President John Grosvenor, Vice Chairman (and Congressman) Dick Lankford; friends and fellow members of the Capitol Hill Section: I'm pleased to be back with the Capitol Hill Section of the Federal Bar Association. I acknowledge the honor of lifetime membership tracing back to our organization days. Your chairman, Jim Palmer, has been gracious and generous in his introduction. This organization owes a great deal to him; I was here when he succeeded after long and devoted effort in getting this section autonomously chartered. His Service as National President of the Federal Bar Association, as all of you know, built it strong and sound, and charted its course to the great achievements of recent years.

The other evening one of my old colleagues who remains an administrative assistant was ticking off the 1961 casualties of Senate types. Irv Hoff is gone; Frank McCulloch and John Horne, Mike Manatos and Eva Adams are gone. As an after-thought he included me in his list, then, wistfully, "I'm the last of the great AA's."

When I was one of you, I enjoyed being identified as a lawyer on the Hill. I thought (and still think) it was fine to keep the professional spirit alive by belonging and participating -- talking shop, if you will, about those parts of our work which did involve our legal skills, and reminiscing about our earlier professional experiences.
There has been a change. I told an audience of foresters a couple of weeks ago that "in the Interior Department (as in some other Departments) the real battle is between the lawyers and the administrators. I try to avoid being identified as a lawyer."

My new attitude about association with my "co-professionals" (a term I've borrowed from some Unitarian friends of mine, who, I've noticed, always call each other "co-religionists"), brings me to a consideration of the subject of "Lawyers in Government."

This is not to be confused with "government lawyers." The government has need of the professional skills of a great many lawyers, who serve their client, the United States Government, pretty much as a lawyer would serve his client General Motors, or John Doe. I'm referring to the large number of lawyers who have a connection individually with the political or policy implications of "government", whether federal, state, or local.

I'm a lawyer in government, and so is the Attorney General and the Solicitor or General Counsel of most of the departments. Government lawyers can be lawyers in government -- the distinction I'm trying to make is not related to job or title.

All of the members of the Capitol Hill Section of the Federal Bar Association are lawyers in government. The great attraction of work on the Hill, whether for a member or a committee, is that the work here, whatever it may be, takes you to the very vitals of a free government -- the functioning of the legislative branch.
This kind of attraction is irresistible to lawyers. Look at the dominance of our members among the Congressmen and Senators and in the staffs of members and committees alike.

Let's consider some of the differences between government lawyers and lawyers in government as seen from the vantage point, if that's what it is, of an Assistant Secretary of the Interior in the field of public land management. The federal government's vast holdings of land and minerals are managed by the Interior Department and used by the public (oil and other mineral leases, grazing permits, timber sales, etc.) under a variety of complex statutes and administrative regulations.

This requires the services of an array of government lawyers, in the drafting of the regulations, leases, contracts, etc., and in the handling of the adjudicative and appellate burden.

Friction between lawyers and administrators is inevitable; and a lawyer on the administrative end of things has a chemical affinity to this kind of friction. He generates his share of it.

A lawyer in government sometimes finds himself trying to be a government lawyer -- trying to second-guess his professional legal advisers. This won't work in government, any more than it will work in a corporation which happens to have a lawyer or two on its board or in its management staff.

But there is a tendency in government, as there is in business, for the government lawyer to seek to arrogate himself by virtue of his professional status alone, into the manager's chair. Granted the top legal staff member wears two hats -- Attorney General Kennedy is the chief government lawyer,
and a ranking lawyer in government. But apart from this, the administrator occasionally suspects that the legal opinion he gets is written with a policy bias not his own.

This is dangerous, because the author of the opinion may bear no responsibility for the results which flow from it.

Policy apart, let's talk of expertise. Consider the clash of a government lawyer with a country lawyer in government on a nuance of the regulations under the Mineral Leasing Act. The government lawyer who has lived in the bowels of the Act and its regulations for twenty-five years is understandably disdainful of criticism of his handiwork by a country lawyer recently come to government.

