evidence presented is substantially the same as that presented earlier.

Subsecion (c) permits a subsequent board unlimited by previous findings or recommendations only if fraudulent evidence submitted by the respondent formed the basis in whole or in part for the findings of the first board.

Section 964(a) prescribes the standards for the types of discharges permitted.

Subsection (b) provides that a member discharged for unsuitability may receive an honorable or general discharge based upon his military record considered in the light of his mental and physical capabilities.

Subsection (c) authorizes an undesirable discharge on the grounds of misconduct after a civil conviction for a crime involving narcotics or sexual perversion, where State law authorizes imprisonment for one year or more; after conviction of a crime classified as a felony under title 18, United States Code, or the District of Columbia Code, or for which the Uniform Code of Military Justice authorizes the award of a punitive discharge; or after conviction of a crime of sexual perversion for which the respondent was adjudicated a juvenile offender.

Subsection (d) authorizes a discharge for misconduct for unauthorized absence of more than one year or for fraud or misrepresentation at the time of enlistment which if known at the time would have resulted in the rejection of the member by the service.

Subsection (e) authorizes an undesirable discharge on the grounds of unfitness based upon frequent involvement with authorities, sexual perversion, a pattern of shirking duties, or a pattern of dishonorable failure to pay debts.

Subsection (f) authorizes an undesirable discharge on the grounds of security.

Subsection (g) permits the issuance of a discharge other than undesirable in cases where the respondent has received a personal decoration by his service, or where otherwise warranted by the facts of the case.

Subsection (h) prohibits the execution of a discharge for misconduct for civil conviction if an appeal is still pending unless the Judge Advocate General of the service certifies that the appeal is frivolous or without merit. If a discharge is executed prior to the final disposition of the appeal and the appeal later results in the member not having been legally convicted of a felony, he must receive all pay and benefits he would have received if he was not so discharged. An undesirable discharge so issued shall be changed to a general or honorable discharge, and a general discharge may be changed to an honorable discharge if warranted by the individual's record.

Section 965 authorizes honorable or general discharges based upon grounds other than those prescribed in this chapter, as prescribed by law or provided in regulations issued by the Secretary of Defense.

Section 966 authorizes the Secretary of Defense to issue regulations providing for the review of discharge actions to determine that all proceedings were fair and impartial and that they were conducted consistent with the provisions of the chapter. No decision on review may be less favorable than the action ordered by the discharge authority. Review by the Court of Military Appeals may be obtained. No decision upon review by the Court may be less favorable than the action ordered by the discharge authority.

Section 3 conforms the table of chapters of subtitle A, title 10, United States Code to the changes made by the addition of chapter 48.

Section 4(a) amends section 867 of title 10 to provide for review by the Court of Military Appeals of cases in which petition for review is made under section 966(b).

Subsection (b) limits review of such cases to issues of law specified in the grant of review or raised by the armed force.

Subsection (c) specifies that cases reviewed by the Court of Military Appeals are to be returned to the reviewing authority specified by section 966(a) for further consideration or action in accordance with the decision of the court.

The other subsections of section 4 make technical changes in accordance with these provisions.

Section 5 provides for the amendment of section 867(b)(4) to authorize the representation by appellate military counsel of respondents whose cases are before the Court of Military Appeals.

Section 6 adds the definition of "respondent" to section 801.

Section 7 makes section 266 of title 10, relating to the composition of boards for appointment, promotion, demotion and involuntary release of Reserves, subject to the provisions of chapter 48.

Section 8 amends section 1161 of title 10, relating to dismissals of commissioned officers, to provide that no commissioned officer may be discharged for reasons of misconduct, unfitness, or security under conditions other than honorable, except pursuant to chapter 48.

Sections 9–11 amend sections 1161–1165 of title 10 to make discharges under those provisions subject to provisions of chapter 48.

Section 12 amends section 1166 of title 10 to require that in actions considering the separation of regular warrant officers the burden of justifying the separation is on the government.

Section 13 amends sections 3781, 3782, 3783 and 3785 of title 10 to require that in the proceedings of selection boards, board of inquiry, and boards of review considering the removal of regular commissioned officers because of substandard performance of duty, the burden of justifying the removal is on the government. All rights and procedures set forth in chapter 48 govern these proceedings.

