H.R. —

A bill to amend title XVIII of the Social Security Act with respect to reimbursement of physicians' services in teaching hospitals

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

That (a) paragraph (7) of section 1861(b) of the Social Security Act is amended to read as follows:

"(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title."

(b) Section 1861(v)(1)(C) of such Act is amended by inserting "(under the conditions described in subsection (b)(7))" after "such school provides services".

(c) Section 1832(a)(2)(B)(i)(II) so such Act is amended by striking out ", unless either clause (A) or (B) of paragraph (7) of such section is met" and inserting in lieu thereof "and which meets the conditions specified in clauses (A) and (B) of paragraph (7) of such section".

SEC. 2. The amendments made by this Act shall apply with respect to cost accounting periods beginning on or after October 1, 1978. A hospital's election, under section 1861(b)(7)(A) of the Social Security Act (as administered in accordance with section 15 of Public Law 93-233), as of September 30, 1978, shall constitute such hospital's election under section 1861(b)(7)(A) of such Act (as amended by this Act) on and after October 1, 1978, and until otherwise provided by the hospital.●

PERSONAL EXPLANATION

HON. JOHN BRADEMAS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 14, 1978

● Mr. BRADEMAS. Mr. Speaker, I insert at this point a statement regarding a recorded vote I missed on Friday, September 8, 1978, and an indication of how I would have voted had I been present.

The vote was on Rollcall No. 743, on final passage of H.R. 11711, the Trade Adjustment Assistance Program Amendments. The bill passed by a vote of 261 to 24. I was paired for this bill and had I been present, would have voted in favor of it.●

HOUSE OF REPRESENTATIVES—*Friday, September 15, 1978*

The House met at 10 a.m.

Rev. James J. O'Sullivan, St. Peter's Church, Marshall, Mo., offered the following prayer:

Father Almighty, You are the source of all power. The providence that guides all things to that last and ultimate frontier: Yourself.

Guide our Representatives to legislate, not just for the good, but for the best interests of this Nation.

Let this House deliberate. Let all voices be heard; but God grant you the courage to conclude, and act, when timely action is imperative.

May God grant you the prudence not to act, until your best solution is found; or, when indeed inaction is the best solution.

Let us be mindful Lord, that Your universe is unfolding according to Your schedule. We are, at best, supporting cast.

"Yet Your work in this world must truly be ours."

Let us do Your work. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

Mr. MOTTL. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

The question is on the approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. DAVIS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 293, nays 10, answered "present" 3, not voting 126, as follows:

[Roll No. 782]

YEAS—293

Abdnor	de la Garza	Hawkins
Akaka	Delaney	Hefner
Alexander	Derrick	Hightower
Anderson, Calif.	Derwinski	Hillis
Andrews, N.C.	Devine	Hollenbeck
Andrews, N. Dak.	Dickinson	Holt
Annunzio	Dicks	Holtzman
Applegate	Dodd	Horton
Archer	Dornan	Howard
Ashley	Downey	Hubbard
Aspin	Drinan	Hughes
AuCoin	Duncan, Oreg.	Hyde
Bafalis	Duncan, Tenn.	Jenkins
Baldus	Early	Johnson, Calif.
Barnard	Eckhardt	Johnson, Colo.
Baucus	Edgar	Jones, Okla.
Bauman	Edwards, Calif.	Jones, Tenn.
Beard, R.I.	Eilberg	Jordan
Bedell	Emery	Kastenmeier
Bellenson	English	Kazen
Benjamin	Erlenborn	Kelly
Bennett	Ertel	Keys
Bevill	Evans, Colo.	Kildee
Biaggi	Evans, Ind.	Kindness
Bingham	Fary	Kostmayer
Blanchard	Fenwick	Krebs
Blouin	Findley	LaFalce
Boland	Fish	Lagomarsino
Bolling	Fisher	Latta
Bonior	Fithian	Le Fante
Bonker	Flippo	Leach
Bowen	Flood	Lederer
Brademas	Florio	Leggett
Breckinridge	Flynt	Lehman
Brinkley	Foley	Lent
Brodhead	Ford, Mich.	Levitas
Brooks	Ford, Tenn.	Livingston
Brown, Calif.	Fountain	Lloyd, Tenn.
Broyhill	Fowler	Long, La.
Burke, Mass.	Frenzel	Long, Md.
Burleson, Tex.	Fuqua	Lundine
Burlison, Mo.	Gammage	McClory
Burton, Phillip	Gephardt	McDade
Butler	Giaimo	McFall
Carr	Gilman	McHugh
Carter	Ginn	Madigan
Cederberg	Glickman	Maguire
Chappell	Gonzalez	Mahon
Clawson, Del	Goodling	Markey
Coleman	Gore	Marks
Collins, Ill.	Gradison	Martin
Conable	Grassley	Mattox
Conte	Green	Mazzoli
Corcoran	Gudger	Meeds
Cornell	Guyer	Meyner
Cornwell	Hagedorn	Michel
Cunningham	Hall	Mikulski
D'Amours	Hamilton	Mikva
Daniel, Dan	Hammer-schmidt	Miller, Ohio
Daniel, R. W.	Hanley	Mineta
Danielson	Hansen	Minish
Davis	Harkin	Mitchell, N.Y.
	Harris	Moakley
		Moffett
Mollohan	Roe	Taylor
Montgomery	Rogers	Thompson
Moore	Roncalio	Thornton
Moorhead, Calif.	Rose	Traxler
Mottl	Rosenthal	Treen
Murphy, N.Y.	Roybal	Trible
Murphy, Pa.	Rudd	Tucker
Murtha	Ruppe	Udall
Myers, Michael	Russo	Ullman
Natcher	Ryan	Van Deerlin
Nedzi	Satterfield	Vander Jagt
Nichols	Sawyer	Vanik
Nowak	Scheuer	Vento
Oberstar	Schroeder	Volkmer
Obey	Schulze	Waggonner
Ottinger	Sharp	Walgren
Panetta	Shuster	Wampler
Patten	Sikes	Watkins
Pattison	Simon	Weaver
Pease	Skelton	Weiss
Perkins	Slack	Whalen
Pettis	Smith, Nebr.	Whitehurst
Price	Solarz	Whitley
Pursell	Spence	Whitten
Quillen	St Germain	Wilson, C. H.
Rahall	Staggers	Winn
Railsback	Stangeland	Wirth
Regula	Steed	Wolff
Reuss	Steers	Wylie
Rhodes	Stockman	Yates
Richmond	Stokes	Yatron
Rinaldo	Stratton	Young, Fla.
Roberts	Studds	Young, Mo.
Robinson	Stump	Zablocki
	Symms	Zeferetti

NAYS—10

Brown, Mich.	Ichord	Walker
Collins, Tex.	Jacobs	Wilson, Bob
Coughlin	Lloyd, Calif.	
Forsythe	Quayle	

ANSWERED "PRESENT"—3

McEwen	Moss	Stanton

NOT VOTING—126

Addabbo	Clausen, Don H.	Garcia
Ambro	Clay	Gaydos
Ammerman	Cleveland	Gibbons
Anderson, Ill.	Cochran	Goldwater
Armstrong	Cohen	Hannaford
Ashbrook	Conyers	Harrington
Badham	Corman	Harsha
Beard, Tenn.	Cotter	Heckler
Boggs	Crane	Heftel
Breaux	Dellums	Holland
Broomfield	Dent	Huckaby
Brown, Ohio	Diggs	Ireland
Buchanan	Dingell	Jeffords
Burgener	Edwards, Ala.	Jenrette
Burke, Calif.	Edwards, Okla.	Jones, N.C.
Burke, Fla.	Evans, Del.	Kasten
Burton, John	Evans, Ga.	Kemp
Byron	Fascell	Krueger
Caputo	Flowers	Lott
Carney	Fraser	Lujan
Cavanaugh	Frey	Luken
Chisholm		McCloskey

Statements or insertions which are not spoken by the Member on the floor will be identified by the use of a "bullet" symbol, i.e., ●

McCormack	Patterson	Sisk
McDonald	Pepper	Skubitz
McKay	Pickle	Smith, Iowa
McKinney	Pike	Snyder
Mann	Poage	Spellman
Marlenee	Pressler	Stark
Marriott	Preyer	Steiger
Mathis	Pritchard	Teague
Metcalfe	Quie	Thone
Milford	Rangel	Tsongas
Miller, Calif.	Risenhoover	Walsh
Mitchell, Md.	Rodino	Waxman
Moorhead, Pa.	Rooney	White
Murphy, Ill.	Rostenkowski	Wiggins
Myers, Gary	Rousselot	Wilson, Tex.
Myers, John	Runnels	Wright
Neal	Santini	Wydler
Nix	Sarasin	Young, Alaska
Nolan	Sebelius	Young, Tex.
O'Brien	Seiberling	
Oakar	Shipley	

So the Journal was approved.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 1427. An act for the relief of Marie Grant;

H.R. 3460. An act for the relief of William J. Elder and the estate of Stephen M. Owens, deceased;

H.R. 5097. An act for the relief of Doctor Daryl C. Johnson; and

H.R. 6760. An act for the relief of Charles M. Metott.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 6506) entitled "An act to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. RIBICOFF, Mr. EAGLETON, Mr. SASSER, and Mr. MATHIAS to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 2640) entitled "An act to reform the civil service laws," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. RIBICOFF, Mr. EAGLETON, Mr. CHILES, Mr. SASSER, Mrs. HUMPHREY, Mr. PERCY, Mr. JAVITS, Mr. STEVENS, and Mr. MATHIAS to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 3337. An act to terminate, in the year 1979, further construction of the Cross-Florida Barge Canal project, to adjust the boundary of the Ocala National Forest, Fla., and for other purposes.

FATHER JAMES O'SULLIVAN

(Mr. SKELTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SKELTON. Mr. Speaker, today I have the distinct privilege of welcoming to the U.S. House of Representatives Father James O'Sullivan, pastor of St. Peter's Catholic Church in Marshall, Mo. Father O'Sullivan has offered today's opening prayer.

Father O'Sullivan was born in Cork City, Ireland. When a child he moved to a farm in that country and attended a rural school. Father O'Sullivan received his higher education in Ireland. He is responsible for introducing into this nation The Presentation Brothers teaching order, an act that is credited with greatly benefiting central Missouri students. Father O'Sullivan has been dean of the Marshall Deanery of the Diocese of Jefferson City, Mo.

He has been a priest since 1960 and a pastor since 1964. Father O'Sullivan served as the associate pastor of Immaculate Conception Church in Jefferson City. He was also the associate pastor of St. Brendan's Church in Mexico, Mo., prior to becoming pastor of St. Patrick's Church in Jonesburg, Mo. St. Patrick's Church in Gravois Mills, Mo., was Father O'Sullivan's next pastorship before accepting his present position in Marshall. He is extremely well regarded in the Marshall area, highly respected by all who know him. It is an honor to have a person of Father James O'Sullivan's stature offering today's opening prayer.

INTRODUCTION OF RESOLUTION CONCERNING NEW PROPOSAL FOR NATIONAL PROPERTY TAX RELIEF

(Mr. BROWN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of California. Mr. Speaker, it is my privilege to bring to the attention of my colleagues, and introduce a resolution concerning, a startling new proposal for national property tax relief.

The plan has come to be known as the McCarthy plan, named for its creator, Mr. Pat McCarthy, a Democratic candidate for the 11th Congressional District of Massachusetts.

Simply put, the McCarthy plan calls for the payment of Federal funds in the amount of 50 percent of the base-year property tax to communities, provided communities allow an equal reduction in the amount of individual property taxes.

As I understand it, Mr. Speaker, this plan would require less Federal revenues expended than those under the Federal tax reduction plan submitted to the Congress by the President.

It is also important to note that the distinguished former Chairman of the President's Council of Economic Advisers and now a senior fellow at the Brookings Institution, Mr. Arthur Okun, has reviewed the McCarthy plan and believes it would have a significant anti-inflationary effect—leading to a one-time reduction of between 1½ and 2 percent in the Consumer Price Index.

CONFERENCE REPORT ON S. 2701, AMENDING THE WATER RESOURCES PLANNING ACT

Mr. MEEDS. Mr. Speaker, I call up the conference report on the Senate bill (S. 2701) to amend the Water Resources Planning Act (79 Stat. 244, as amended), and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of August 15, 1978.)

Mr. MEEDS (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the statement.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

The SPEAKER. The gentleman from Washington (Mr. MEEDS) will be recognized for 30 minutes, and the gentleman from Idaho (Mr. SYMMS) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Washington (Mr. MEEDS).

Mr. MEEDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the conference report on S. 2701 provides two significant changes from the bill passed in the House. I will explain the disposition of each of these differences.

First, the Senate bill authorized $3,328,000 for administration of the Water Resources Council and for financing certain other nontitle II activities, while the House-passed bill authorized no appropriations for this activity, abolished the Water Resources Council, and transferred its functions to the Secretary of the Interior. The conference report accepts the Senate language but reduces the amount authorized to be appropriated to the amount of $2,668,000.

Next, the conference provides that funds in the amount of $459,000 be authorized for the Great Lakes water and energy study. The Great Lakes study had been omitted from the House-passed bill. In all other respects the conference report is identical to the bill passed by the House. In summary, the outlays provided in the conference report are $3,127,000 higher than that in the original House-passed bill. Lastly, the amendments are clearly germane.

Mr. SYMMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I concur with the remarks of the distinguished chairman of our Water and Power Subcommittee and will assure the Members on this side of the aisle that the amendments to the original bill are acceptable to the minority members of the commitee.

Our earlier action in abolishing the Water Resources Council was an action well taken. And even though the Coun-

cil is reestablished in this conference report, I am certain that we have made our point to the administration. We have shown them in very understandable terms that the days of administrative foot-dragging on programs mandated by the Congress are over, so far as our committee is concerned.

I am trustful that our message will not go unobserved by not only the Water Resources Council but by other agencies, such as the Office of Water Research and Technology; and that we will begin to see some positive responses from these agencies on programs that have been suffering from bureaucratic roadblocks and delays.

I join with the gentleman from Washington in urging the acceptance of this conference report.

Mr. MEEDS. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. BROWN).

