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## Realigning Functions

Mr. Eschwege

Well, you talked earlier about the promotions you had made to grade 15. You also had a major realignment of functions in 1972, when you regrouped your different areas under four Associate General Counsels. I believe one group was transportation. Another one was procurement; then there was one that had both civil and military pay, and one was general government. Did that generally open up some promotion opportunities?

Mr. Dembling

Yes, I think what we tried to do was to realign the functions so that they were combined in a more homogenous manner. We recognized that civil and military personnel law were pretty similar, and they were to be combined. It also opened up a level of coordination so we could establish some Associate General Counsel positions, and it also provided for a better control of the activities.

Later on, we were trying to move transportation into the general government contract area because they were pretty closely related. Eventually, the transportation group actually moved into the government contract area or the procurement area. So that was a trend to consolidate those

advantage of having this summer program, because we could say to them, "Take a look at the kind of work you will be doing." When they came here, we didn't give them material that had been lying around all year that nobody researched.

We said, "Give them actual cases so that they will have a feel for the kind of work they'll be doing if they join us permanently." We also rotated them within the office so they'd get a feel for the different kinds of work in the office. That was a good recruitment tool, in addition to being a source of additional summer people.

Mr. Eschwege

There is something you mentioned earlier about the Civil Service Commission. I'm not clear about this, but do the lawyers in government have the same tenure that other people have?

Mr. Dembling

No.

Mr. Eschwege

To what extent have we ever taken advantage of some possible differences in requirements for hiring or terminating lawyers and things like that?

Mr. Dembling

I don't think we ever took advantage of it. It actually was a disadvantage generally because a lawyer did not have civil service status and never got so-called tenure. Lawyers were exempt from the civil service program, and so while the Civil Service Commission had jurisdiction over classification of lawyers or other aspects of personnel, it did not have authority to grant lawyers civil service status.

So a lawyer had no tenure, as such, and could be dismissed with no notice except if he or she were a veteran.

Mr. Eschwege

Is this still true today?

Mr. Socolar

It's kind of changed a little bit today, particularly with regard to protected classes. One has antidiscrimination provisions that cover even the lawyers, and one is not as free as the system earlier allowed one to be.

We covered the country pretty well in terms of recruitment. Representatives of maybe 40 law schools were in the Office—I'm guessing at that—and maybe it was even higher. We were particularly proud of the fact that we did have that many represented from across the nation.

Mr. Socolar

If you recall, when you came in, you had a particular problem. I remember doing an analysis for you that came up with the fact that the average age of the attorneys when you came into the Office was 59 years of age.

Mr. Dembling

That's right.

Mr. Socolar

In about 2 or 3 years, we had to hire about 100 attorneys to maintain a staff of 100 attorneys.

Mr. Dembling

That's right.

Mr. Socolar

And so there was a very large recruiting effort at that particular time.

Mr. Trask

What law schools did you go to? Do you remember any ones in particular?

Mr. Dembling

Well, we went to the Ivy League schools, and then we went to the schools that were in the area here, and then we tried to go to schools that we thought would produce good recruits for us. Many times, we tried to send GAO people from certain law schools back to those law schools to recruit.

We touched on most of the major law schools, but we also hit some of the other schools that were not always recruited. When the affirmative action plan came along, we tried to recruit minority students both for our summer jobs and for our regular positions.

Mr. Eschwege

You always had some women, but did you also try to get some more women?

court where GAO had ruled in favor of the contractor and where the court said, "No, the agency is correct; we're not going to follow GAO."

That, in fact, became a technique for taking a case into court and saying to the court, "We want you to have jurisdiction, but we want you to have jurisdiction only until GAO renders a decision because it has the expertise, it has the knowledge, it's nonpartisan, and so forth. Consequently, that was the technique that was developed.

Mr. Socolar

I think Judge Leventhal admonished district courts to seek the advice of GAO.

Mr. Dembling

That's right.

Mr. Eschwege

Was that the Wheelabrater case?

Mr. Dembling

That's right.

Mr. Eschwege

The court recognized that GAO had some special expertise in this area?

Mr. Dembling

That's what the judge said. He said that we had special expertise and that the district courts shouldn't get involved in this. That was a period after the Scanwell cases where the district courts were starting to get involved in the merits of the cases. Contractors were bringing actions in district courts in their locales because they felt that they were going to get a better shot at the agency if they brought it in their own local courts than if they carried it forward here in the District.



painted to be. If we got out and told our story and we got out and explained what we were doing, our job would be easier and it would be more productive because they would understand what we were trying to do.