Sections 14–15 make similar changes with respect to such boards considering the removal of general officers.

Section 16–20 make similar changes in the sections of title 10 concerning analogous proceedings in the Navy, Marine Corps, and the Air Force.

Section 21 amends sections 321–323, and 325 of title 14, United States Code, to make similar changes in analogous proceedings in the Coast Guard.

Section 22 provides that the amendments made by the Act are to be effective on the first day of the sixth calendar month following the month in which it is enacted.

By Mr. CASE:

S. 2251. A bill to provide that the President notify Congress of his intention to exercise certain special authorities under the Foreign Assistance Act of 1961. Referred to the Committee on Foreign Relations.

NOTICE TO CONGRESS OF FOREIGN MILITARY OR ECONOMIC ASSISTANCE TRANSFERS

Mr. CASE. Mr. President, I am today introducing legislation which would require the President to give Congress advance notice of money transfers within the foreign military and economic assistance programs.

I have long been concerned by the so-called "flexibility" written into the Foreign Assistance Act. The President now has authority to shift large amounts of money programed for one country to another country, with the proviso that he notify Congress within 30 days.

Thus, the law as presently written allows the administration to make a significant commitment to a foreign country without including either the Congress or the public in the debate.

Under this authority, the administration shifted nearly $100 million to the Cambodia Government during 1970. The largest portion of this transfer was made before the 1970 elections, but Congress was not notified until the end of November.

I firmly believe that such a large commitment of U.S. Government funds to Cambodia should have been widely discussed in advance, for it involved a significant step toward our becoming entangled in that country.

Then in December 1970, the administration came to Congress for a large supplemental foreign aid appropriation, and we were asked to vote money for those other aid programs from which money had been borrowed in order to send the nearly $100 million to Cambodia.

Frankly, I was disturbed by the whole process, and that is why in December I introduced with Senator SYMINGTON an amendment requiring the President to give the Congress advance notice of aid increases in Cambodia. Happily, the Case-Symington amendment was accepted by the Congress and then signed into law by the President.

But in the case of Cambodia, almost all the horses had escaped by the time we got around to closing the barn door.

So in the future, I am proposing that the President give the Congress 30 days advance—or 10 days in case of an emergency—before he shifts scheduled levels of foreign military or economic assistance funds to any country.

If decisions are to be made that affect our country's foreign policy, let them be made with full congressional and public knowledge prior to the event—not 30 days after the fact.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2251

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 652 of the Foreign Assistance Act of 1961, as added by section 8 of the Special Foreign Assistance Act of 1971, is amended to read as follows:

"SEC. 652. Limitation Upon Exercise of Special Authorities.—The President shall not exercise any special authority granted to him under section 506(a), 610(a), or 614(a) of this Act unless the President, at least thirty days (or 10 days if he certifies, in addition, that the national interest requires it) prior to the date he intends to exercise any such authority, notifies the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate in writing of each such intended exercise, the section of this Act under which such authority is to be exercised, and the justification for, and the extent of, the exercise of such authority.".

SEC. 2. The last sentence of section 506(a) of the Foreign Assistance Act of 1961 is repealed.

By Mr. CASE:

S. 2252. A bill limiting the total amount of excess defense articles that all Government agencies may make available to foreign countries;

days before the hearing of his case by a board of inquiry, that a hearing will be held to determine whether he should be removed from active duty."; and

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

"(b) In addition to the rights and procedures prescribed in subsection (a) of this section, all rights and procedures prescribed in chapter 48 of title 10, United States Code (relating to administrative discharge boards), shall be applicable to boards of inquiry convened under section 322 of this title.

"(c) The burden of justifying the removal for cause of any officer from active duty in the Regular Coast Guard shall be on the Coast Guard."

SEC. 22. The amendments made by this Act shall become effective on the first day of the sixth calendar month following the month in which it is enacted.

SECTIONAL ANALYSIS

Section 1 provides that the Act may be cited as "The Military Administrative Discharge Procedure Act of 1971."

Section 2 adds a new chapter 48, title 10, United States Code, prescribing the minimum procedural due process applicable in administrative discharge boards considering discharges under conditions other than honorable. Chapter 48 consists of 25 sections as follows:

Section 941 contains the definitions applicable for chapter 48.