Mr. BROWN of California. Mr. Speaker, I rise in support of the conference report on S. 2701, the Water Resources Planning Act, fiscal year 1979. I would also cite the joint statement of the committee of conference which the gentleman from Washington (Mr. MEEDS) presented when filing the report on August 15, 1978.

One action which I particularly approve is that of retaining the Water Resources Council as an administrative unit. Responsibilities for the management of water resources are scattered among the executive agencies. I believe the Council's role in harmonizing such responsibilities is important, and I believe it is essential that some executive office perform that role. The Council has done this by establishing principles, standards, and procedures for the formulation and evaluation of Federal water resource projects.

The conferees' joint statement notes that their action regarding the Council was predicated on an intensive review by the House and the Senate, within the next year, of the President's proposed water policy, as announced on June 6, 1978. I would note that in his water policy message, the President added a project review function to the Water Resource Council, and added a water conservation component to all water resource planning.

I have recently introduced a bill, H.R. 13946, to promote and assist in the conduct of environmental research and development on ground water. Ground water is a major source of water supply in the United States. I am concerned that in many areas this supply is threatened both with respect to its quality and to its quantity. I recognize that all our water resources are linked in a hydrologic cycle and that planning for one resource may affect others. It is important that we develop and maintain adequate institutional mechanisms for the coordination, assessment, and technological transfer of information about those resources.

If the Water Resource Council's role can be continued and extended, I would expect that new initiatives regarding ground water would be included with such extensions.

The Office of Technology Assessment is considering a study of national water supply and demand. This study should be timely and helpful to a congressional review of water policy. Such considerations as this add to my feelings that the time period embraced by S. 2071 will be one of considerable significance for integrated water resource planning and policies for the whole of our Nation.

I therefore urge my colleagues to support the conference report.

Mr. MEEDS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I thank the distinguished gentleman from Washington for yielding. The House should refresh its memory about this legislation. All of those Members who spoke are obviously in support; I am not.

Our committee, the Committee on the Interior, on two occasions voted by narrow margins to repeal the existence of this Council this year, in one of its rare acts of statesmanship in which a Federal agency was actually abolished. I am still not convinced, despite the water policy argument that is now going on, that we should not stand by that decision and end the duplication this council represents.

For that reason, I must oppose the conference report. But we came very close to doing the impossible, and that is repealing the near eternal existence of a Federal agency. Maybe next year.

Mr. MEEDS. Mr. Speaker, I appreciate the position of the gentleman from Maryland (Mr. BAUMAN).

● Mr. VENTO. Mr. Speaker, I fully support the conference report on S. 2701, the Water Resources Planning Act. The passage of this bill will be an important first step in the development of a comprehensive and effective national water policy.

There is an urgent need for a sensible water policy, one that utilizes this precious resource in a rational manner and helps to preserve a resource that is so valuable to our Nation. The President has already sent his proposals for a national water policy to Congress and I am certain that the consideration of this and other proposals will be a major issue facing the 96th Congress.

Whatever the results of the future deliberations over water and its use, it will be imperative that the policy implementation be carried out by an effective executive body. That is why this bill is so important. S. 2701 authorizes the continuation of the Water Resources Council. The WRC has been responsible for many important aspects of water policy and is the logical executor of any comprehensive water policy. Since its inception, the WRC has dealt with a wide range of functions including: assessing national and regional water supplies; coordinating Federal, State, regional, and river basin water programs; administering a program of grants to States to assist in improving non-Federal water resource planning capability; and administering a grant program to river basin commissions to pay the Federal share of their operating costs.

While the WRC has not met all the expectations that Congress originally intended, it has performed admirably in spite of an inadequate budget, congressional scorn and executive branch jealousies. I believe that given a new commitment by the President and the Congress, the WRC will fulfill its responsibilities and will play a crucial role in the development and implementation of our national water policy.

As a member of the conference committee on S. 2701, I believe that this bill is essential for the development of our water policy and I urge my colleagues to support the conference report on S. 2701.●

Mr. MEEDS. Mr. Speaker, I have no further requests for time and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on the conference report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. DAVIS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 304, nays 22, not voting 106, as follows:

[Roll No. 783]

YEAS—304

Abdnor	Byron	Fary
Addabbo	Carr	Fascell
Akaka	Carter	Fenwick
Alexander	Cavanaugh	Findley
Anderson, Calif.	Cederberg	Fish
	Chisholm	Fisher
Andrews, N.C.	Coleman	Fithian
Andrews, N. Dak.	Collins, Ill.	Flood
	Conable	Florio
Annunzio	Conte	Flynt
Applegate	Corcoran	Foley
Ashley	Cornell	Ford, Mich.
Aspin	Cornwell	Ford, Tenn.
AuCoin	Coughlin	Forsythe
Bafalis	Cunningham	Fowler
Baldus	D'Amours	Fraser
Barnard	Daniel, R. W.	Frenzel
Baucus	Danielson	Fuqua
Beard, R.I.	Davis	Gammage
Bedell	de la Garza	Garcia
Beilenson	Delaney	Gephardt
Benjamin	Derrick	Giaimo
Bennett	Derwinski	Gilman
Bevill	Dickinson	Ginn
Biaggi	Dingell	Glickman
Bingham	Dodd	Gonzalez
Blanchard	Dornan	Goodling
Blouin	Downey	Gore
Boland	Drinan	Gradison
Bolling	Duncan, Oreg.	Green
Bonior	Duncan, Tenn.	Gudger
Bonker	Early	Guyer
Bowen	Eckhardt	Hagedorn
Brademas	Edgar	Hall
Breckinridge	Edwards, Calif.	Hamilton
Brinkley	Edwards, Okla.	Hammer-schmidt
Brooks	Eilberg	
Brown, Calif.	Emery	Hanley
Broyhill	English	Hansen
Buchanan	Erlenborn	Harkin
Burke, Mass.	Ertel	Harris
Burlison, Mo.	Evans, Colo.	Hawkins
Burton, Phillip	Evans, Ga.	Hefner
Butler	Evans, Ind.	Heftel

Hightower	Mikva	Sharp
Hillis	Miller, Ohio	Shuster
Holland	Mineta	Sikes
Hollenbeck	Minish	Simon
Holtzman	Mitchell, Md.	Skelton
Horton	Mitchell, N.Y.	Slack
Howard	Moakley	Smith, Nebr.
Hubbard	Moffett	Snyder
Hughes	Mollohan	Solarz
Hyde	Moore	Spence
Jacobs	Moorhead, Calif.	St Germain
Jenkins		Staggers
Johnson, Calif.	Moss	Stangeland
Johnson, Colo.	Mottl	Stanton
Jones, Okla.	Murphy, N.Y.	Steed
Jones, Tenn.	Murphy, Pa.	Steers
Jordan	Murtha	Stockman
Kastenmeier	Myers, Michael	Stokes
Kazen	Natcher	Stratton
Kemp	Neal	Studds
Keys	Nedzi	Symms
Kildee	Nichols	Thompson
Kindness	Nowak	Thornton
Kostmayer	O'Brien	Traxler
Krebs	Oberstar	Treen
LaFalce	Obey	Trible
Lagomarsino	Ottinger	Tucker
Latta	Panetta	Udall
Le Fante	Patten	Ullman
Leach	Pattison	Van Deerlin
Lederer	Pease	Vanik
Leggett	Perkins	Vento
Lehman	Pettis	Volkmer
Lent	Preyer	Waggonner
Levitas	Price	Walgren
Livingston	Pursell	Walker
Lloyd, Calif.	Quillen	Wampler
Lloyd, Tenn.	Railsback	Watkins
Long, La.	Rangel	Weaver
Long, Md.	Regula	Weiss
Lundine	Reuss	Whalen
McClory	Rhodes	Whitehurst
McDade	Richmond	Whitley
McEwen	Rinaldo	Whitten
McFall	Robinson	Wiggins
McHugh	Roe	Wilson, Bob
McKay	Rogers	Wilson, C. H.
Madigan	Roncalio	Winn
Maguire	Rose	Wirth
Mahon	Rosenthal	Wolff
Markey	Roybal	Wylie
Marks	Rudd	Yates
Martin	Russo	Yatron
Mattox	Satterfield	Young, Fla.
Mazzoli	Sawyer	Young, Mo.
Meeds	Scheuer	Young, Tex.
Meyner	Schroeder	Zablocki
Michel	Schulze	Zeferetti
Mikulski	Seiberling	

NAYS—22

Archer	Daniel, Dan	Montgomery
Bauman	Devine	Rahall
Brodhead	Dicks	Roberts
Brown, Mich.	Flippo	Ruppe
Burleson, Tex.	Fountain	Stump
Chappell	Grassley	Vander Jagt
Clawson, Del	Holt	
Collins, Tex.	Ichord	

NOT VOTING—106

Ambro	Goldwater	Pickle
Ammerman	Hannaford	Pike
Anderson, Ill.	Harrington	Poage
Armstrong	Harsha	Pressler
Ashbrook	Heckler	Pritchard
Badham	Huckaby	Quayle
Beard, Tenn.	Ireland	Quie
Boggs	Jeffords	Risenhoover
Breaux	Jenrette	Rodino
Broomfield	Jones, N.C.	Rooney
Brown, Ohio	Kasten	Rostenkowski
Burgener	Kelly	Rousselot
Burke, Calif.	Krueger	Runnels
Burke, Fla.	Lott	Ryan
Burton, John	Lujan	Santini
Caputo	Luken	Sarasin
Carney	McCloskey	Sebelius
Clausen, Don H.	McCormack	Shipley
	McDonald	Sisk
Clay	McKinney	Skubitz
Cleveland	Mann	Smith, Iowa
Cochran	Marlenee	Spellman
Cohen	Marriott	Stark
Conyers	Mathis	Steiger
Corman	Metcalfe	Taylor
Cotter	Milford	Teague
Crane	Miller, Calif.	Thone
Dellums	Moorhead, Pa.	Tsongas
Dent	Murphy, Ill.	Walsh
Diggs	Myers, Gary	Waxman
Edwards, Ala.	Myers, John	White
Evans, Del.	Nix	Wilson, Tex.
Flowers	Nolan	Wright
Frey	Oakar	Wydler
Gaydos	Patterson	Young, Alaska
Gibbons	Pepper	

The Clerk announced the following pairs:

On this vote:

Mrs. Boggs for, with Mr. McDonald against.

Until further notice:

Mr. Ambro with Mr. Harsha.
Mr. Rostenkowski with Mr. Pressler.
Mr. Teague with Mr. Anderson of Illinois.
Mr. Wright with Mr. Kasten.
Mr. Pepper with Mr. Lujan.
Mr. Cotter with Mr. Brown of Ohio.
Mr. Carney with Mrs. Heckler.
Mr. John L. Burton with Mr. Quie.
Mr. Mathis with Mr. Sarasin.
Mr. Breaux with Mr. Steiger.
Mr. Hannaford with Mr. Walsh.
Mr. Rodino with Mr. Marriott.
Mr. Rooney with Mr. Badham.
Mr. McCormack with Mr. Broomfield.
Mr. Moorhead of Pennsylvania with Mr. Kelly.
Mr. Murphy of Illinois with Mr. Lott.
Mr. Nix with Mr. Quayle.
Mr. Dellums with Mr. Burgener.
Mr. Dent with Mr. Cleveland.
Mr. Gaydos with Mr. Crane.
Mr. Krueger with Mr. Frey.
Mr. Mann with Mr. Goldwater.
Mrs. Burke of California with Mr. Marlenee.
Mr. Miller of California with Mr. McCloskey.
Mr. Stark with Mr. Skubitz.
Mrs. Spellman with Mr. Rousselot.
Mr. Santini with Mr. Sebelius.
Mr. Shipley with Mr. Taylor.
Mr. Jenrette with Mr. Gary A. Myers.
Mr. Risenhoover with Mr. Edwards of Alabama.
Mr. Sisk with Mr. Cohen.
Mr. Waxman with Mr. Caputo.
Mr. Ireland with Mr. Thone.
Mr. Metcalfe with Mr. Wydler.
Ms. Oakar with Mr. John T. Myers.
Mr. Pickle with Mr. Evans of Delaware.
Mr. Ammerman with Mr. Cochran of Mississippi.
Mr. Clay with Mr. Ashbrook.
Mr. Nolan with Mr. Jeffords.
Mr. Charles Wilson of Texas with Mr. Beard of Tennessee.
Mr. Runnels with Mr. Burke of Florida.
Mr. Pike with Mr. Don H. Clausen.
Mr. Harrington with Mr. Milford.
Mr. Corman with Mr. McKinney.
Mr. Diggs with Mr. Young of Alaska.
Mr. Conyers with Mr. Pritchard.
Mr. Flowers with Mr. Luken.
Mr. Jones of North Carolina with Mr. Gibbons.
Mr. Huckaby with Mr. Tsongas.
Mr. Patterson of California with Mr. Smith of Iowa.
Mr. White with Mr. Ryan.

Messrs. ARCHER, RUPPE, and GRASSLEY changed their vote from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MEEDS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

PROCEEDINGS AGAINST HANCHO C. KIM

Mr. FLYNT. Mr. Speaker, by direction of the Committee on Standards of Official Conduct, I call up a privileged report (Rept. No. 95–1214) and ask for its immediate consideration.

The SPEAKER. The Clerk will read the report.

The Clerk read as follows:

PROCEEDINGS AGAINST HANCHO C. KIM

(May 24, 1978.—Referred to the House Calendar and ordered to be printed)

(Mr. FLYNT, from the Committee on Standards of Official Conduct, submitted the following report:)

INTRODUCTION

On May 15, 1978, Hancho C. Kim ("Kim"), having been summoned as a witness by the authority of the Committee on Standards of Official Conduct (the "Committee") pursuant to a subpena[1] of the said committee, appeared before Hon. Richardson Preyer, a member of the committee, in executive session for a deposition to be conducted pursuant to the authority of House Resolution 252, 95th Congres, first session.[2] At the deposition Kim refused to answer the following question:

Did there come a time when you received some money from Kim Sang Keun?