And so the relationships were established. I was available to come and speak to General Counsel meetings, which I did. I was invited many times to come over and talk to them. I remember going over and talking to the Inspector General's staff at HEW [Department of Health, Education, and Welfare] and talking to General Counsel meetings over at the Navy, to tell them what we did and explain our function and how we operated. Then also I encouraged the General Counsels to call informally and to discuss their matters.

They didn't have to submit their inquiries in writing and get caught on the petard for their lack of writing ability. I don't think we compromised our position in any way. We told them what the situation was.

Mr. Socolar

I think the overriding philosophy at that time began to shift toward a real desire to be helpful, rather than to just answer a question and cut it off at that point. If there would be some suggested way that the problem that generated the question could be dealt with, we tried to be helpful in that regard, and I think agencies began to realize that.

Mr. Eschwege

Yes, I think that happened on the audit side as well.

Mr. Dembling

With regard to relations with the Congress, aside from the general comment that I made, I was not uncomfortable with congressional sources. I'd been dealing with them at NACA, and, consequently, I didn't feel uncomfortable when they called.

I felt that many times I knew where they were coming from, and there was no reason to get all panicky about the fact that they had called. There was a recognition that we were an arm of the Congress, and we recognized where we stood in relation to them.

Mr. Eschwege

Now, the Attorney General was involved in a little bit of a different relationship, I suppose, because he saw us as perhaps getting into areas that he believed he should be into.

Counsel to the committees? Was it a lot of informal touching base about legal issues and so on?

Mr. Dembling

I was amazed by the real lack of pressure from the Congress on any decisions we rendered or any of the materials that we were preparing in response to questions from the Hill or to protests or whatever.

I never felt that I got any pressure. No member of the Congress would call and insist that we come out on the side of his constituent, for example. I expected that there would be more, to be honest with you, because with being an arm of the Congress, I felt that we were going to be inundated with comments and criticisms, if not from Senators or Congressmen directly, at least from the staff. They tend to get involved heavily in many of the operations.

But, as a general comment, I want to say that I didn't find that there were any pressures of that kind. I had spent close to 3 years as the head of Congressional Relations for NASA, so I was used to that kind of activity, and, in my contacts with the Congress, I instituted something over there that I was particularly pleased with. I don't know whether "proud" is the word, but "pleased" is certainly the word that I would use.

We were getting criticized a lot by the various Congressmen around the country that most of the NASA contracts were being awarded to companies in California; in St. Louis, Missouri; and various other places where there was a predominance of aerospace companies.

We felt that there was a lot of activity outside those areas. So as an experiment, we took the Mercury Capsule contract, which had been awarded to McDonnell in St. Louis, and tried to trace transactions with the second-tier contractors—to determine the location of subcontractors that did work for McDonnell. We found there were something like 3,000 subcontracts that were let in 36 states.

So then I convinced the Director of Procurement to put into every contract that the prime contractor would then flow down to [include in] these first- and second-tier subcontracts a provision that whenever subcontractors signed a subcontract or a contract for supplies, components, or whatever, they would send back a postcard to NASA indicating the company's name, the location, what the item was, and the amount of the contract.

The Office of the General Counsel was generally not a part of that planning process. I recall your convincing Mr. Staats and Mr. Keller that it was important for the Office of the General Counsel to become a part of the family, so to speak, and there were several sessions where you made presentations to that Committee. I recall both of us feeling that they were very, very useful.

Mr. Dembling

What was helpful and useful was that each of the divisions would present its programs and issues and what it planned to do and lay out activities that the division was carrying on.

The Office of the General Counsel, as Milt said, was not included in that review process, and I felt that it should be for two reasons.

One was that it really was a good discipline for the staff to think what we were really doing; each of the Assistant General Counsels and the Associate General Counsels and the Deputy General Counsel all appeared and explained the program.

Second, it provided an insight to the division directors for maybe the first time to really understand and get a recognition of what was being done in the General Counsel's office. It provided also a review for both Keller and Staats as to what the office did.

It was helpful from that standpoint, and I felt that we should not be left out just because we were considered a staff function or a service function. It worked out well, as Milt indicated.

Mr. Eschwege

One other role you played within the General Accounting Office was that you were made Chairman of the Committee on Ethics, which I think was particularly important for an agency like GAO that got into so many different activities of the federal government and the private sector as well. The Committee was to ensure that we adhered to the rules of ethics and didn't have any conflict of interest or appearances of a conflict of interest.

Mr. Dembling

Yes. That was an interesting role. I had fulfilled that same function at NASA. Mr. Webb did not want to know the holdings and financial interests of appointees to NASA. When Assistant Administrators were appointed, he didn't want to know about their specific holdings.