Section 942 makes chapter 48 applicable to all members of the armed forces whether in active status or serving in the reserve forces.

Section 943 provides that no member may be discharged under conditions other than honorable except for reasons of misconduct, unfitness, or security and that discharges for these reasons must be pursuant to the procedures set forth in the chapter.

Section 944 defines the administrative discharge board as a factfinding body consisting of three or more officers whose duty it is to conduct a fair and impartial hearing, receive evidence, find facts based upon a preponderance of the evidence, and recommend on the basis of the evidence and the facts found, whether a member should be retained or discharged from the armed forces. The board is also to recommend the type of discharge and to specify reasons for its recommendations.

Section 945 authorizes the President, the Secretary of each service and officers designated by them as appointing authorities. Members of the board are required to be officers of mature judgment and temperament. Officers who have participated in previous hearings at which the member was a respondent may not be members.

Section 946 permits the appointment of a legally qualified adviser to the board when the case presents legal or other questions of such complexity as to make the presence of a legal advisor advisable or when the board or the respondent so requests. The appointing authority is directed to comply with the request unless there are compelling reasons for refusing. A statement of the reasons must be included in the record if the request is not granted.

Section 947 requires the appointment of legally qualified counsel for the respondent. The member may have military counsel of his own choice if reasonably available and may also retain civilian counsel at his own expense.

Section 948 authorizes the appointment of a non-voting recorder to present evidence to the board and to keep a record of the proceedings.

Section 949 provides for the appointment of reporters to record the proceedings and testimony presented at the hearing.

Section 950 authorizes the Secretary of Defense to prescribe rules and regulations for implementing chapter 48. The Secretary of Transportation is similarly authorized to prescribe rules for the Coast Guard when it is not operating as a service in the Navy. The section states that the procedural safeguards established by chapter 48 are to be considered minimums and that the Secretary may grant additional procedural safeguards to respondents. The rules are to be as uniform as possible and are to be reported to the Congress.

Section 951 parallels section 837 of title 10 (article 37 of the Uniform Code of Military Justice) in prohibiting improper interference with the independence and impartiality of discharge boards, courts of inquiry and military commissions.

Subsection (a) prohibits any reprimand of a board because of the findings or recommendations arrived at in a case. General instructions relating to the duties and responsibilities of board members are permitted.

Subsection (b) prohibits coercion or improper influencing of boards with a view to affecting the impartiality of the proceedings.

Subsection (c) makes violation of this section punishable as a court-martial offense.

Subsection (d) prohibits the evaluation of a member's performance as a board member for purposes of promotion or assignment. Also, the zeal with which counsel represents a respondent may not be regarded as an adverse factor for promotion or assignment.

Section 952 requires that 15 days notice be given to a member against whom administrative discharge proceedings have been initiated. The notice must inform him of his rights to have legal counsel to present evidence and cross-examine adverse witnesses, and to remain silent if he chooses. The notice must also inform him of the nature of the action contemplated, the charges and evidence against him, the names of prospective government witnesses, the applicable regulations, and the possible consequences of the proceedings.

Section 953 requires that the parents of respondents less than 21 years old must be notified of the initiation of discharge action. Such notice is also to be sent when the respondent is over 21 but is considered unable to appreciate the nature of the action being taken.

Section 954 requires that counsel be sent copies of all notices and other information sent to the respondent.

Section 955(a) provides that a written waiver of the right to a board may be made only after consultation with counsel. The waiver is not valid if made within 24 hours of notice under section 952. The appointing authority may also reject a waiver if he determines that it was improvidently made.

Subsection (b) permits the appointing authority to deem a waiver of a board hearing to have been made if a respondent in civil confinement or absent without official leave fails to respond within 30 days of notice.

Subsection (c) permits a respondent to resign or be discharged for the good of the service if he so requests in writing after consultation with counsel. The discharge awarded may be honorable or under honorable conditions if such is warranted in the interests of justice. An undesirable discharge may not be awarded if the grounds alleged for board action would not have supported such a discharge.