Mr. Preyer found Kim's refusal to answer contemptuous, and, thereafter, the committee, a quorum being present, authorized its chairman, Hon. John J. Flynt, Jr., ayes, nine, nays, zero, to file this report and to offer a resolution directing the Speaker of the House to certify this report to the U.S. attorney for the District of Columbia to the end that Kim be prosecuted for criminal contempt of Congress, pursuant to the provisions of title 2, U.S. Code, sections 192 and 194.

This report sets forth more fully the facts constituting Kim's contempt.

THE FACTS

House Resolution 252, unanimously adopted by the House on February 9, 1977, provides in part that "information has come to the attention of the House of Representatives alleging that Members of the House of Representatives have been the object of efforts by certain foreign governments or persons and organizations acting on behalf of foreign governments (including the Government of the Republic of Korea) to influence the Member's official conduct by conferring things of value on them or on members of their immediate families or their business or political associates" and directs the committee to conduct a "full and complete inquiry and investigation to determine whether Members of the House of Representatives, their immediate families, or their associates accepted anything of value, directly or indirectly, from the Government of the Republic of Korea or representatives thereof."

Pursuant to that resolution, on October 19 and 20, 1977, the Committee heard testimony in public session from Kim Sang Keun.[3] From October 1970 until November 1976 Kim Sang Keun was a Korean diplomat stationed at the Korean Embassy in Washington, D.C., and an agent of the Korean Central Intelligence Agency. In 1974 and 1975 he delivered a

[1] The subpena is set forth in app. I. It was authorized on July 14, 1977, and served on Kim on Nov. 17, 1977.

[2] H. Res. 252 is set forth in app. II. Section 4(a)(1)(A) authorizes "the taking of a deposition by any member of the committee."

[3] That testimony is set forth in the hearings before the Committee on Standards of Official Conduct Pursuant to H.R. 252, Korean Influence Investigation (pt. I), 95th Cong., 1st sess., pp. 32–75 (1977).

total of $600,000 in cash to Hancho K. Kim. Kim told him that this money was to be used to influence Members of the House of Representatives in the performance of their official duties. Indeed, Kim reported to Kim Sang Keun the identity of five Congressmen, referred to by the code name "Advance Guard," whom he said he had paid off in furtherance of this venture. Hancho Kim boasted that in carrying out the plan to pay off Members of Congress and to influence the executive branch of the U.S. Government, the American media and the American academic community, he had spent over $700,000.

In view of this evidence, the committee served Hancho C. Kim with a subpoena commanding his appearance before the Committee at a deposition.

In the meantime, on September 27, 1977, a Federal grand jury sitting in the District of Columbia indicated Kim and charged him with conspiring:

"To defraud the United States and the Congress of the United States in connection with the performance of their lawful governmental functions: (a) of and concerning the right of the Congress and the Executive Branch of the United States, to have their deliberations and official actions conducted, free from corruption, fraud, improper and undue influence, dishonesty, malfeasance, unlawful impairment and obstruction; and (b) of and concerning the right of the United States to have U.S. Congressmen and other Government officials transact the business of the Congress of the United States and other departments and agencies of the United States free from corruption, fraud, improper and undue contacts and influence, dishonesty, malfeasance, unlawful impairment and obstruction."

The grand jury also charged Kim with committing perjury on September 22, 1976, when he appeared before the grand jury and denied under oath receiving any money from Kim Sang Keun. On the same day, a Federal grand jury sitting in Baltimore charged Kim and his wife with two counts of income tax evasion.

Prior to Kim's deposition, his attorneys raised various objections to his testifying and requested the opportunity to argue these objections to the Chairman and Ranking Minority Member of the Committee. Their request was granted.

On November 16, 1977, Chairman John J. Flynt, Jr., and the Honorable Floyd Spence, the Ranking Minority Member of the Committee, overruled these objections in a four-page order. Chairman Flynt and Ranking Minority Member Spence issued this order only after having received a fifteen-page memorandum from the attorneys for Kim, an answering memorandum from Special Counsel to the Committee conducting the Korean Influence Inquiry and a reply memorandum from Kim's attorneys[4] and only after having heard extensive oral arguments by Kim's attorneys and by Counsel to the Special Staff to the committee conducting the Korean Influence Inquiry. The facts and Kim's arguments are concisely set forth in Chairman Flynt's and Ranking Minority Member Spence's Order of November 16, 1977, which provides as follows:

BEFORE THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT U.S. HOUSE OF REPRESENTATIVES

In re Hancho C Kim, a witness before the committee, and request of witness to be excused from testifying.

ORDER

Statement of facts

The House Committee on Standards of Official Conduct (hereinafter referred to as the HCSOC) on the 13th day of July 1977 authorized the issuance and service of a subpoena on one Hancho C. Kim.

Thereafter, Hancho Kim's attorney advised committee counsel that, if called as a witness, Mr. Kim would decline to testify, giving as his reason therefore his constitutional right against self-incrimination.

Thereafter, by a vote of not less than eight affirmative votes, the HCSOC authorized Special Counsel to seek an order granting immunity to said witness, which application was duly filed and such immunity order granted on the 13th day of October 1977 by William B. Bryant, Chief Judge, U.S. District Court of the District of Columbia.

Thereafter, the witness, through his counsel, requested a hearing before the Chairman and the Ranking Minority Member of the HCSOC, asking for a specific ruling on whether, notwithstanding the order granting immunity to such witness, said witness should be required to testify during the pendency of indictments against him in two U.S. District Courts involving facts upon which he reasonably apprehends that he will be asked to give answers before the HCSOC.

The Chairman and the Ranking Minority Member of the HCSOC, in response to such application, set the date of November 8, 1977, as the date for filing any written request with supporting briefs and other documents, and set the hearing on such application for Monday, November 14, 1977 at 2 p.m. in the U.S. Capitol.

The application, with supporting brief consisting of 15 pages and two exhibits, was filed by counsel for witness, and a brief (memorandum) was also filed by Special Counsel of the HCSOC. Counsel for witness and Special Counsel for the committee appeared and made oral arguments in support of their respective positions. Counsel for witness requested time to file a reply brief to the brief (memorandum) of committee counsel, and counsel for witness was given until 1 p.m., Wednesday, November 16, 1977 within which time to prepare a reply brief and serve it upon committee counsel and with the committee.

The hearing at 2 p.m., November 14, 1977 in room H–140 of the U.S. Capitol, with consent of counsel for witness, was not reported but the undersigned are not aware of any disagreement with the facts as related above.

Counsel for witness stated that he is not seeking to permanently withhold the testimony of such witness from this Committee, but is asking that such compulsory testimony be delayed until after the trial in U.S. District Court for the District of Columbia on the indictment naming Hancho C. Kim and filed in said court on the 27th day of September 1977.

Counsel for witness contends that compelling the testimony of said witness at this time violates his rights in that it would constitute:

I

(A) A violation of the privilege against self-incrimination.

(B) A violation of his VI Amendment rights.

(C) A violation of due process.

II

(A) A violation of marital privilege.

(B) A violation of witness' rights under 18 U.S.C. 2510 et seq. (illegal electronic surveillance).

Special Council for the HDCOC responds to each of the foregoing claims of witness and in response to II(B) denies that any evidence heretofore obtained by the Committee was obtained by any illegal electronic surveillance. Counsel for witness and Special Counsel for Committee have cited numerous cases purporting to sustain their respective positions.

CONCLUSION

The Chairman and the Ranking Minority Member of the HCSOC have read all briefs and memoranda submitted by counsel for witness and Special Counsel to the Committee and have applied all citations to the facts in this case. Having done so, the undersigned are of the individual and joint opinion that the witness, Hancho C. Kim, be directed to appear before a designated member of the Committee on Thursday, November 17, 1977, then and there to answer such questions as shall be propounded to said witness by the Committee member and/or Special Counsel to the Committee.

The undersigned are of the opinion that the prompt testimony of Hancho C. Kim is absolutely necessary to enable the Committee to carry out the inquiry mandated by House Resolution 252 and that to rule otherwise would be to question the ability of the U.S. District Court to properly safe-guard the rights accorded the witness under the order granting immunity to such witness. We must assume that the Court is competent to protect such rights and that it will, in fact, protect such rights.

The undersigned hereby direct that the testimony of the witness, Hancho C. Kim, be taken as if in executive session and that the transcript of such testimony be restricted to an original copy only and that every precaution be taken to safe-guard the confidentiality and secrecy of such testimony until such time as a majority of the Committee may vote to release such testimony.

This 16th day of November 1977 in the City of Washington, District of Columbia.

JOHN J. FLYNT, JR.,
Chairman.

FLOYD SPENCE,
Ranking Miniority Member.

Thereafter, Kim testified before the Committee at depositions on November 17, 1977; November 23, 1977; December 9, 1977; and January 12, 1978. At these depositions, however, Kim was not asked about his dealings with Kim Sang Keun or his relationship to the Korean government. At Kim's appearance on January 12, 1978, the subpoena directed to Kim was adjourned *sine die*. By letter dated May 9, 1978, Chairman Flynt informed Hancho C. Kim's attorneys that the subpoena was returnable on May 15, 1978.[5]

In the meantime, on April 8, 1978, a jury sitting in the United States District Court for the District of Columbia found Hancho Kim guilty of the charges of conspiracy and perjury. A judgment of conviction was entered against Kim on May 19, 1978.

At the deposition on May 15, 1978, Hancho Kim was first sworn. He had previously been granted immunity from any prosecution based upon any testimony he gives.[6] Thereupon, Kim willfully refused to answer the following question:

Did they come a time when you received money from Kim Sang Keun?[7]

In response to this question, Kim, through his attorneys, interposed the same objections which had been previously extensively argued to Chairman Flynt and Ranking Minority Member Spence and which had been overruled. These objections were again overruled by the Honorable Richardson Preyer, who was presiding over the deposition.

Notwithstanding the fact that Chairman Flynt, Mr. Preyer and Mr. Spence had overruled their objections, Kim's attorneys persisted in their objections and directed their client not to answer the question posed to him. Thereupon, Representative Preyer found that Kim had refused to answer the question,

[4] Kim's memorandum, the answering memorandum from Special Counsel and Kim's reply memorandum are set forth in appendices III to V, respectively.

[5] The Chairman's letter is set forth in Appendix VI.

[6] The Order Conferring Immunity Upon and Compelling Testimony and Production of Information from Hancho C. Kim, pursuant to title 18, United States Code, Section 6005, was communicated to Hancho C. Kim on November 17, 1977, and is set forth in Appendix VII.

[7] The official transcript of the deposition of May 15, 1978, is set forth in Appendix VIII.

and found his refusal to be contemptuous. Kim's attorneys asked for an opportunity to appear to argue their case before the full committee, and Mr. Preyer granted their request.

On May 17, 1978, the Committee met in executive session. It heard extensive arguments from Kim's attorneys and from Counsel to the Special Staff Conducting the Korean Influence Inquiry.[8] All counsel were then excused from the meeting and the committee voted, ayes nine, nays zero, to adopt the following resolution.

RESOLUTION WITH RESPECT TO THE CONTEMPT OF HANCHO C. KIM

Resolved, That the Chairman of the Committee on Standards of Official Conduct shall submit to the House of Representatives the Report of the Committee on Standards of Official Conduct In Proceedings Citing Hancho C. Kim for Contempt of Congress and the said Chairman shall offer a resolution directing that the Speaker of the House of Representatives certify the said Report with respect to the refusal of the said Hancho C. Kim to answer a question at a deposition being conducted by the committee pursuant to the authority of H. Res. 252, 95th Congress, First Session, to the United States Attorney for the District of Columbia, pursuant to Title 2, United States Code, Sections 192 and 194, to the end that the said Hancho C. Kim may be proceeded against in the manner and form provided by law.

Such disclosures of any proceedings in executive session with respect to the witness Hancho C. Kim as may be necessary to effectuate this resolution are hereby authorized.

Provided, however, That this resolution shall be of no force or effect if the Special Counsel determines that the said Hancho C. Kim has submitted to a full and complete deposition prior to Friday, May 19, 1978.

Provided further, That if the Special Counsel determines that the said Hancho C. Kim is persisting in his contemptous conduct after Friday, May 19, 1978, the Committee at a subsequent meeting thereof will consider whether to initiate civil contempt proceedings against the said Hancho C. Kim.

Although the committee's resolution gave Kim the opportunity to avoid a contempt proceeding by answering the Committee's question, Kim appeared on May 18, 1978, with his attorneys, at a deposition before the Honorable Millicent Fenwick a Member of the Committee, and persisted in his refusal to answer the question. Mr. Kim also refused to answer related questions.[9]

RECOMMENDATION OF THE COMMITTEE

Pursuant to the resolution set forth above, the Committee recommends the adoption of the following resolution:

Resolved, That the Speaker of the House certify the Report of the Committee on Standards of Official Conduct with respect to the Proceedings against Hancho C. Kim, which report details the refusal of the said Hancho C. Kim, to answer a question in a proceeding being conducted by the said Committee pursuant to the authority of H. Res. 252, 95th Congress, 1st Session, to the U.S. Attorney for the District of Columbia, pursuant to Title 2, United States Code, Sections 192 and 194, to the end that the said Hancho C. Kim may be proceeded against in the manner and form provided by law.

[8] The transcript of this portion of the committee's meeting of May 17, 1978, is set forth in Appendix IX.

[9] See the letter of Leon Jaworski, special counsel to the committee conducting the Korean Influence Inquiry, set forth in appendix X. The transcript of these proceedings is set forth in appendix XI.

APPENDICES: APPENDIX I

[Subpena (Deposition)]

(By authority of the House of Representatives of the Congress of the United States of America).

To Hancho Kim:

You are hereby commanded to be and appear before the Standing Committee on Standards of Official Conduct of the House of Representatives of the United States, of which the Hon. John J. Flynt, Jr. is chairman, in Room H140 of the Capitol Building, in the city of Washington, on November 17, 1977, at the hour of 2:00 p.m., then and there to produce the things identified on the attached schedule and to testify on deposition touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

To any employee of the Committee on Standards of Official Conduct or any U.S. Marshal to serve and make return.

WITNESS my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 14th day of July, 1977

FLOYD SPENCE.

Attest:

EDMUND L. HENSHAW, Jr.,
Clerk.