But is it possible that the country lawyer in government may have a point — is it possible that *stare decisis*, which has come to its ultimate glory not in the common law courts, but in the opinions and decisions of departments and agencies, might not be the touchstone in every situation.

Pope John XXII canonized Thomas Aquinas on the ground that his decisions were miracles. Government lawyers who haven't even been near Georgetown, much less Notre Dame, seem to feel themselves at least the spiritual legatees of St. Thomas. A later Pope said that on the wings of St. Thomas's genius, human reason has reached the most sublime height it can probably ever attain. I'm sure that the Papal staff men weren't familiar with the challenge to this statement implicit in some of the federal government's legal opinions and decisions.
A country lawyer is accustomed to make judgments on the worth of the opinions of his professional colleagues on some better standard than hierarchical status. When a lawyer in government finds that an informal legal opinion he likes is later reversed in the reviewing process to one he doesn't like, he's likely to be exasperated. Are GS-15's automatically better lawyers than GS-14's?

The Capitol Hill Section members of the Federal Bar Association don't usually examine contracts for legal sufficiency, or represent the government at some level of administrative or court proceedings. But they find common professional ground on a much higher level. They are lawyers in government.

When I was practicing, I derived satisfaction in my bar association activities in the field of education -- for lawyers, for law students, and generally. I've had occasion to tell lawyers and law students, and faculty members of my state's university, that I thought that lawyers were losing the right to call themselves members of a learned profession -- educated men first and foremost.

I've graded bar examination papers which reflected failure of education at the secondary school level.

Now it may be that the public suffers no great or lasting harm when un-educated men practice in the civil courts. I think, however, that most law schools realize that they are educating as much for government as for the law's traditional role. And government, as well as law, is an honorable goal for law graduates.
In a new book by Marshall Dimock of New York University, entitled *The New American Political Economy*, the following definition of what the author calls "the public person" appears:

"The ideal individual combines the cutting edge of his own trained intellect with the wisdom of past experience. He sees what society needs and how to progress toward higher levels, but he knows that in seeking change we must safeguard tested values. The ideal individual is sufficiently hard-headed to choose measures that will work, but he seeks constantly for solutions that promote human well-being and happiness. He knows how to get things done, which is sometimes considered the hallmark of the conservative, and at the same time he has the high aspirations and ethical standards that are associated with the liberal pattern. He believes in universal principles and has an incisive and catholic capacity to probe and to make connections in his thinking. He understands the theory of opposing forces and the need for balance, for specialization combined with integration. He recognizes the role of challenge and response in the various stages of institutional growth. He knows that these key ideas exist everywhere in the social sciences and the humanities, and especially in philosophy."

Although I doubt that Mr. Dimock would agree, I think that good law schools, particularly those which require a first class education as a prerequisite to admission, come closer to producing the requisite number of "public persons" to meet our nation's needs than any other kind of specialized education.

I have tried through the medium of recounting a few of my own experiences to differentiate between government lawyers and lawyers in government. I have brought to my discussion today a bias in favor of lawyers in government without meaning in any way to deprecate the high calling of government lawyers. I have said that it is inappropriate for lawyers in government to try to second guess the government lawyers, and
I have said that it is equally inappropriate for government lawyers to step into the administrator's role. Each is mightily tempted. Each must resist the temptation.

But more important than the friction which attends the relationship, in my view, is the final thought I have tried to develop that lawyers can take pride in their training and professional qualifications when they serve the government, even though they may not be "practicing law" for the government.

I have a fascination with the business of government in these challenging times. No calling can be higher than the calling of government service. No business is bigger; no enterprise more demanding of our best. I think, again in the words of Marshall Bimock, that we have tended too often to "turn out men and women who are superficial manipulators instead of stewards, narrow instead of cultivated, segmented between knowledge on the one side and values and character on the other."

All of you in the Capitol Hill Section of the FBA and many of your alumni "downtown" are lawyers in government. It is a high calling and worthy of our continued association.