Section 956 requires that all proceedings of the board be recorded and that, except when the board deliberates or votes, they occur in the presence of counsel, the respondent, and the legal advisor if one has been detailed. Only the voting members of the board may be present when the board deliberates or votes. The board may hear the case in absentia only when the respondent is represented by qualified counsel.

Section 957 provides for challenges to board members only for cause. Challenges are determined by the other members of the board when no legal advisor has been detailed.

Section 958 requires members of the board, counsel and reporter to take an oath to perform their duties faithfully. Witnesses are examined under oath.

Section 959 prohibits the admission into evidence of acts occurring more than three years prior to the order appointing the board or prior to the current enlistment or tour of duty of the respondent, whichever is longer. However, evidence of fraud or misrepresentation affecting the current enlistment is admissible if the service could not have discovered the misrepresentation or fraud.

Subsection (c) prohibits introduction of evidence of acts or omissions which were the subject of a previous court-martial or civil trial which resulted in acquittal or for which the rule against double jeopardy prevents a second trial.

Subsection (d) requires that any evidence admitted must be relevant, material, and probative. It prohibits any ex-parte evidence and introduction of investigative reports unless a copy has been furnished to the respondent in advance and the investigating officer is available for examination as a witness. Matter deleted from the report for security may not be shown to the board. The report may not be introduced if deletions have substantially reduced its evidential value.

Section 960(a) grants equal rights to the respondent to obtain witnesses and evidence under regulations prescribed by the Secretary of Defense. Subpoena power is authorized.

Subsection (b) permits the taking of depositions upon reasonable notice unless forbidden upon good cause. The Secretary of Defense is to issue regulations governing the taking of depositions.

Subsection (c) grants the respondent the right to submit any sworn or unsworn statement in his own defense and to submit to examination under oath if he chooses. Cross-examination of all witnesses and examination of all documents and other evidence submitted is permitted respondent and counsel.

Section 961 provides that all rulings, findings, and recommendations shall be by majority vote of the members of the board. When a legal advisor is detailed, he rules on the admissibility of evidence, on motions and on challenges for cause.

Section 962 requires that a record be kept of all proceedings and that a copy be presented to the respondent. The record must be verbatim in cases of undesirable discharges and in all other cases where ordered by the appointing authority, required by regulations, or where required for a fair and impartial review of the board proceedings.

Section 963(a) authorizes the appointing authority to approve the findings of the board if he determines that they are supported by a preponderance of the evidence in the record. He may disapprove the discharge recommended and issue a higher type of discharge or order a new hearing if he determines the existence of error prejudicial to the respondent, or in the interests of justice. He may not approve findings or recommendations of the new board less favorable to the respondent if the evidence presented is substantially the same as that presented in the earlier hearing. The authority may also retain the member or suspend the execution of a discharge. The basis for the discharge may be changed, but no discharge recommended on the grounds of unsuitability may be changed to the grounds of unfitness or misconduct.

Subsection (b) provides that when a board recommends the retention of the respondent, the case is closed, and no subsequent board may again consider the charges if the

S. 2253. A bill to require specific congressional authorization before funds may be made available to finance military operations outside the borders of the country of the government or person receiving such funds; and

S. 2254. A bill to limit all Government agencies with respect to the use of funds for certain activities conducted outside the United States. Referred to the Committee on Foreign Relations.

INCREASED CONGRESSIONAL CONTROL OVER CERTAIN CIA AND DEFENSE DEPARTMENT PROGRAMS

Mr. CASE. Mr. President, much has been said lately about the effort of Congress to reassert and redefine its authority in the field of foreign policy. For myself, I am scarcely at all interested in this as an exercise in congressional self-aggrandizement. I am very much interested in it as a means of forcing our Government to conduct foreign policy in the open so that the public may know what is going on and have the controlling voice in important decisions.

In a moment I shall mention briefly several measures I am introducing to allow Congress to exercise increased control over certain Central Intelligence Agency—CIA—and Defense Department programs.

My purpose is to place some outside control on what has been the free wheeling operation of the executive branch in carrying on foreign policy and even waging foreign wars.

To be perfectly honest, our system has gotten out of whack, and it is time to restore a better balance.

The Constitution does not give the President authority to declare a secret war, and I do not accept that there are any precedents in our history which would permit him now to do so.