Any questions as to compliance should be referred to David H. Belkin, Deputy Chief Counsel, (202) 225–7984.

APPENDIX II

[H. Res. 252, 95th Cong., 1st sess.]

RESOLUTION

Whereas article I, section 9, clause 8 of the United States Constitution prohibits any person holding Federal office, including Members of Congress, from accepting any present, emolument, office, or title from any foreign government without the consent of Congress; and

Whereas Congress has forbidden the receipt of political contributions from a foreign national, including a foreign government (2 U.S.C. 441e); and

Whereas the Federal Criminal Code prohibits the receipt of anything of value by any Member of Congress to influence his performance of his official duties or to reward or compensate him, other than as provided for by law, for the performance of those duties (18 U.S.C. 201, 203); and

Whereas rule XLIII of the Rules of the House of Representatives sets forth the Code of Official Conduct for Members, officers and employees of the House of Representatives and, among other things, prohibits the acceptance of any gift of substantial value, directly or indirectly, from any person, organization, or corporation having a direct interest in legislation before the Congress; and

Whereas information has come to the attention of the House of Representatives alleging that Members of the House of Representatives have been the object of efforts by certain foreign governments or persons and organizations acting on behalf of foreign governments (including the Government of the Republic of Korea) to influence the Members' official conduct by conferring things of value on them or on members of their immediate families or their business or political associates; and

Whereas clause 4(e)(1) of rule X of the Rules of the House of Representatives entrusts the Committee on Standards of Official Conduct with particular responsibility—

(A) to recommend to the House of Representatives from time to time such administrative actions as it may deem appropriate to establish or enforce standards of official conduct for Members, officers, and employees of the House of Representatives;

(B) to investigate any alleged violation, by a Member, officer, or employee of the House of Representatives, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities, and after notice and hearing, to recommend to the House of Representatives, by resolution or otherwise, such action as the committee may deem appropriate in the circumstances; and

(C) to report to the appropriate Federal or State authorities, with the approval of the House of Representatives, any substantial evidence of a violation, by a Member, officer, or employee of the House of Representatives, of any law applicable to the performance of his duties or the discharge of his responsibilities, which may have been disclosed in a committee investigation: Now, therefore be it

Resolved, That the Committee on Standards of Official Conduct be and it is hereby authorized and directed to conduct a full and complete inquiry *and investigation* to determine whether Members of the House of Representatives, their immediate families, or their associates accepted anything of value, directly or indirectly, from the Government of the Republic of Korea or representatives thereof. The scope of the inquiry *and investigation* shall be determined by the committee in its discretion and may extend to any matters relevant to discharging its responsibilities pursuant to this resolution.

SEC. 2. The committee shall report to the House of Representatives any findings, conclusions, and recommendations it deems proper with respect to the adequacy of the present Code of Official Conduct or the Federal laws, rules, regulations, and other standards of conduct applicable to the conduct of Members of the House of Representatives in the performance of their duties and the discharge of their responsibilities (1) to protect the House of Representatives against the exertion of improper influence by or on behalf of foreign governments and (2) to prohibit Members of the House of Representatives from receiving things of value under circumstances that conflict, or appear to conflict, with their obligations to perform their constitutional duties without regard to private gain or benefit.

SEC. 3. The committee, after appropriate notice and hearing, shall report to the House of Representatives its recommendations as to such action, if any, that the committee deems appropriate by the House of Representatives as a result of any alleged violation of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities.

SEC. 4. (a) For the purpose of conducting any inquiry or investigation pursuant to this resolution the committee is authorized to require—

(1) by subpena or otherwise—

(A) the attendance and testimony of any person at a hearing or at the taking of a deposition by any member of the committee; and

(B) the production of such things; and

(2) by interrogatory the furnishing under oath of such information as it deems necessary to such inquiry or investigation.

(b) The authority conferred by subsection (a) of this section may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether

such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole.

(c) Subpenas and interrogatories authorized under this section may be issued over the signature of the chairman, or ranking minority member, or any member designed by either of them. A subpena may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them and may be served, either within or without the United States on any national or resident of the United States or any other person subject to the jurisdiction of the United States.

(d) In connection with any injury or investigation pursuant to this resolution, the committee may request the Secretary of State to transmit a letter rogatory or request to a foreign tribunal, officer, or agency.

(e) Subpenas for the taking of depositions or the production of things may be returnable at specified offices of the committee or at a scheduled hearing, as the committee may direct.

(f) The chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness.

(g) For the purposes of this section, "things" includes books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions-recordings, tapes, transcripts, printout, data compilations from, which information can be obtained (translated, if necessary, into reasonably usable form), tangible objects, and other things of any kind.

SEC. 5. For the purpose of conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to sit and act, without regard to clause 2(m) of the rule XI of Rules of the House of Representatives, during the present Congress at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings, as it deems necessary.

SEC. 6. The committee is authorized to seek to participate and to participate, by special counsel appointed by the committee, on behalf of the committee and the House of Representatives in any judicial proceeding concerning or relating in any way to the inquiry or investigations conducted pursuant to this resolution.

SEC. 7. The authority conferred by this resolution is in addition to, and not in lieu of the authority conferred upon the committee by the Rules of the House of Representatives. In conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to adopt special rules of procedures as may be appropriate.

SEC. 8. Any funds made available to the committee after the adoption of this resolution may be expended for the purpose of carrying out the inquiry and investigation authorized and directed by this resolution.

APPENDIX III

(Before the Committee on Standards of Official Conduct of the House of Representatives).

In re Hearings Conducted
Pursuant to House Resolution 252.

MEMORANDUM SETTING FORTH THE CONSTITUTIONAL AND PRACTICAL REASONS WHY HANCHO C. KIM SHOULD NOT BE COMPELLED TO TESTIFY

The United States House of Representatives Committee on the Standards of Official Conduct is contemplating calling Mr. Hancho C. Kim as a witness. Toward this end on October 14, 1977, the Committee procured an "Order Conferring Immunity Upon and Compelling Testimony and Production of Information from Hancho C. Kim." Mr. Kim and his counsel appreciate this opportunity to set forth the reasons why Mr. Kim should not be compelled to testify at this time.

INTRODUCTION

On September 27, 1977, a grand jury impaneled by the United States District Court for the District of Columbia returned a two-count indictment against Hancho C. Kim. Count I alleges that Mr. Kim conspired with confederates of the government of the Republic of Korea to defraud the United States and the Congress of the United States of their respective rights to function free from corrupt and improper influence, in violation of Title 18, U.S.C. § 371. Count II charges that Kim violated 18 U.S.C. § 1623 by committing perjury before a grand jury inquiring into lobbying activities of the Korean Government. Specifically, Kim is accused of falsely testifying before the grand jury about $600,000 that he allegedly received from Sang Keun (S.K.) Kim, an agent of the Korean Central Intelligence Agency. ("K.C.I.A.") A copy of the indictment is attached as Exhibit 1.

On September 27, 1977, a grand jury impaneled by the United States District Court for the District of Maryland also returned an indictment charging Mr. Kim and his wife, Soonduk E. Kim with two counts of Income Tax Evasion in violation of Title 26, U.S.C. § 7201. The essence of these charges against the Kims is that they filed false returns because they failed to report income during the years in question. Counsel has been advised by the Government that the alleged source of the unreported income which the Government will urge was received by the Kim's related to activities of Mr. Kim for and on behalf of the South Korean Government. As the Government concedes, this tax case essentially tracks the indictment pending against Hancho Kim in the District of Columbia. Indeed, the funds allegedly received by Hancho Kim from K.C.I.A. operative S. K. Kim, which are at the core of the charges made by the District of Columbia Grand Jury, also constitute the allegedly unreported income which is the basis of the District of Maryland indictment. A copy of the indictment is attached as Exhibit 2.

The trial against Mr. Kim in the District of Columbia is scheduled to commence on January 9, 1978; the tax case against Mr. and Mrs. Kim in Maryland is presently set for trial on December 5, 1977. As such, Mr. Kim is now engaged in preparing his defense to these indictments. Clearly, the indictments allege criminal activity arising out of events which are the very subject matter of this Committee's investigation. Therefore, as more fully explained below, we believe that compelling Mr. Kim to testify before the Committee under these circumstances is not only legally improper because it infringes upon his Fifth and Sixth Amendment Rights and other privileges, but also practically unwise because it forces Mr. Kim to litigate issues before the committee that should properly be addressed in the first instance by the trial courts.

I

Compelling Kim to testify at this time violates his constitutional rights

There is a distinction of great moment between subpoenaing for questioning a witness (even one who might subsequently be indicted) and subpoenaing an *indicted* defendant for questioning on the subject of the crimes for which he is charged. The filing of the indictment marks the commencement of a "criminal prosecution." At that point, the full panoply of protective rights guaranteed to a criminal defendant by the Constitution attaches. The importance of the beginning of a criminal prosecution was emphasized by Justice Stewart in his opinion in *Kirby* v. *Illinois*, 406 U.S. 682, 689 (1972):

"The initiation of judicial criminal proceedings is far from a mere formalism. It is the starting point of our whole adversary system of criminal justice. For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified. It is then that a defendant finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law."

For this reason, compelling Mr. Kim to testify before the Committee while he is preparing his defense to criminal indictments arising out of events which are the very subject of the Committee's investigation is constitutionally impermissible. To do so, violates Kim's Fifth Amendment privileges against *self-incrimination* and his Sixth Amendment rights; it is also "fundamentally unfair" and thus violates the Due Process Clause of the Fifth Amendment.

A. Violation of the Privilege Against Self-Incrimination

Requiring Mr. Kim to appear before the Committee on the eve of two trials in which he is a criminal defendant violates his Fifth Amendment privileges against self-incrimination. The Committee seeks to compel testimony from Kim about the precise matters for which he has been indicted; his testimony will *preview* for the Government the defenses he will assert at the trials. The Fifth Amendment prohibits such a "dress-rehearsal" for the Government. This violation is not cured by granting Kim use immunity pursuant to 18 U.S.C. § 6001 *et seq.*

As a preliminary point, we question whether Congress intended the application of the use immunity device to compel testimony from an already indicted defendant. Title 18 U.S.C. § 6002, the central provision of the immunity statute, provides that use immunity may be conferred "whenever a *witness* refuses, on the basis of his privilege against self-incrimination, to testify or provide other information . . ." (Emphasis added.) As noted above, once an individual has been indicted he can no longer be classified as a *witness* because the commencement of the criminal prosecution transforms him into a defendant. The traditional purpose of use immunity is to compel testimony from a witness without foreclosing the possibility of a *subsequent* prosecution. The application of the device to compel testimony from an already indicted defendant was never concontemplated by Congress and is therefore unauthorized.

If the immunity statute was intended to apply even after an individual has been indicted, it is unconstitutional as so applied. In *Kastigar* v. *United States*, 406 U.S. 441 (1972) the Supreme Court held that the use immunity statute did not on its face violate the Fifth Amendment. However, *Kastigar* does not foreclose inquiry as to whether an immunity order issued pursuant to the statute fails to provide immunity coextensive with the scope of the Fifth Amendment privilege in a particular instance. *Application of United States Senate Select Committee on Presidential Campaign Activities*, 361 F Supp. 1270, 1279 (D.D.C. 1973).

The grant of use immunity in the present circumstances will not afford Mr. Kim protection coextensive with the Fifth Amendment for at least two reasons.

First, the Courts have held on numerous occasions that once an individual has been indicted he may not be compelled to testify before a grand jury. *United States* v. *Doss*, —— F. 2d —— (6th Cir. September 23, 1977) (*En Banc*) (while a grand jury is free to question a target of an investigation, it may not question an already indicted defendant on the subject about which he has been

charged); *United States* v. *Lawn*, 115 F. Supp. 674 (S.D.N.Y. 1953). Indeed, this doctrine has been acknowledged even when the individual has been granted immunity. *In re Liddy*, 506 F. 2d 1293, 1299 (D.C. Cir 1974).[1] This constitutional principle is fully applicable here. Simply put, once an individual has been indicted the Fifth Amendment privilege against self-incrimination prohibits him from being compelled to testify about the subject of the indictment under any circumstances.[2]

Second, the Courts have recognized that there are practical, if not theoretical, limits to the protection afforded by use immunity. For example, in *Goldberg* v. *United States*, 472 F. 2d 513 (2d Cir. 1973), the Court while upholding a grant of immunity to compel grand jury testimony of an individual arrested for an offense,[3] made clear that use immunity would not adequately protect him if he were indicted by the same grand jury that had heard his immunized testimony. The Court reasoned that no level of precaution could insure that the grand jury had not indicted on the basis of the individual's compelled testimony.

We contend that the same type of practical difficulties render the protection of use immunity inadequate here. While the Committee's sessions will be closed, we respectfully submit that a realistic assessment of the situation makes it impossible to conclude that the Government will not gain, however inadvertently, some advantage, however subtle, from Mr. Kim's compelled testimony on the eve of his criminal trials. Such an advantage gained from testimony compelled from the mouth of the defendant contravenes the cherished protections of the Fifth Amendment privilege against self-incrimination.

B. Violation of Sixth Amendment Rights

The Sixth Amendment affords a criminal defendant a series of protective rights; it guarantees a speedy and public trial, the right to confront and cross-examine the witnesses against him, the right to have compulsory process for obtaining witnesses in his favor and the right to the assistance of counsel. As the Supreme Court held in *Kirby* v. *Illinois*, supra, 406 U.S. at 690, all of these rights attach upon the filing of an indictment. Because the Committee is compelling Mr. Kim to testify about the precise subjects for which he has been indicted, the Sixth Amendment protections are fully applicable. We respectfully submit that the procedures contemplated by the Committee do not respect these rights.

One of the most central rights afforded a criminal defendant is the right to confront and cross-examine his accusers. Yet, the Committee has denied counsel's request to question witnesses appearing before the Committee.[4] Indeed, the Committee has placed a five minute limit on the cross-examination that may be conducted by any individual member of the Committee. These limitations are in direct contravention of Mr. Kim's constitutional right to confront and cross-examine witnesses.[5]

In addition, the Committee's proposed course of action violates the most fundamental tenets of the Sixth Amendment right to counsel. Mr. Kim and his counsel are presently engaged in preparing a defense to two very serious criminal indictments. The Committee is not only interfering with this preparation, but also is compelling Mr. Kim to disclose, on the eve of trial, factual matter that the Constitution intended would be voluntarily disclosed only to defense counsel.