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Mr. Trask

I'd like to raise one question here, going back to something that you indicated was one of your concerns when you first came in: the fact that you were an upper-level hire and you were wondering whether there was going to be any resentment. I think you've indicated in your comments about Mr. Staats, Mr. Keller, and Mr. Socolar that there was no problem; in fact, your relationships were fine. But did you experience any resentment?

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## Working With the Divisions

Mr. Dembling

I felt that within the Office, I didn't particularly feel any resentment, with maybe one or two exceptions here or there or on occasion, which I felt soon were overcome. I sensed some feeling, maybe some negative feelings, by division chiefs who sort of felt that here was somebody who had come in and maybe didn't know their system so well and that sort of thing. I felt that I had to work at that much harder than even I was doing with the staff. I did make a point of visiting with the division chiefs and talking to them and trying to explain to them our philosophy of management and how we could work together. It was as a result of those conversations that I realized that it was good to set up a special unit to handle the decisional problems that involved the division chiefs.

What had happened was that I heard over and over again from the division chiefs that what they resented about the Office of the General Counsel was that they were not getting responses to questions that they needed in their work and that as an audit was going forward, they first had to write down their questions and submit them formally to the General Counsel's office; then they would get a formal response 2 to 3 months later, and many times it was too late. The response might have turned around an audit earlier, or it might have told them that a law had been repealed or modified. By the time the response was received, a lot of work had been done on the basis of the old statute or the old regulations.

Over and over again, I noticed that, and there was a resentment, maybe not against me as coming in but sort of a feeling that they weren't getting service. My feeling was always that the General Counsel's office should service the audit divisions and that we should work together.

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Mr. Dembling

Yes.

Mr. Eschwege

Did that change?

Mr. Dembling

Yes. When I came in, one of the concerns I had was how I would relate to the Deputy—I knew Jed Welch quite well. Jed Welch was the only person who had been out representing the Office of the General Counsel and had attended meetings around town. I knew him from his procurement activities; that's correct.

When I was offered the job of General Counsel, I asked both Mr. Staats and Mr. Keller what the story was with Jed Welch. They said it had been determined that since he was not a complete Deputy, he couldn't function as General Counsel—or they'd made a determination to that effect.

I had lunch with Jed Welch and told him that I was considering accepting the position and asked how he felt about the entire role. He said that he had been told that he wasn't going to be General Counsel. He was happy that somebody that he knew was going to be coming in, and so my relations with Jed were very good.

When I came aboard, I recognized also that his main role was in the procurement area. At the same time, I recognized also that he would be leaving within some time. He had indicated that he was going to stay for a short period of time. I'd asked him to help me with the transition if he could see his way clear to do that. He said that he would, but he was planning to retire soon after that period of time.

Milt Socolar was Special Assistant to the General Counsel at the time, and Milt and I started to work very closely together. I recognized his talents and moved him over to become Assistant General Counsel for Personnel because that was the only vacancy at the time.

Then when Jed Welch left, I recommended that Milt Socolar be named Deputy General Counsel, which really was over some other people who had seniority in various other Associate General Counsel jobs.

There again, I touched base with all of the people around, including Bob Keller and Elmer Staats, before I formally sent it up for approval, and I had no problem. I didn't have any problem with the staff either within the office. That worked out very well.

worked themselves up in the organization; it was a pretty solidified organization. It was homogenous. They worked well together. It was a team effort, and here was somebody being brought in from the outside. Originally before I got here, I wondered as to how I was going to deal with that. So that was a concern.

The other concern was, here was Bob Keller who had served as General Counsel for 11 years or something of that nature, and he was now going to act in the Deputy Comptroller General position. Was I really going to be a Deputy General Counsel, or was I going to be the General Counsel?

So that was another concern. Early on, something had come up and I had taken the matter in to Keller—the question came up with regard to a method where we ought to move and how we ought to deal with a legal problem—and he said to me, “You are the General Counsel; I am not going to get involved in making legal decisions. I’m going to confine myself to the policy decisions that the Comptroller General assigns to me. I’m not going to be General Counsel, and I’m not going to continue to be that in that role.”

We had a lengthy discussion about that, and it worked out very well. I was very pleased with the reaction I got from him at that time. I must admit that he never tried to second-guess the legal aspects; he would ask questions but not any more than one would expect in that position.