Moreover, our recent history in Southeast Asia shows that wars approved by simply a handful of presidential advisers may well be not only unconstitutional but relatively unsuccessful, too.

Like most Americans, I was shocked by the cynical manipulation of our political processes revealed in the New York Times account of the McNamara study on the origins of the Vietnam war. I believe that our country should not go to war as part of a carefully plotted scenario which involves secret attacks on the other side—some apparently with the aim of provoking retaliation against us and our allies. This approach has no place in our open society.

I do not want to get into an extended post mortem on Vietnam, however. Our primary task should not be to engage in recriminations or assign blame, but to bring the war to an end. That is why, last year and earlier this week, I voted for the Hatfield-McGovern proposal to set a definite date for U.S. withdrawal from Vietnam.

The Vietnam war, as least during the last several years, has been waged essentially in the open. The same cannot be said for the war in neighboring Laos. A top American diplomat was quoted recently by the Washington Star as saying:

> What we are doing here in Laos is totally inconsistent with our kind of society. We are fighting a war by covert means and an open society cannot tolerate that.

I agree with this diplomat's appraisal, and consequently I have done everything I can to bring the facts on the war in Laos before the American public.

For example, I stated several weeks ago that there apparently was an agreement between the United States and Thai Governments for the financing and support through CIA of thousands of Thai troops in Laos. Only when the administration became aware of my speech did the Senate receive any kind of explanation of what was going on. And the explanation was incomplete and partially inaccurate despite its secret classification which prevented it from being made known to the public.

Even today, the Government tries to maintain a thick veil of secrecy over some of its programs in Laos. Every so often news trickles out in driblets as an energetic newspaperman digs out a story or a Government official leaks out a revelation.

But essentially, we are only told things after they have somehow gotten into the public realm, despite the $350 odd million in taxpayers' funds which are being spent annually in Laos, to say nothing of the estimated $2 billion annual cost of U.S. air activity over Laos.

Successive administrations have been able to carry on the secret war in Laos, as they did earlier in Vietnam, by use of that vast billion dollar treasure chest which Congress has appropriated, but never controlled, for discretionary intelligence and military programs. And the U.S. Government agency assigned to carrying out the administration's policies such as the running of the 30,000-man Secret Army—Armée Clandestine—and the funding of Thai troops has usually been the CIA.

I do not direct criticism against the CIA, for it has only been following orders issued by several Presidents. I simply question whether a secret intelligence organization should be assigned a war-making role abroad. Certainly this was not the intent of Congress when it originally voted to establish CIA.

So I come to my three proposals to limit the Executive's authority to wage a secret war. These are not all-inclusive, but they are an attempt to get at the questions of the circumvention of congressional intent and the hiring of mercenaries. The specific proposals are:

First. A bill to extend the limitations which now apply to the use by the Defense Department of its funds overseas to all U.S. Government agencies, including CIA. This would prevent the circumvention of congressional intent in the funding of activities such as the Thai troops in Laos through CIA rather than through more open Government agencies. It would also eliminate the possibility that the Cooper-Church prohibitions against the use of American troops or advisers in Cambodia could be skirted by using CIA personnel.

Second. A bill to prohibit the funding by any U.S. Government agency of military operations by any country outside its borders without specific congressional authorization. This would eliminate the confusing trail of Thais in Laos, Cambodians in Laos, and even Thais in Cambodia. It would not affect the present programs for U.S. payments to Koreans, Thais, and Filipinos in Vietnam, since Congress has specifically voted money for these troops. My bill would, however, require the administration to inform the Congress, on a confidential basis, if necessary, of the details of any agreements with foreign governments to finance their military operations abroad. I would hope this would prevent our Government from offering lavish inducements to foreign governments in return for the use of their troops. As you may remember, it was revealed last year that the U.S. Government in some cases had been secretly paying Koreans and Thais in Vietnam higher levels of combat pay than were being paid to American troops fighting in the same country.

Third. A bill to extend existing limitations on the use by the Defense Department of surplus military materiel to all Government agencies. I make this proposal because of reports I have received of the relatively unrestricted use of surplus materiel by CIA, I have no means of verifying these reports, but if they are untrue, my bill would not interfere with any existing Government programs.