We point out these clear violations of the Sixth Amendment not so much to demand a full-blown trial before the Committee, but rather to demonstrate the inappropriateness of compelling Mr. Kim's testimony at this time.

C. Violation of Due Process

Fundamental fairness, as embodied in the due process clause of the Fifth Amendment, has always been a touchstone of the American criminal justice system. If the Committees seeks to compel Mr. Kim to testify at this time, that time-honored principle will be violated.

Mr. Kim has been indicted for committing perjury before a grand jury investigating the lobbying activities of the Korean Government. He is charged with lying to the grand jury when he testified that the K.C.I.A. operative, S. K. Kim, never left money at his home. By now inquiring into these precise areas, the Committee places Kim in an intolerable position where he is forced to *either repeat the testimony which has already resulted in a perjury indictment or change those answers and thereby confess to a crime for which he has been indicted*. Specifically, if Kim stands by his earlier testimony and denies receipt of any money from S. K. Kim he leaves himself open to a possible second indictment for perjury, since the grant of immunity explicitly excludes from its protection a prosecution for perjury.[6] And if, he changes his testimony and admits receipt of the money he *will have prejudiced his defense to the perjury indictment by having made inconsistent statements while under oath*. See 18 U.S.C. § 1623(c) ("In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury"). Aside from the obvious self-incrimination problems that have already been discussed, placing a criminal defendant in this "Catch-22" dilemma is contrary to the most basic elements of fundamental fairness.

The Supreme Court case of *Hutcheson* v. *United States*, 369 U.S. 598 (1962) is instructive. Hutcheson, a president of a labor union, was summoned to testify before the Senate Select Committee on Improper Activities in the Labor or Management Field. At the time he was summoned he was under a state indictment for the alleged bribery of an Indiana highway official. Hutcheson was convicted of a federal crime for refusing to answer 18 of the Committee's questions pertaining to the use of union funds in connection with efforts to forestall the state bribery indictment. His refusal to answer was not based upon the privilege against self-incrimination,[7] but rather on his right to due process of law; he argued that the Committee's interrogation required that he either prejudice his defense or commit perjury and that it was a "pretrial" of the state charges before the Committee.

A majority of the Court rejected these arguments,[8] finding that many aspects of the Due Process argument were premature and could not be addressed until after a state conviction.

However, Chief Justice Warren, in a dissenting opinion joined by Justice Douglas, asserted that the interrogation was violative of the Due Process Clause. He put the constitutional issue as follows: "Is it a violation of the constitutional guarantee of due process of law for a legislative committee, under the circumstances of this case, to inquire into matters for which the witness is about to be tried under a pending indictment?" *Id.* at 628. Both Warren and Douglas answered the question affirmatively.

The majority opinion responded to the dissent in a way that clearly indicates that it did not disagree with the dissenters' constitutional analysis. Rather, it disagreed with their factual premise.

"It should be noted that although this Congressional inquiry was related to the subject matter of the state indictment, the questions that were asked of the petitioner did not bear directly on his guilt or innocence of the state charges. *Id.* at 615 n. 16."

The clear implication is that if the questions did bear directly on the pending charges the majority would have agreed that there was a due process violation.

In the present case, the questions to be asked will bear directly on Mr. Kim's guilt or innocence on the criminal charges. For this reason, *Hutcheson* supports the proposition that the questioning here will be fundamentally unfair and violative of due process.

The inherent unfairness of the situation is not apparent only to Mr. Kim. In a brief hearing regarding the immunity order, Chief Judge Bryant of the United States District Court for the District of Columbia expressed his discomfort with the proposed course of action.

"The COURT. Well, I guess you gentlemen will have to wait a few minutes. There is an odor to this that I don't quite understand.

"Mr. FORTUIN. I am sorry. I didn't hear you.

"The COURT. There is a little odor to this that I don't quite relish. This has never been done before, has it. Nobody under Federal indictment has ever been called under these circumstances, have they?

"Mr. FORTUIN. I don't know, your Honor. I don't know the answer to that question. transcript, at 16."[9]

Weighed against the inherent unfairness of Mr. Kim's dilemma is the fact that there is no apparent need for the Committee to question him at this time. Therefore, we respectfully submit that there is no justification for the Committee to refuse to delay its questioning of Mr. Kim until after his criminal trials. *See, In re Tuso*, 357 A.2d 1 (N.J. Super. Ct. App. Div. 1976).

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[1] While noting that there was "respected authority" for this proposition, the Court in *In re Liddy* was not directly confronted with the question because Liddy had already been convicted at the time he was called before the grand jury.

[2] *Cf.* 18 U.S.C. § 3481 (defendant is incompetent to testify except at his request).

[3] *Goldberg* is not authority for the compulsion of testimony pursuant to a grant of immunity of an already indicted defendant. At the time he was summoned before the grand jury, Goldberg only had a complaint filed against him. In *In re Liddy*, supra, the Court treated Goldberg as only a potential defendant. Nor is *Application of United States Senate Select Committee on Presidential Campaign Activities*, supra, to the contrary. The witness there also had not been indicted.

[4] Letter of Counsel to committee of Oct. 20, 1977.

[5] The committee has agreed in its letter of Oct. 28, 1977, to subpena witnesses suggested to it by Mr. Kim. However, this is an empty agreement because the most critical witnesses are unavailable.

[6] Indeed, a strong argument can be made that the committee's approach violates the spirit if not the letter of the double jeopardy cause because the Government may be afforded two chances to secure a conviction for what is in reality only one act of perjury.

[7] At the same time, the assertion of the privilege in a Federal proceeding would have been admissible in a State criminal case.

[8] Only six justices participated; the majority consisted of four.

[9] Chief Judge Bryant issued the order, but left open the possibility of challenging its propriety before Judge Flannery who will be presiding over the criminal case.

If Mr. Kim is ordered by the committee to testify, he will decline to do so by asserting the marital privilege and will decline to answer questions based upon illegal surveillance

A. Marital Privilege

Hancho Kim is a defendant in not only the conspiracy and false statement case pending in the District of Columbia but a codefendant as well with his wife in the tax evasion case now pending against them in the United States District Court for the District of Maryland. The United States Attorney has already urged before the Grand Jury in that case that Mrs. Kim's inclusion as a codefendant was appropriate under the evidence then available, and this committee will recall that S. K. Kim testified that she was present and witnessed the delivery of $300,000 of K.C.I.A. funds to her husband in September of 1974. Counsel for Hancho Kim wishes to candidly advise the Committee that should he be ordered to testify, he will assert on behalf of himself and his wife, both of whom are accused of criminal tax evasion in violation of 26 U.S.C. § 7201, a marital privilege not to testify against their spouse. This privilege is, of course, separate and distinct from the right of the accused not to testify against himself as guaranteed by the Fifth Amendment of the United States Constitution. Here the accused, in this case Mrs. Kim, has the spousal privilege prohibiting her husband from testifying against her, in addition to his Fifth Amendment privilege against self-incrimination.

Under Rule 501 of the Federal Rules of Evidence, "the privilege of a witness, person . . . shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." It is an established federal rule of evidence that either spouse may be barred from testifying against the other. *Hawkins* v. *United States*, 358 U.S. 74 (1958); *United States* v. *Fields*, 458 F.2d 1194, 1198–1199 (3d Cir. 1972).

Under Rule 1101(c), "[T]he rule with respect to privileges applies at all stages of all actions, cases and proceedings," and specifically, to contempt proceedings under subparagraph (b). The marital privilege is "not only for the benefit of the husband, wife and children, but for the benefit of the public as well. Such a belief has never been unreasonable and is not now." *Hawkins* v. *United States, supra* at 77. There is no reason why it should not apply with equal vitality to these proceedings.

Counsel for Hancho Kim is mindful that the Committee may seek to circumvent the invocation of the privilege by granting immunity to Mrs. Kim. Such a procedural device, however, will not overcome the privilege since the granting of immunity under 18 U.S.C. § 6002 relates solely to the witnesses' self-incrimination and not to testimony against the spouse. The dependency of the indictment against both Mr. and Mrs. Kim makes all the more viable the marital privilege under the circumstances of these proceedings. If the Committee wishes to prevail upon the Department of Justice to dismiss the indictments now pending against Mr. and Mrs. Kim, counsel would reevaluate the appropriateness of the spousal privilege in these proceedings. But as the matter now stands, the privilege prohibits Hancho Kim from testifying against his wife, and under the circumstances here, the indictment precludes him from testifying at all.

B. Illegal Electronic Surveillance

If called to testify before the Committee, Mr. Kim would request an opportunity to determine whether the questioning was in any way derived from the product of electronic surveillance, and the legality of that surveillance.

Title 18 U.S.C. § 2515 prohibits the use as evidence before this Committee of the fruits of illegal electronic surveillance.

"Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial bearing or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, *legislative committee*, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter." (Emphasis added.)

In *Gelbard* v. *United States*, 408 U.S. 41 (1972), the Supreme Court held that the refusal to answer questions before a grand jury because they were based on illegal electronic surveillance was a defense to a civil contempt charge. The Court stated:

"The purposes of § 2515 and Title III as a whole would be subverted were the plain command of § 2515 ignored when the victim of an illegal interception is called as a witness before a grand jury and asked questions based upon that interception. Moreover, § 2515 serves not only to protect the privacy of communication, but also to ensure that the courts do not become partners to illegal conduct: the evidentiary prohibition was enacted also "to protect the integrity of court and administrative proceedings." Consequently, to order a grand jury witness, on pain of imprisonment, to disclose evidence that § 2515 bars in unequivocal terms is both to thwart the congressional objective of protecting individual privacy by excluding such evidence and to entangle the courts in the illegal acts of Government agents.

"In sum, Congress simply cannot be understood to have sanctioned orders to produce evidence excluded from grand jury proceedings by § 2515. Contrary to the Government's assertion that the invasion of privacy is over and done with, to compel the testimony of these witnesses compounds the statutorily proscribed invasion of their privacy by adding to the injury of the interception the insult of compelled disclosure. And, of course, Title III makes illegal not only authorized innterceptions, but also the disclosure and use of information obtained through such interceptions. 18 U.S.C. § 2511 (1); *see* 18 U.S.C. § 2520. Hence if the prohibition of § 2515 is not available as a defense to the contempt charge, disclosure through compelled testimony makes the witness the victim, once again, of a federal crime. Finally, recognition of § 2515 as a defense "relieves judges of the anomalous duty of finding a person in civil contempt for failing to cooperate with the prosecutor in a course of conduct which, if pursued unchecked, could subject the prosecutor himself to heavy civil and criminal penalties." *In re Grand Jury Proceedings, Harrisburg, Pennsylvania (Egan)*, 450 F.2d at 220 (Rosenn, J., concurring). "And for a court, on petition of the executive department, to sentence a witness, who is herself the victim of the illegal wiretapping, to jail for refusal to participate in the exploitation of that crime in violation of the explicit command of Section 2515 is to stand our whole system of criminal justice on its head." *In re Evans*, 146 U.S. App. D.C. 310, 323, 452 F.2d 1239, 1252 (1971) (Wright, J., concurring)." *Id.* at 51–52."

The reasoning of Gelbard is fully applicable here. Congress cannot be understood to have sanctioned orders to produce evidence excluded from proceedings before legislative committees by § 2515. There is reason to believe that questioning to be propounded to Mr. Kim may be derived from electronic surveillance. Mr. Kim is justified in refusing to answer all questions based upon illegal electronic surveillance.

CONCLUSION

As Justice Brennan stated in a concurring opinion in *Hutcheson* v. *United States*, supra, 369 U.S. at 624:

"When a congressional inquiry and a criminal prosecution cross paths, Congress must accommodate the public interest in legitimate legislative inquiry with the public interest in securing the witness a fair trial. Whether a proper accommodation has been made must be determined from the vantage point of the time of petitioner's appearance before the Committee."

For the reasons set forth herein, we respectfully submit that the proper accommodation demands that the Committee stay its questioning until such time as the prejudice to Mr. Kim's right to a fair trial is eliminated.

Respectfully submitted.

WILLIAMS & CONNOLLY,
DAVID POVICH,
KENDRA E. HEYMANN,
LON S. BABBY,
Attorneys for Hancho Kim.

EXHIBIT 1 TO APPENDIX III

(In the United States District Court for the District of Columbia. Holding a Criminal Term, Grand Jury Sworn in on June 7, 1978.)

United States of America *v.* Hancho C. Kim

INDICTMENT

The Grand Jury Charges:

COUNT I

1. At all times pertinent to this indictment the Korean Central Intelligence Agency (hereafter the KCIA) was an agency of the Government of the Republic of Korea.

2. At all times material hereto, General Yang Doo Wan, also known as Lee Sang Ho (an unindicted co-conspirator herein) was an assistant to the Director of the KCIA with offices in Seoul, Korea.

3. At all times material hereto, Sang Keun Kim (an unindicted co-conspirator herein) was an employee of the KCIA stationed as a diplomatic officer at the Embassy of the Republic of Korea in Washington, D.C.

4. Beginning on or about August 15, 1974, and continuing thereafter until in or around April 1976 (the exact date being unknown to the Grand Jury), in the District of Columbia, the State of Maryland, the Republic of Korea, and elsewhere, Hancho C. Kim, the defendant herein, did willfully and knowingly, combine, conspire, confederate and agree with Yang Doo Wan, Sang Keun Kim and diverts other persons who are presently known and unknown to the Grand Jury, to defraud the United States and the Congress of the United States in connection with the performance of their lawful governmental functions and rights:

(a) of and concerning the right of the Congress and the Executive Branch of the United States to have their deliberations and official actions conducted honestly and impartially as the same should be conducted, free from corruption, fraud, improper and undue influence, dishonesty, malfeasance, unlawful impairment and obstruction, and

(b) of and concerning the right of the United States to have United States Congressmen and other government officials transact the business of the Congress of the United States and other departments and agencies of the United States free from corruption, fraud, improper and undue contracts and influence, dishonesty, malfeasance, unlawful impairment and obstruction.