So the relationships with Bob Keller were excellent. With Staats, I think that they were very good. I had no problems with Elmer Staats. On the legal issues and the legal matters and the materials that would come out of our office, generally Bob Keller would handle those. But on policy matters or where you had to explain things to Staats because they might become an issue on the Hill or with the public, I always found that Staats was a very reasonable man and very easy to get along with and that he recognized the situation. I never felt that he pressured for a decision that he felt was going to be more politically acceptable or generally would receive a better public view.

So I must admit that I never had any problems.

Mr. Socolar

No, I think that there is an issue, too, on the other side of the spectrum, other than Bob Keller and Elmer Staats. There was also the question of your relationship with the staff that you were inheriting.

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I knew that one of the things that faced an agency was this business of involvement by GAO, and sometimes we invited GAO before it involved itself.

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## View of General Counsel's Role

Mr. Eschwege

Now, your title was General Counsel. I remember that soon after you came in, I had occasion to meet you and you made quite a point of that—that you were General Counsel and not just Legal Counsel. This gets me into a discussion of your relationships within GAO and how you viewed your role. Let's first talk about your relationship with the Comptroller General and the Deputy Comptroller General, who was Bob Keller. What kind of advice did you think you were to give? What kind of duties did you think you were to perform?

Mr. Dembling

Well, let me go back. That point I made to you about being General Counsel might sound a little bit arrogant. What had happened was that soon after I'd arrived, Mr. Staats had sent me down a draft report and asked me to review it.

I guess I reviewed it, and I'd asked other people in the Office to review it. We made comments that were beyond legal comments. Those were really my comments, because when I sent it around to the people within the Office of the General Counsel, they had told me that we were looking at these things from a legal sufficiency standpoint.

Well, I had been used to working with James Webb, and Webb wanted comments about everything. He felt that if you were a counsel, you were a counsel and an adviser. So I went to a meeting shortly after that with the division chiefs or division representatives, and one of them raised a question as to how far this new fellow on the block, Dembling, was going to take these comments with regard to reports that had been drafted.

Mr. Staats sort of looked at me, and I said, "Well, I thought that you had asked me for complete advice, and so I made comments with regard to other matters besides the legal matters." And, then facetiously, I said, "And besides, I'm not just Legal Counsel, I'm General Counsel."

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Chairman of that. I did a whole series of things. I'd been Deputy General Counsel for many years, and then in 1967, I was named General Counsel. I was General Counsel there until I came over here and joined GAO as General Counsel.

Mr. Eschwege

While all this was going on, you were already starting to teach at gw Law School?

Mr. Dembling

Yes, I started teaching at gw Law School in 1964. I had also served as a delegate on the U.S. Delegation to the United Nations and participated in the drafting of some of the space treaties, first the Outer Space Treaty and then others. I continued to serve as a delegate for the rest of my time in NASA.

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## Selection for GAO Post

Mr. Eschwege

So then a vacancy occurred in the General Accounting Office when Bob Keller moved up to become the Deputy Comptroller General.

Mr. Dembling

Right.

Mr. Eschwege

Now, how did you find out about that? How did you get to come here to GAO?

Mr. Dembling

Well, I really didn't know that he had moved up because it had not been official yet. I got a call from Mr. Staats, and he asked me whether I would like to come by and visit with him one evening after work.

I asked him what it was about. He said that he just wanted to chat with me. Jim Webb had told him that I was getting ready to leave NASA, and he wanted to get my ideas on how I saw GAO from NASA's perspective and so forth, because we'd had business. Jim Webb, who had been Administrator and whom I had worked for at NASA, had been a close colleague of Elmer Staats in the Bureau of the Budget and various other places.

to the various formulas that had been established by regulation: limitations, bonuses, that sort of thing.

Mr. Eschwege

NACA was really the forerunner of the National Aeronautics and Space Administration [NASA], is that right?

Mr. Dembling

Yes, but not automatically. NACA, which had about 8,000 people at the peak of its activity and ran 3 research centers, had been doing a lot of space work. When Sputnik went up, there was a feeling in NACA that it should be the logical place for space research, especially when President Eisenhower announced that we ought to do something. He appointed Killian [James R. Killian, Jr.] from Massachusetts as his science advisor, the first science advisor the President had. Killian and Eisenhower said that the space effort ought to be in a civilian agency.

But the Atomic Energy Commission and the Department of Defense—the Air Force primarily—lobbied very strongly. Let me tell you a story about that.

Senator Styles Bridges was Chairman of the Armed Services Committee. We used to want to go up to see him, to lobby him for his support in this new activity.