The three proposals I have outlined would serve to plug some loopholes in the law. Of course, they would by no means close them all. The Executive can find ways to skirt almost any prohibition if it is so inclined. The solution to the problem lies, in the long run, not in a tighter drafting of the law but in the acceptance by the Executive of Congress and the public as partners in the conduct of the peoples' vital business.

Our country was founded on the principles of democracy, and the essence of a democracy is the participation of the people and their representatives in the decisions which affect their very national existence.

Mr. President, I ask unanimous consent that the text of my bills be printed in the RECORD.

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

S. 2252

A bill limiting the total amount of excess defense articles that all Government agencies may make available to foreign countries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first and second sentences of section 8 (a) of the Act entitled "An Act to amend the Foreign Military Sales Act, and for other purposes", approved January 12, 1971 (Pub. L. 91-672; 84 Stat. 2054), are amended to read as follows: "Subject to the provisions of subsection (b), the value of any excess defense article granted to a foreign country or international organization by any department, agency, or independent establishment of the United States Government shall be considered to be an expenditure made from funds appropriated under the Foreign Assistance Act of 1961 for military assistance. Unless such department, agency, or establishment certifies to the Comptroller General of the United States that the excess defense article it is ordering is not to be transferred by any means to a foreign country or international organization, when an order is placed for a defense article whose stock status is excess at the time ordered, a sum equal

to the value thereof shall (1) be reserved and transferred to a suspense account, (2) remain in the suspense account until the excess defense article is either delivered to a foreign country or international organization or the order therefor is cancelled, and (3) be transfered fom the suspense account to (A) the general fund of the Treasury upon delivery of such article or (B) to the military assistance appropriation for the current fiscal year upon concellation of the order."

S. 2253

A bill to require specific congressional authorization before funds may be made available to finance military operations outside the borders of the country of the government or person receiving such funds

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 2 of part II of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

"SEC. 511. Limitations on Availability of Funds for Military Operations.—(a) No funds authorized or appropriated under any provisions of law shall be made available by any means by any officer, employee, or agency of the United States Government for the purpose of financing any military operations outside the borders of the country of the government or person receiving such funds unless Congress specifically authorizes the making of funds available for such purpose and designates the area where military operations financed by such funds may be undertaken outside such borders.

"(b) Upon requesting Congress to make any such authorization, the President shall provide to Congress a copy of any agreement proposed to be entered into with any such government or person and the complete details of the proposed military operation. Upon such authorization by Congress the President shall provide a copy of any such agreement and thereafter of all plans and details of such operation."

S. 2254

A bill to limit all Government agencies with respect to the use of funds for certain activities conducted outside the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7(a) of the Special Foreign Assistance Act of 1971 (84 Stat. 1943) is amended by adding at the end thereof the following new sentence: "None of the funds authorized or appropriated pursuant to this or any other Act may be used to provide military or paramilitary instruction or training assistance to or for Cambodian military or paramilitary forces in Cambodia through advisers paid directly or indirectly by any department, agency, or independent establishment of the United States Government or with funds of any such department, agency, or independent establishment."

SEC. 2. Section 401(a) of Public Law 89–367, approved March 15, 1966 (80 Stat. 37), as amended, is amended—

(1) by inserting in the second sentence of paragraph (1), after "to or for the use of the Armed Forces of the United States", the following: "or of any department, agency, or independent establishment of the United States"; and

(2) by inserting in the introductory matter preceding clause (A) of paragraph (2) of such section, after "Armed Forces of the United States", the following: "or of any department, agency, or independent establishment of the United States".

By Mr. GRIFFIN:

S. 2258. A bill to permit coordination and cooperation in accelerated research and development of devices and equipment to meet government standards for motor vehicle exhaust emisisons and abatement of air pollution. Referred to the Committee on the Judiciary.

MOTOR VEHICLE AIR POLLUTION CONTROL ACCELERATION ACT

Mr. GRIFFIN. Mr. President, a few weeks ago the leading domestic and foreign automobile manufacturers reported to the Environmental Protection Agency on the progress they are making in the control of automotive emissions. What they had to say added up to a discouraging outlook for the prospects of complying with the Federal emissions standards set by Congress in the Clean Air Act Amendments of 1970.