5. It was a part of the said conspiracy that Hancho C. Kim would conduct a clandestine operation in the United States called "Operation White Snow" for the purposes of in-

creasing foreign aid to the Republic of Korea and of creating a favorable attitude toward the Government of the Republic of Korea and its officials.

6. It was further a part of the said conspiracy that Hancho C. Kim would receive a substantial amount of money from the KCIA for the purpose of distributing the money to members of the Congress of the United States on behalf of the Government of the Republic of Korea and its officials.

7. It was further a part of the said conspiracy that Hancho C. Kim would endeavor to indoctrinate, convert, induce, persuade, and in other ways influence members of the Congress of the United States and Executive Branch officials with reference for formulating, adopting and changing the foreign polices of the United States for the benefit of the Government of the Republic of Korea.

8. It was further a part of the said conspiracy that Hancho C. Kim would periodically report on his activities to, and receive instructions from, General Yang Doo Wan and other officials of the KCIA.

9. It was further a part of the said conspiracy that Hancho C. Kim would travel to the Republic of Korea to discuss with General Yang Doo Wan and other officials of the KCIA his accomplishments and the means of attaining the future goals of the said agreement.

10. In order to accomplish the objects of the conspiracy the following means, among others, were used by Hancho C. Kim, and his co-conspirators:

(a) Hancho C. Kim utilized his home at 6404 Martins Lane, Lanham, Maryland, where he entertained Congressmen, received and stored KCIA funds, operated a telex machine, and received instructions from, and sent information to, the KCIA;

(b) Hancho C. Kim received a total of $600,000.00 in United States currency from the KCIA to support Operation White Snow, which was delivered to him at his home by Sang Keun Kim;

(c) Hancho C. Kim expended a portion of the KCIA funds to purchase two new automobiles and expensive furnishings for his home, to entertain at home and at expensive restaurants, and to make contributions to an educational institution, all in order to impress Congressmen and others as to his financial condition.

(d) Hancho C. Kim approached and spoke with members of the House of Representatives of the United States about the economic and political conditions in the Republic of Korea for the purpose of influencing the attitude of such members of the United States Congress in favor of the Government of the Republic of Korea;

(e) General Yang Doo Wan wrote letters to Sang Keun Kim instructing Sang Keun Kim to deliver money to, and otherwise assist, Hancho C. Kim on behalf of the KCIA.

(f) Hancho C. Kim frequently met Sang Keun Kim to report on the progress of Operation White Snow, after which Sang Keun Kim did transmit the aforesaid information to General Yang Doo Wan by means of the Korean Embassy diplomatic pouch;

(g) Hancho C. Kim rented telecommunications (telex) equipment from R.C.A. Global Communications, Inc., in order to directly and quickly report upon his activities in the United States to General Yang Doo Wan and other officials of the KCIA, and on numerous occasions transmitted such reports to Seoul, Korea; and

(h) Hancho C. Kim traveled to Seoul, Korea, and reported to General Yang Doo Wan and other officials of the KCIA on past and planned future activities of Operation White Snow.

OVERT ACTS

In furtherance of the conspiracy, the following overt acts were committed:

1. On or about September 3, 1974, in the District of Columbia, Sang Keun Kim received a letter from General Yang Doo Wan in which Sang Keun Kim was instructed to assist Hancho C. Kim in a secret operation.

2. In or around September 1974, Hancho C. Kim advised Sang Keun Kim that they would work together on a secret operation to be financed by the KCIA for the purpose of influencing members of the Congress of the United States and others.

3. On or about September 9, 1974, within the District of Columbia, Sang Keun Kim received from General Yang Doo Wan and other officials and employees of the KCIA a personal check in the amount of $100,000.00 written on the checking account of Tong Sun Park.

4. On or about September 9, 1974, within the District of Columbia, Sang Keun Kim, acting pursuant to written instructions from General Yang Doo Wan, deposited the check referred to in Overt Act Number 3 in his personal checking account at the Riggs National Bank.

5. On or about September 11, 1974, within the District of Columbia, General Yang Doo Wan and other officials and employees of the KCIA caused United States currency in the amount of $256,000.00 to be delivered to Sang Keun Kim.

6. On or about September 11, 1974, within the District of Columbia, Sang Keun Kim received written instructions from General Yang Doo Wan to deliver to Hancho C. Kim the $256,000.00 referred to in Overt Act Number 5 and $44,000.00 from the funds deposited in Sang Keun Kim's personal checking account, referred to in Overt Act Numbers 3 and 4.

7. On or about September 12, 1974, Sang Keun Kim delivered $300,000.00 in United States currency to Hancho C. Kim on behalf of the KCIA for the purpose of financing the clandestine operation referred to in Overt Act Number 2.

8. On or about September 17, 1974, Hancho C. Kim ordered and subsequently paid for a new 1975 Cadillac with funds obtained from the KCIA.

9. On or about September 19, 1974, Hancho C. Kim contributed $10,000.00 to Findlay College, Findlay, Ohio, with funds obtained from the KCIA.

10. On or about October 8, 1974, Hancho C. Kim caused directly and indirectly the insertion of an article in the Congressional Record by a member of Congress which was favorable to the Government of the Republic of Korea and its officials.

11. On or about November 8, 1974, Hancho C. Kim transmitted a letter and attachments reflecting his personal views on economic and political conditions in the Republic of Korea to an official in the Executive Branch of the United States.

12. In or around January 1975, Hancho C. Kim traveled to Seoul, Korea, where he conferred with officials and employees of the KCIA.

13. On or about February 25, 1975, Hancho C. Kim caused directly and indirectly the insertion of an article in the Congressional Record by a member of Congress which was favorable to the Government of the Republic of Korea and its officials.

14. On or about March 3, 1975, Hancho C. Kim transmitted two letters and attachments reflecting his personal views on economic and political conditions in the Republic of Korea to an official in the Executive Branch of the the United States.

15. In or around March 1975, Hancho C. Kim had a telex machine installed in his home in Lanham, Maryland, for the purpose of directly and quickly reporting upon his activities in the United States to officials of the KCIA.

16. From on or about March 1, 1975, through July 1, 1976 one hundred forty one (141) telex messages were sent by Hancho C. Kim and Sang Keun Kim from the telex machine at the home of Hancho C. Kim to a telex machine at KCIA headquarters in Seoul, Korea.

17. On or about April 30, 1975, Hancho C. Kim transmitted a letter and attachments reflecting his personal views on economic and political conditions in the Republic of Korea to an official in the Executive Branch of the United States.

18. On or about May 5, 1975, Hancho C. Kim purchased a second new 1975 Cadillac with funds obtained from the KCIA.

19. In or around May 1975, Hancho C. Kim traveled to Seoul, Korea, where he conferred with officials and employees of the KCIA.

20. In or around June 1975, in the District of Columbia, Sang Keun Kim received a letter from Park Wang-Kyu, an assistant to General Yang Doo Wan, advising Sang Keun Kim that Sang Kuen Kim would receive $300,000.00 for delivery to Hancho C. Kim.

21. In or around June 1975, Sang Keun Kim received $300,000.00 in United States currency through the diplomatic pouch, and Sang Keun Kim delivered the $300,000.00 to Hancho C. Kim as instructed by the KCIA.

22. On or about June 24, 1975, Hancho C. Kim dined with two Congressmen and their families at the Sans Souci Restaurant in Washington, D.C.

23. In or around August 1975, Hancho C. Kim traveled to Seoul, Korea, where he conferred with officials and employees of the KCIA.

24. On or about January 22, 1976, Hancho C. Kim held a catered dinner for two Congressmen and their families at his home.

25. In or around February 1976, Sang Keun Kim traveled to Seoul, Korea, and conferred with officials and employees of the KCIA regarding the clandestine operation involving Hancho C. Kim.

In Violation of 18 U.S.C. § 371.

COUNT II

1. On or about September 22, 1976, within the District of Columbia, Hancho C. Kim, the defendant herein, duly took an oath in a proceeding before a grand jury of the United States, empaneled and sworn in on June 7, 1976, in the United States District Court for the District of Columbia (hereinafter the grand jury), inquiring into matters then and there pending before the grand jury.

2. Hancho C. Kim, having taken the aforesaid oath that he would testify truthfully, did willfully and knowingly and contrary to said oath, make a false material declaration which he did not believe to be true.

3. At the time and place aforesaid the grand jury was conducting an investigation into various allegations of illegal payments made by agents of the Government of the Republic of Korea to members of the Congress of the United States and to officials of the United States Government, in possible violation of the laws of the United States.

4. It was material to the aforesaid investigation to determine whether Hancho C. Kim had received money from officials and employees of the Government of the Republic of Korea for the purpose of making payments to members of the Congress of the United States.

5. On September 22, 1976, within the District of Columbia, Hancho C. Kim appeared as a witness before the grand jury, and then and there being under oath testified falsely with respect to the aforesaid material matter as follows:

Question. [By Paul Michel, Attorney, Department of Justice]: What is the name of the gentleman who sold your wife the movie projector?

Answer. [Hancho Kim]: Sung Gun Kim.

(Grand Jury Transcript p. 86)

* * * * *

Question. You mentioned that on some of the occasions of his visits Mr. Kim brought something.

Answer. He bring the newspapers once in a while Korean newspapers. After he read in his office.

(Grand Jury Transcript p. 91–92)

* * * * *

Question. Did he leave anything at your home, or with you—aside from the movie projector and some copies of this Korean newspaper?

Answer. Absolutely not.

(Grand Jury Transcript p. 92–93)

* * * * *

Question. Fine. Did he ever bring and leave with you, or at your house, any money?

Answer. Absolutely, positively, no sir. I like to make it—very strongly about it.

(Grand Jury Transcript p. 93)

* * * * *

6. The aforesaid testimony of HANCHO C. KIM, as he then and there well knew and believed, was not true in that on or about September 12, 1974, and in or around June 1975, the exact date being unknown to the grand jury, HANCHO C. KIM did in fact receive at his home money in the aggregate of $600,000.00 in United States currency from the person who HANCHO C. KIM referred to as "Sung Gun Kim," but who in fact is Sang Keun Kim, an agent of the Korean Central Intelligence Agency.

(Violation of 18 U.S.C. § 1623.)

BENJAMIN R. CIVILETTI,
Assistant Attorney General, Criminal Division, Attorney for the United States.

EXHIBIT 2 TO APPENDIX III

(In the United States District Court for the District of Maryland.)

United States of America *v.* Hancho C. Kim and Soonduk E. Kim

(Tax Evasion, 26 U.S.C. § 7201)

INDICTMENT

The Grand Jury Charges:

COUNT I

That on or about April 15, 1975, in the District of Maryland, Hancho C. Kim and Soonduk E. Kim, residents of Lanham, Maryland, who during the calendar year 1974 were married, did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1974, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the District of Maryland, a false and fraudulent income tax return on behalf of themselves, which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was the sum of $9,740.79, and that the amount of tax due and owing thereon was the sum of $1,683.60, whereas, as they then and there well knew, their joint taxable income for said calendar year was substantially in excess of $9,740.79, upon which said taxable income there was owing to the United States of America an income tax substantially in excess of $1,683.60.

In violation of Section 7201, Title 26, United States Code.

COUNT II

That on or about April 15, 1976, in the District of Maryland, Hancho C. Kim and Soonduk E. Kim, residents of Lanham, Maryland, who during the calendar year 1975 were married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1975, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the District of Maryland, a false and fraudulent income tax return on behalf of themselves, which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was the sum of $15,556.29, and that the amount of tax due and owing thereon was the sum of $2,939.72, whereas, as they then and there well knew, their joint taxable income for said calendar year was substantially in excess of $15,556.29, upon which said taxable income there was due and owing to the United States of America an income tax substantially in excess of $2,939.72.

In violation of Section 7201, Title 26, United States Code.

JERVIS S. FINNEY,
U.S. Attorney.
EDWIN R. PIERCE,
Special Assistant U.S. Attorney.
JEFFREY S. WHITE,
Special Assistant U.S. Attorney.

APPENDIX IV

NOVEMBER 14, 1977.

THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In the Matter of Hancho C. Kim, a Witness Before the Committee on Standards of Official Conduct.

MEMORANDUM

The Special Counsel and the Special Staff conducting the Korean influence inquiry pursuant to House Resolution 252 submit this memorandum to advise Members of the Committee on Standards of Official Conduct ("Committee") with respect to the appropriate disposition of the claims set forth in the "Memorandum Setting Forth the Constitutional and Practical Reasons Why Hancho C. Kim should Not Be Compelled to Testify" (the "Memorandum") submitted by Hancho C. Kim ("Kim").

DISCUSSION

The facts

On February 9, 1977, in the wake of press reports of efforts by the Government of the Republic of Korea to influence United States foreign policy by paying off Members of Congress, the House of Representatives unanimously adopted House Resolution 252. That resolution "directs" this Committee *inter alia*, to conduct a "full and complete inquiry to determine whether Members of the House of Representatives accepted anything of value, directly or indirectly, from the Government of the Republic of Korea or representatives thereof."

Pursuant to said resolution, on October 19 and 20, 1977, the Committee heard testimony in public session from Kim Sang Keun, who had been First Secretary and later Counsellor at the Korean Embassy in Washington, D.C., from October 1970 through November, 1976, at which time he defected to the United States (Tr. 101–05).[1] He testified that he had delivered $600,000 in cash to Hancho Kim which, according to Hancho Kim was to be used, and was in fact used in part, to buy off Members of the House of Representatives and influence them in the performance of their duties. (E.g., Tr. 130–31, 146–47, S8, S10–13, S19). Indeed, Hancho Kim, in reports that he made to Kim Sang Keun, indicated the identity of five Congressmen, referred to by the code name "Advance Guard," whom Kim had allegedly paid off in furtherance of this venture. (Tr. S23). Hancho Kim boasted to Kim Sang Keun that in carrying out the plan to pay off Members of Congress and to influence the Executive Branch of the United States Government, American media and the American academic community, he had spent over $700,000. (Tr. S12, S63). Hancho Kim is thus one of three individuals named in the Committee's public hearings who, according to proof adduced at those hearings, personally delivered cash to Members of Congress.

