

Office of Government Ethics

82 x 7 -- 04/19/82

Letter to a Former Employee dated April 19, 1982

This is to reply to your April 12, 1982 letter wherein you asked for our opinion on whether certain proposed activities on your part in [a specific litigation] case would violate 18 U.S.C. § 207.

Since you would like a written response as soon as practicable, we will incorporate your factual representations in your April 12 letter herein by reference thereto in the interests of brevity.

In essence, you have informed us that you were a designated Senior Employee as the Deputy Assistant Secretary for [a certain subject sector] at [a] Department for purposes of 18 U.S.C. § 207(b)(ii) and (c) and that you resigned from that position in mid 1981. You now want to assist the defendants in the forthcoming trial of the case mentioned above which involves a particular matter which was pending under your "official responsibility" at the Department during your last year of service there.¹ (This was decided by the Department's designated agency ethics official in a letter to you dated April 8, 1982, a copy of which you supplied to us.) You have also advised us that employees of your former office within the Department will likely appear as witnesses (presumably for the prosecution) during the course of pretrial hearings and the trial itself.

Based on your representation that you did not participate "personally and substantially" in this particular matter involving these parties while a Government employee, you consequently have no 18 U.S.C. § 207(a) or (b)(ii) bars with regard to such matter. Since you do have 18 U.S.C. § 207(b)(i) and (c) constraints, we will address your specific questions on them.

Without violating sections 207(b)(i) and (c), you may be present in the courtroom during the proceedings of the case. You may have oral and written communications with defense counsel but you may not do anything which involves oral and/or written communications with intent to influence the prosecuting attorneys

or witnesses. (Compare the reach of § 207(c) with § 207(b)(i) in this respect.) You have informed us that you will not be entering your appearance for any of the defendants and will not be either questioning witnesses or addressing the court. Under those circumstances, you could advise the defense counsel who are representing them at defense counsel's table if necessary. With 18 U.S.C. § 207(b)(ii) not applicable to you under the circumstances here (see above), you may assist defense counsel in this manner as long as your aid to them does not entail any communications with intent to influence the Department of Justice attorneys, other Government attorneys or witnesses involved in the case.

Sincerely,

J. Jackson Walter
Director

1 The Department describes the "particular matter" as involving application for [certain] licenses form [by a private corporation (one of the defendants)]. You have described the prosecution as centering on 19 counts of violating the on Act and 11 counts of filing false declarations by these four defendants. You have specifically represented to us that you cannot recall ever having participated yourself in this matter involving these parties at the Department.