He did not want to meet with us in his office because he said he was going to get too much flack from the military. The Chairman of the Board of AVCO, a man by the name of Victor Immanuel, used to come to town often and made his headquarters at the Sheraton Carlton; it was called the Carlton at that time. We used to telephone Mr. Immanuel and tell him we wanted to see Senator Bridges. We would meet Senator Bridges and his staff at the Carlton because of the lobbying activity that was going on in town.

So when NACA was dubbed the logical place to start the space activity, it was not automatic. The other thing that I am proud of was that I went to the Director of NACA, Dr. Hugh Dryden, and said, "If we're going to want to carry forward the space activities, the thing we ought to do is write a bill because this town acts on the first draft that it obtains."

I said, "Let me take 2 weeks off and write a bill that we could then use as a basis and foundation." He agreed and that's what I did. I have been

with a Professor Marden, who was writing one of the early books in sociology on minorities.

I had also been working with Arthur F. Burns, who had been teaching economics at Rutgers. I was majoring in economics. Rutgers' economics department was quite well-respected. It had Arthur F. Burns, as I indicated. It had Julius Shiskin, who later came down to Washington, and Geoffrey Moore, who later was a Commissioner of the Bureau of Labor Statistics. And so it was with a large component of the people at Rutgers who later worked in New York at the National Bureau of Economic Research.

I also did some work for Professor Sundelson, who was an adviser to Governor Lehman on the New York budget processes. He [Sundelson] was an interesting man because his mother was the first woman executive and later president of the Equitable Assurance Company.

I had a pretty good economics background. By the way, Milton Friedman was originally from Rahway; he was a protege of Arthur F. Burns at school.

I was on my way to a Ph.D., both at Rutgers and at Columbia, when the war came along, the last popular war. Since Rutgers was a male school, it was pretty decimated. I came down to Washington, and my career took a different turn at that time.

Mr. Eschwege

This is when you came to the War Department?

Mr. Dembling

That was when I came to the War Department, with the idea of going back to Rutgers or Columbia to get my Ph.D. and then work in the economics arena. I was working with lots of people in industrial relations. Somebody had looked at my background and found that I had done my master's thesis on legislation and the administration of minimum wages and had put me into industrial relations in the War Department.

As a result, I started to do work with people who had been directly commissioned as Army officers out of the private sector. They kept telling me that I was doing a fine job in economics and the wage work and the wage surveys we were doing. They thought that, somewhere along the line, I ought to take a law course so that I would understand what they were trying to accomplish.

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**Contents**

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**Abbreviations**

CICA	Competition in Contracting Act
CIA	Central Intelligence Agency
CPD	Comptrollers Procurement Decisions
GAO	General Accounting Office
GW	George Washington University
HHEW	Department of Health, Education, and Welfare
NACA	National Advisory Committee for Aeronautics
NASA	National Aeronautics and Space Administration
OGC	Office of the General Counsel
PPC	Program Planning Committee
RFP	request for proposal
SSA	Special Studies and Analysis Section
VA	Veterans Administration

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# Interviewers

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## Milton J. Socolar

Milton J. Socolar is the Special Assistant to Comptroller General Charles A. Bowsher, a position he assumed soon after Mr. Bowsher took office on October 1, 1981. Mr. Socolar joined GAO in 1952 as an auditor and transferred from his accounting to a legal position in 1956. He distinguished himself in positions of increasing responsibility in GAO's Office of the General Counsel and was appointed General Counsel in November 1978. Elmer B. Staats, prior to the expiration of his term, designated Mr. Socolar to be Acting Comptroller General of the United States effective March 4, 1981, until the appointment of a successor.

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## Henry Eschwege

Henry Eschwege retired in March 1986 after almost 30 years of service in GAO under three Comptrollers General. He held increasing responsibilities in the former Civil Division and became the Director of GAO's Resources and Economic Development Division upon its creation in 1972. He remained the Director after the Division was renamed the Community and Economic Development Division. In 1982, he was appointed Assistant Comptroller General for Planning and Reporting.

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## Roger R. Trask

Roger R. Trask became Chief Historian of GAO in July 1987. After receiving his Ph.D. in History from the Pennsylvania State University, he taught between 1959 and 1980 at several colleges and universities, including Macalester College and the University of South Florida; at both of these institutions, he served as Chairman of the Department of History. He is the author or editor of numerous books and articles, mainly in the foreign policy and defense areas. He began his career in the federal government as Chief Historian of the U.S. Nuclear Regulatory Commission (1977-1978). In September 1980, he became the Deputy Historian in the Historical Office, Office of the Secretary of Defense, where he remained until his appointment in GAO.

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# Paul G. Dembling

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