From the foregoing, it is apparent that the Committee must obtain at the earliest possible moment the testimony of Hancho C. Kim to determine to whom, if anyone, he made cash payoffs in amounts aggregating several hundreds of thousands of dollars, as he claimed in statements to Kim Sang Keun. Such testimony is essential to enable the Committee to fulfill its mandate.[2]

Accordingly, in pursuing the inquiry, Members of the Special Staff notified Kim's attorney of the Committee's desire to take his testimony in executive session. Kim's attorney advised that if called as a witness Kim would assert his Fifth Amendment privilege *not* to testify, on the grounds that his testimony might tend to incriminate him. The Committee thereafter voted unanimously to obtain an order of immunity from the United States District Court pursuant to the provisions of Title 18, U.S.C., Sections 6002 and 6005.

Thereafter, Committee Counsel filed with the United States District Court for the District of Columbia an application for an Order Conferring Immunity Upon and Compelling Testimony from Hancho C. Kim. The Department of Justice indicated that it had no objection to this order and that, in its opinion, its case against Kim and his wife could be adequately protected by immediately date stamping and sealing all evidence to be used against Kim in any trials. On October 13, 1977, Chief Judge William B. Bryant of the United States District Court for the District of Columbia signed the order submitted by Committee Counsel. That order provides in part as follows:

"(N)o testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order."

In the meantime, on September 27, 1977, a Federal grand jury sitting in the District of Columbia indicted Hancho Kim for conspiracy to defraud the United States and for perjury. The perjury count of the indictment charges Kim with lying when he denied before the grand jury having received money from Kim Sang Keun. That same day, Kim and his wife were indicted by a Federal grand jury sitting in Baltimore. Both were charged with income tax evasion for the years 1974 and 1975.

On November 3, 1977, Counsel to the Committee advised Kim's lawyer that the Committee intended to proceed to take testimony from Kim in executive session pursuant to the immunity order it had obtained. The following day, Kim's lawyer told Counsel to the Committee that in spite of the immunity order Kim believed he should still not have to testify and requested an opportunity to raise the reasons upon which Kim relied to justify this belief before the Chairman and Ranking Minority Member of the Committee. Kim's request was

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[1] References in parenthesis are to pages of the official transcript of public hearings held by the committee on October 19–21, 1977. References to pages of the transcript for the second day of hearings are preceded by the letter "S."

[2] The assertion by Hancho Kim that "there is no apparent need for the committee to question" Kim at this time is frivolous on its face. It will take a considerable amount of time following Hancho Kim's testimony to corroborate or refute his testimony and the reasons for resolving allegations against Members of Congress at an early date are compelling.

granted on Friday, November 4, 1977, and these proceedings followed.

I. KIM'S MAJOR CONTENTIONS: COMPELLING HIM TO TESTIFY WOULD VIOLATE HIS CONSTITUTIONAL RIGHTS

Kim's major contentions, which will be addressed individually below, all rest in part on the claim that if Kim testifies before this Committee at this time he will not receive a fair trial in any of his criminal cases. A complete answer to Kim's major contentions is that they are being asserted in the wrong place. The Courts are fully competent to see that Hancho Kim is not convicted except at a fair trial. If Hancho Kim can receive a fair trial, the Courts will see to it that he gets one. If Hancho Kim cannot receive a fair trial—and we firmly believe that he can—the Courts will set him free.[3] In either event, however, the legislative branch is separate from and co-equal to the other branches of government and it is entitled to the testimony of one of the three most significant witnesses in an extremely important Congressional investigation. There is no reason, in the words of Mr. Justice Harlan:

"to thwart the exercise of legitimate Congressional power, on the basis of conjecture that (the courts) may later abuse an individual's reliance upon federally assured rights. . . .

* * * * *

"Surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding. *Sinclair* v. *United States, supra* (279 U.S. at 295), or when crime or wrongdoing is disclosed. *McGrain* v. *Daugherty*, 273 U.S. 135, 179, 180. *Hutcheson* v. *United States*, 369 U.S. 599, 612, 618 (1961)."

Another complete answer to Kim's major contentions is that they are premature. Kim's testimony will be taken in executive session and may not be released to the public or the Justice Department until after Kim's criminal trials.

A. Kim's fifth amendment claims

Kim first argues that, notwithstanding the order of immunity which under the law must guaranty and does guaranty that his testimony will not be used in any way to incriminate him, his testimony will nonetheless be used to incriminate him because "his testimony will preview to the government the defenses he will assert at the trials" (Memorandum at 4), and it is "impossible to conclude that the government will not gain, however inadvertently, some advantage, however subtle" (Memorandum at 6) from Kim's testimony. This same claim was raised and squarely rejected in *Kastigar* v. *United States*, 406 U.S. 441, 459–462 (1971), which held that Courts *must* make sure that no testimony given under immunity by a defendant in a criminal case is used *in any way* in that criminal case and which held that Courts are competent to administer this rule. In *Kastigar* the Supreme Court wrote as follows:

"Petitioners argue that use and derivative-use immunity will not adequately protect a witness from various possible incriminating uses of the compelled testimony . . . It will be difficult and perhaps impossible, the argument goes, to identify, by testimony or cross-examination, the subtle ways in which the compelled testimony may disadvantage a witness, especially in the jurisdiction granting the immunity.

"This argument presupposes that the statute's prohibition will prove impossible to enforce. The statute provides a sweeping proscription of any use, direct or indirect of the compelled testimony and any information derived therefrom. . . .

* * * * *

"This total prohibition on use provides a comprehensive safeguard, barring the use of compelled testimony as an "investigatory lead," and also barring the use of any evidence obtained by focusing investigation on a witness as a result of his compelled disclosures.

"A person accorded this immunity under 18 U.S.C. Sec. 6002, and subsequently prosecuted, is not dependent for the preservation of his rights upon the integrity and good faith of the prosecuting authorities. As stated in *Murphy:*

" 'Once a defendant demonstrates that he has testified, under a . . . grant of immunity, to matters related to the federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent legitimate source for the disputed evidence, 378 U.S., at 79 n. 18.'

"This burden of proof, which we reaffirm as appropriate, is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.

"This is very substantial protection, commensurate with that resulting from invoking the privilege itself.

"The privilege assures that a citizen is not compelled to incriminate himself by his own testimony. It usually operates to allow a citizen to remain silent when asked a question requiring an incriminatory answer. This statute, which operates after a witness has given incriminatory testimony affords the same protection by assuring that the compelled testimony can in no way lead to the infliction of criminal penalties.

"We conclude that the immunity provided by 18 U.S.C. Sec. 6002 leaves the witness and the prosecutorial authorities in substantially the same position as if the witness has claimed the Fifth Amendment privilege. The immunity therefore is coextensive with the privilege and suffices to supplant it (footnotes omitted)."[4]

The reasoning of Kastigar and subsequent court decisions make clear that the fact that Kim has already been indicted is of no consequence. *United States* v. *Frumento*, 552 F.2d 534 (3d Cir. 1977); *In re Liddy*, 506 F.2d 1293 (D.C. Cir. 1974); *In re Buonacoure*, 412 F. Supp. 904 (E.D. Pa. 1976), are all cases in which a witness was compelled to testify under immunity after the witness had been indicted.

B. Kim's sixth amendment claims

Kim next argues that taking his testimony at this time will violate his Sixth Amendment right to counsel because (1) under the Sixth Amendment he is entitled "to be confronted with the witnesses against him" and (2) the burden of preparing for Kim's testimony before the Committee will interfere with his preparations for trial. Both claims are without merit.

1. The Sixth Amendment mandates confrontation of witnesses only by an "accused" in "criminal prosecutions." Here the Committee's proceedings are not criminal, and Hancho Kim is not an "accused." The Sixth Amendment does not apply.

2. Kim has retained one of the largest and most experienced criminal law firms in the country, which has been representing Kim for almost a year. The papers submitted by Kim make it clear that even at the present time a partner in the firm and two associates have responsibility for Kim's case. The suggestion that with these overwhelming resources available to him, Kim cannot prepare for testimony before the Committee and for trial, is frivolous on its face. In any event, if Kim's attorneys are impeded in their preparation of the criminal cases by Kim's testimony before this Committee, adjournments should be requested from the Courts.

C. Kim's due process claims

Additionally, Kim claims that compelling him to testify at this time is fundamentally unfair and, therefore, violates his constitutional right to due process of law. In *Hutcheson* v. *United States*, 369 U.S. 599, 628 (1962), the Supreme Court explicitly held that it is not "a violation of due process of law for a legislative committee . . . to inquire into matters for which the witness is about to be tried under a pending criminal indictment."

In *Hutcheson* the witness had been indicted in a state court and was then compelled to appear before a Senate committee. He refused to testify on due process grounds and was prosecuted for contempt.

The Supreme Court affirmed his conviction. There is nothing to distinguish *Hutcheson* from this case.[5]

Moreover, the instances of alleged unfairness set forth by Kim lend no support to his argument. Kim argues that compelling him to testify at this time somehow puts him on the horns of dilemma:

"Specifically, if Kim stands by his earlier testimony and denies receipt of any money from S. K. Kim he leaves himself open to a possible second indictment for perjury, since the grant of immunity explicitly excludes from its protection a prosecution for perjury. And, if he changes his testimony and admits receipt of the money he will have prejudiced his defense to the perjury indictment by having made inconsistent statements while under oath." (Memorandum at 8) (footnote omitted).

This argument is based on the mistaken view of the law that if Kim gives truthful testimony which is inconsistent with his allegedly perjurious testimony it could be admitted against him in his criminal trial.[6]

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[3] The Department of Justice clearly agrees that Kim can be tried following his testimony before this committee since it has indicated that it has no objection to the taking of Kim's testimony by this committee at this time.

[4] The cases cited by Kim (Memorandum at 5) to the effect that a person who has been indicted may not be compelled to testify before a grand jury have no applicability to this case. In those cases, the grand jury was being used to obtain evidence against the witness and the cases stand only for the proposition that a grand jury's job is over once an indictment has been filed. Such cases plainly do not apply where the witness is granted immunity by and testimony is taken before a committee of Congress.

[5] Kim's feeble attempt to distinguish the Hutcheson case on the grounds that there the committee agreed not to question Hutcheson on matters for which he was under indictment (Memorandum at 9) is of no avail since the Court assumed in deciding the case that the evidence which the committee did seek to elicit could have been used against him as evidence of guilt at his criminal trial. 369 U.S. at 607.

[6] In support of this argument Kim cites title 18, United States Code, sec. 1623(c) which provides that the crime of perjury may be established by proof that the defendant made "irreconcilably contradictory declarations" while under oath. This statute, the argument goes, establishes that if Kim contradicts his prior sworn statement, this contradiction could be used at his criminal trial to prove perjury. *Kastigar*, however, makes clear that the statute not be used in this manner and the Courts have explicitly so held. *United States* v. *Patrick*, 542 F.2d 381, 385 (7th Cir. 1976); see also *United States* v. *Frumento*, above, 552 F.2d at 541 n. 11. Moreover, title 18, United States Code, sec. 1623(c) by its terms applies only to testimony "before or ancillary to any court

Kastigar, above makes it clear, however, that no such use of the immunized testimony could be made. The precise argument made by Kim was raised and rejected in *United States* v. *Frumento*, 552 F.2d 534, 541–544 (3d Cir. 1977) in terms that apply with full force to Kim's argument. In *Frumento* the witness, Pisciotta, suggested the same dilemma suggested by Kim here:

"That dilemma, Pisciotta contends, consists of the following: if his testimony is untruthful (i.e., exculpatory as to him), he will be subject to prosecution for perjury; yet, if the testimony is truthful (i.e., inculpatory), it can be used against him to impeach his testimony at any subsequent prosecution. But Section 6002 imposes no such dilemma, mandates no such choice, and, as a result, permits no such consequences.

"The threat of a perjury prosecution, as it is implicated in half of Pisciotta's supposed dilemma is real enough.

* * * * *

"However, for his 'dilemma' to move this Court to rule that Section 6002 immunity does not provide the full measure of Fifth Amendment protection, he must demonstrate that his truthful immunized statements could be used against him. This he cannot do.

* * * * *

"We reiterate our adherence to this principle: except as the basis for a prosecution for perjury a witness's immunized testimony may not be used against him.

"Pisciotta's dilemma, then, is illusory. His testimony could be used against him only in the event of a prosecution for perjury, but in no other way and for no other reasons. Pisciotta is fully protected by Section 6002 immunity from having any truthful testimony he may give—even though inculpatory—used against him. (Footnotes omitted)."

II. KIM'S MINOR CONTENTIONS: MARITAL PRIVILEGE; ILLEGAL ELECTRONIC SURVEILLANCE

In addition to the claims set forth above, Kim raises two additional arguments which are completely spurious: First he asserts that the marital privilege justifies him in refusing to testify in a Congressional proceeding even though his wife is not a party to the proceeding; and second, he alleges that he is justified in refusing to answer questions because the questions may be based upon illegal electronic surveillance, even though there is no evidence that Kim or his wife have ever been the subject of such surveillance.

A. Marital privilege

The simple and complete answer to Kim's claim that the marital privilege justifies his refusal to testify is the well established rule that "the privilege applies only in favor of a person *against whom, as a party to the cause, the testimony of a wife or husband* is offered." 8 *Wigmore on Evidence*, Section 2234, page 232 (McNaughton rev. 1961) (emphasis in the original). Since Kim's wife is plainly not a party to any proceedings before the Committee and, of course, could not be, the marital privilege has no application in this case.[7] Thus, Kim's wife is in no way prejudiced by her husband's testimony before the Committee and the marital privilege does not apply.

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or grand jury" and, therefore, does not apply to testimony before congressional committees. (Title 18, United States Code, sec. 1621, which does apply to congressional committees, has no similar provision.)

[7] Kim's testimony before this committee could not be offered in any proceeding which does involve Mrs. Kim since it would be mere heresay in that proceeding. 4 *Wigmore on Evidence*, section 1079, p. 180 (Chadbourne ed. 1972).

B. Electronic surveillance

Kim next claims that if called to testify before the Committee he is entitled to an opportunity to determine whether the questioning before the Committee is in any way derived from illegal electronic surveillance. (Memorandum at 13).