There was a good deal of progress to report in reducing emissions below today's levels. Some companies were hopeful that they may be able to meet the 1975 standards on hydrocarbons and carbon monoxide. None of them, however, could say so with any certainty, and none of them could see more than the barest possibility of meeting the 1976 standard for oxides of nitrogen.

From this progress report we can draw only one realistic conclusion: The automobile manufacturers are gaining on the needed technology but losing their race against the clock. I remind my colleagues that the clock by which the automobile industry must work, owing to lead times, is set months and years ahead of ours. For efficient production—which means lower costs to consumers—1975 model designs must be locked up by approximately one short year from now.

Accordingly, it is increasingly evident that we are rushing headlong toward an unpalatable choice between, fiscal, an extension of the deadline for meeting the Clean Air Act standards, or second, a crippling of automobile production with the attendant consequences to our economy and to our automobile-oriented transportation system.

Mr. President, today I am introducing a bill which would minimize the necessity for making that difficult choice by maxamizing the automobile industry's chances of meeting the Clean Air Act standards on schedule.

As my colleagues know, the major American automobile manufacturers are now working in willful ignorance of each other's emissions research under a consent decree which prohibits them from exchanging technical information relating to emissions hardware. The consent decree stems from a 1969 Justice Department antitrust charge, stoutly denied by the companies, that their cooperative efforts constituted a conspiracy in restraint of trade.

The bill I am introducing would permit accelerated development of effective air pollution control devices through a limited exemption to the antitrust laws which would allow the auto manufacturers to disclose to one another the results of their efforts and thereby find quicker solutions to automotive pollution.

Mr. President, exemptions to the antitrust laws are and should be strictly construed and severely limited. The exemption I propose has been narrowly drawn with that principle in mind. Its sole and single purpose would be to enable the affected industries to expedite the development of more effective emission control methods. The exemption would not cover vehicle safety developments or any other competitive phase of the industry.

Moreover, the bill provides ample safeguards to assure that the exemption would be fully in keeping with the purpose of the antitrust laws:

Any cooperative arrangement would require prior approval by the Attorney General, and he would have complete oversight of actions taken pursuant to such an arrangement.

Information developed under such arrangements would have to be shared with any nonparticipating manufacturer who wanted it.

Predatory pricing or predatory practices would continue to be subject to antitrust prosecution.

And, finally, the exemption would terminate December 31, 1975.

I wish to point out that there is nothing new or even uncommon about exemptions to the antitrust laws. A former assistant Attorney General in charge of antitrust has estimated that nearly 20 percent of the national income originates in sectors exempt from antitrust laws.

Among the many examples which can be cited are section 9 of the Small Business Act, which permits joint research programs among small business concerns; section 708 of the Defense Production Act, as amended, which provides for voluntary agreements and programs designed to further the objectives of that act; section 2 of the act to assist in safeguarding the U.S. balance-of-payments position, which also provides for voluntary agreements and programs to further the aim of the bill; and the Newspaper Preservation Act, which provides antitrust exemption for joint newspaper operating arrangements where needed to sustain a financially sound publication.

Mr. President, a temporary and carefully qualified antitrust exemption such as that which I propose is necessary to promote two vital goals essential to the public interest:

First. Improving the quality of our air, and

Second. Preserving a healthy automobile industry.

One of the most forceful arguments for permitting the auto companies to cooperate on emissions work has come from Mr. Leonard Woodcock, president of the United Auto Workers. The UAW's commitment to environmental improvement cannot be questioned but, as Mr. Woodcock pointed out in a letter dated May 24, 1971, to the Attorney General, the UAW must also be deeply concerned about the jobs and economic well-being of nearly 1 million members of the union and their families.

In his letter, Mr. Woodcock strongly urged that the Justice Department permit all auto manufacturers to share their technology under direct and strict governmenttal supervision in a crash program to solve the problems of both vehicle emissions and vehicle safety.

Mr. Woodcock said:

The purpose underlying the antitrust laws is, of course, to promote competition. There should not be competition in such vital areas as human safety and pollution control. There should not be added profit for those who can best cut corners and save in these areas. Every car should be as safe and clean

Sent to: OGC
OPPB
SAVA
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