Annexed hereto as Exhibits A and B are sworn statements of John W. Nields, Jr., Chief Counsel to the Special Staff to the Commitee on Standards of Official Conduct and Thomas M. Fortuin, Counsel to the Special Staff, who will be responsible for the questioning of Mr. Kim and who have knowledge of the records and evidence obtained by the Special Staff on which questioning of Kim will be based.

These affidavits establish that there is no evidence that Kim has ever been the subject of electronic surveillance and that any questioning of Kim will not be based upon any illegal electronic surveillance. The law is well established that, absent some showing by the witness of illegal electronic surveillance, there is no burden on the government even to "confirm or deny" the existence of wiretapping. *In re Grand Jury (Vigil)*, 524 F. 2d 209, 214 (10th Cir. 1975), cert denied, 425 U.S. 927 (1976). In any event, the law is clear that the statements of Nields and Fortuin are a more than sufficient response to Kim's argument. *In re Archuleta*, Dkt. No. 77–1286, Slip Op. 5321, 5326–5328 (2d Cir. August 19, 1977); *United States* v. *Yanagita*, 552 F. 2d 940 (2d Cir. 1977); *United States* v. *Grusse*, 515 F. 2d 157, 159 (2d Cir. 1975) (Lumbard, J., concurring); *See Gelbard* v. *United States*, 408 U.S. 41, 71 (1972) (White, J. concurring) ("Of course, where the Government officially denies the fact of electronic surveillance of the witness, the matter is at an end and the witness must answer.").

CONCLUSION

Kim has set forth no grounds justifying a refusal to answer when called to testify before the committee.

Respectfully submitted.

LEON JAWORSKI
Special Counsel.
JOHN W. NIELDS, Jr.,
Chief Counsel.
THOMAS M. FORTUIN,
Counsel.

EXHIBIT A

Statement of John W. Nields, Jr.

1. I am Chief Counsel to the Special Staff conducting the Korean Influence Inquiry pursuant to House Resolution 252 on behalf of the Committee on Standards of Official Conduct of the United States House of Representatives.

2. I submit this statement in response to claims made by Hancho C. Kim that the questioning of him by the Committee may be based upon illegal electronic surveillance.

I have responsibility for the questioning of Hancho C. Kim, a witness before the Committee, along with Thomas M. Fortuin, Counsel to the Special Staff. I also have knowledge of all of the files and records of the Special Staff.

4. I am not aware of any electronic surveillance, legal or otherwise, in which the voice of Hancho C. Kim was overheard. In any event, the questioning of Hancho C. Kim will be based exclusively on investigations conducted by the Special Staff, which did not include any electronic surveillance or the obtaining of information gathered therefrom.

I state under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of November, 1977.

JOHN W. NIELDS, Jr.

EXHIBIT B

Statement of Thomas M. Fortuin

1. I am Counsel to the Special Staff conducting the Korean Influence Inquiry pursuant to House Resolution 252 on behalf of the Committee on Standards of Official Conduct of the United States House of Representatives.

2. I submit this statement in response to claims made by Hancho C. Kim that the questioning of him by the Committee may be based upon illegal electronic surveillance.

3. I have responsibility for the questioning of Hancho C. Kim, a witness before the Committee, along with John W. Nields, Jr., Chief Conusel to the Special Staff. I also have knowledge of the files and records of the Special Staff upon which such questioning will be based.

4. I am not aware of any electronic surveillance, legal or otherwise, in which the voice of Hancho C. Kim was overheard. In any event, the questioning of Hancho C. Kim will be based exclusively on investigations conducted by the Special Staff, which did not include any electronic surveillance or the obtaining of information gathered therefrom.

I state under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of November, 1977.

THOMAS M. FORTUIN.

Certificate of service

I hereby certify that on November 14, 1977, I served a copy of the attached Memorandum and the Exhibits thereto on the attorneys for Hancho Kim by causing a copy thereof to be hand-delivered to:

William & Connolly, 1000 Hill Building, Washington, D.C. 20006. Attention: David Povich, Esq.

THOMAS M. FORTUIN.

APPENDIX V

(Before the Committee on Standards of Official Conduct of the House of Representatives.)

In re Hearings conducted Pursuant to House Resolution 252.

MEMORANDUM IN RESPONSE TO MEMORANDUM OF SPECIAL COUNSEL WITH RESPECT TO CLAIMS OF HANCHO KIM

In a Memorandum dated November 11, 1977, Hancho C. Kim, by his undersigned counsel, set forth the legal and practical reasons why he should not be compelled to testify before the Committee at this time. In an effort to answer that Memorandum, Special Counsel to the Committee has made several arguments in favor of calling Mr. Kim. We appreciate this opportunity to respond briefly to those arguments.

I.

Special Counsel misconceives the nature of the committee's obligation to accommodate its inquiry with Mr. Kim's constitutional rights

Both in its Memorandum of November 14, 1977, and during oral argument before the Chairman and Ranking Minority Member of the Committee, Speical Counsel has suggested that Mr. Kim's constitutional claims are premature and are addressed to the wrong forum. This position erroneously assumes that only the court and not the Committee has the obligation to safeguard Mr. Kim's constitutional rights.

As the Supreme Court stated in *Baranblatt* v. *United States*, 360 U.S. 109, 112 (1959),

"[T]he Congress, in common with all branches of the Government, must exercise its powers subject to the limitation placed by the Constitution on governmental action more particularly in the context of this case the relevant limitations of the Bill of Rights."

We respectfully submit that the Special Counsel has ignored this responsibility and the resultant obligation of the Committee to accommodate its legitimate legislative inquiry with the constitutional rights of an already indicted defendant.

Indeed, rather than being premature, the

claims made by Mr. Kim are timely and properly addressed to the Committee. Justice Brennan's statement in *Hutcheson* v. *United States*, 369 U.S. 599, 624 cited in our earlier Memorandum, warrants repetition:

"When a congressional inquiry and a criminal prosecution cross paths, *Congress* must accommodate the public interest in legitimate legislative inquiry with the public interest in securing the witness a fair trial. Whether a proper accommodation has been made must be determined *from the vantage point of the time of petitioner's appearance before the Committee.*" (Emphasis added.)

Despite Special Counsel's invitation to do so, we therefore respectfully urge the Committee not to abdicate its clear responsibility. The "proper accommodation" may be accomplished by simply delaying the questioning of Mr. Kim until such time as it would not prejudice his criminal trials.

II.

Special Counsel has not adequately answered Mr. Kim's claims

A. Violation of Privilege Against Self-Incrimination

Special Counsel argues that *Kastigar* v. *United States*, 406 U.S. 441 (1972), is dispositive of Mr. Kim's claim that compelling him to testify at this time violates his privilege against self-incrimination. However, *Kastigar* dealt only with a challenge to the immunity statute *on its face;* it did not foreclose inquiry as to whether the statute provided adequate protection as applied in a particular instance. Judge Sirica made this point in *Application of United States Senate Select Committee on Presidential Campaign Activities*, 361 F. Supp. 1270, 1279 (D.D.C. 1973); *accord, In re Baldinger*, 365 F. Supp. 153 (C. D. Cal. 1973). Indeed, as noted in our earlier Memorandum, the Courts have recognized that there are practical limitations to use immunity as a protective device which render it constitutionally inadequate in certain circumstances. *See, e.g., Goldberg* v. *United States*, 472 F. 2d 513 (2d Cir. 1973).

Nothing in Special Counsel's argument refutes the contention that use immunity cannot provide protection coexistence with the Fifth Amendment in the present circumstances. For instance, Special Counsel cannot provide an absolute guarantee that no information will be released—however inadvertently, by the Committee or its staff. Nor can Special Counsel assure that action of the Committee subsequent to Mr. Kim's testimony—such as a contempt citation or the subpoenaing of additional witnesses—will not aid the Government in its prosecution of Mr. Kim.

Special Counsel places great weight on three cases, *In re Liddy*, 506 F. 2d 1293 (D.C. Cir. 1974); *United States* v. *Frumento*, 552 F. 2d 534 (3d Cir. 1977); *In re Buanacoure*, 412 F. Supp. 904 (E.D. Pa. 1976). However, none of these cases involves the grant of immunity to an indicted individual awaiting trail.

In re Liddy, supra, dealt with the propriety of a grant of immunity to an individual already convicted of a crime. The fact of conviction was critical to the Court's decision. After recognizing "that there is respectable authority for the propositions that one who has been formally charged may not be called before the grand jury to testify about his alleged crimes unless he knowingly consents", 506 F. 2d at 1299, the Court stated:

"Liddy is not in the position of one who has been indicted and. *before facing trial*, has been called to testify before the indicting grand jury. Rather, Liddy has been indicted *and convicted* for the crimes about which the grand jury now seeks his testimony. *Id.* at 1300."

Similarly, *United States* v. *Frumento*, *supra*, involved an already convicted individual. In the very first sentence of its opinion, the Court stated:

"This appeal requires us to determine whether a defendant *who has been tried and convicted* but not yet sentenced, and whose post-trial motions were still pending at the time the government sought his testimony at the trial of his codefendants, may be compelled to testify under a grant of immunity. 552 F. 2d at 535. (Emphasis added.)"

Nor is *In re Buonacoure, supra*, authority for the Special Counsel's position. In that case, the individual was indicted only after he refused to testify pursuant to an immunity order. Indeed, the Court explicitly left open the question of whether the indictment would have to be dismissed if the individual expressed a willingness to testify. 412 F. Supp. at 908. Thus the Court did *not* decide the question of whether the Government should be required to dismiss the indictment, thereby expunging Buonacoure's status as an indicted defendant, as a *quid pro quo* for his testimony. This Committee is not in a position to offer such a *quid pro quo*.

In sum, we stand on our earlier assertion that an indicted individual, on the eve of trial, has never been compelled to testify in the circumstances involved here. Special Counsel admitted this fact before Chief Judge Bryant, and his efforts to find examples have failed to turn up an analogous application of use immunity.

B. Violation of Sixth Amendment Rights

Once an individual has been indicted, the full panoply of Sixth Amendment rights attach. These rights follow him wherever he is compelled to appear and testify about the subject matter of the indictment. They are, therefore, fully applicable here.

Special Counsel has failed to respond to the core of Mr. Kim's Sixth Amendment argument; that is, that the right to assistance of counsel guarantees that an individual about to stand trial will not be compelled to disgorge information to anyone other than defense counsel. The Committee's proposed compulsion of testimony is in direct conflict with that right and with the critical right to confront and cross-examine witnesses.

In addition, Special Counsel did not respond to the argument that the preparation of Mr. Kim for testimony before this Committee will constitute a major interference with preparation for trial.

C. Violation of Due Process

Quoting from the *dissent's* statement of the issue, Special Counsel states: "In *Hutcheson* v. *United States*, 369 U.S. 599, 628 (1962), the Supreme Court explicitly held that it is not a 'violation of due process of law for a legislative committee . . . to inquire into matters for which a witness is about to be tried under a pending criminal indictment.' " Memorandum at 9. A careful reading of the case, however, reveals that the majority made no such holding. Indeed, in light of its response to the dissent, it is fair to say that if the majority viewed the issue in those terms, it would have found a violation of due process.

First, it is important to note that the *Hutcheson* Court did not consider the self-incrimination implications that result from compelling an indicted individual to testify about the precise subject for which he had been indicted. Rather than wrestle with that serious question, the Court expressly left it for another day. 360 U.S. at 612.

The Court was concerned only with whether it was there inherently unfair to compel Hutcheson to testify. While the majority found no due process violation, it is clear that central to the result was the fact that the questions being asked *did not* bear directly on the witnesses' guilt or innocence on the State charges. In the present case, the proposed inquiry *does* bear directly on the question of guilt or innocence of the crimes charged. In these circumstances, *Hutcheson* supports the conclusion that the due process clause prohibits this inquiry.

The thrust of Mr. Kim's due process argument is that the Committee is placing him in a constitutionally intolerable position between the Scylla of a perjury charge and the Charybdis of possible self-incrimination. Despite Special Counsel's assertion to the contrary, that dilemma is real rather than illusory. If Mr. Kim is compelled to repeat his earlier testimony, he faces the very real prospect of a *second* perjury indictment. It is no answer to say that the prosecutorial decision will be made by the Department of Justice, for the fundamentally unfair situation of forcing Mr. Kim to repeat his testimony or confess to criminal charges will have been the Committee's creation.

D. Marital Privilege

Special Counsel has responded to the claim of marital privilege by arguing that it has no applicability because Mrs. Kim is not a party to the Committee's proceedings. This narrow view of the privilege is patently unacceptable.

The marital privilege is not an evidentiary rule grounded upon ensuring the admissibility of only reliable evidence; rather, it reflects the far more important and far-reaching policy of safeguarding marital and familiar harmony.

Mr. and Mrs. Kim are co-defendants in a criminal indictment. Under circumstances, the underlying policy of the marital privilege is fully applicable here. To say that Mrs. Kim is not a party to the proceedings advances nothing, because strictly speaking there are *no* parties to the proceedings. The highly technical approach taken by Special Counsel ignores this fact and, more importantly, the sound policies that justify the privilege.

Conclusion

For the reasons set forth both here and in our earlier Memorandum, we respectfully submit that it would be legally improper and practically unwise to compel Hancho Kim to testify at this time. We respectfully request that the questioning of Mr. Kim be postponed until a time when the Committee's important mandate may be accomplished without violating Mr. Kim's constitutional rights.

Respectfully submitted.

WILLIAMS & CONNOLLY,
KENDRA E. HEYMANN,
DAVID POVICH,
LON S. BABBY,
Counsel for Hancho Kim.

APPENDIX VI

[Korean Influence Investigation Pursuant to H. Res. 252]

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT,
Washington, D.C., May 9, 1978.

Re Hancho C. Kim.
DAVID POVICH, Esq.
Williams & Connolly,
Washington, D.C.

DEAR MR. POVICH: This letter is to inform you that the Committee subpoena directed to your client Hancho C. Kim, dated and served on him on November 17, 1977, and adjourned *sine die* on January 12, 1978, is returnable on Monday, May 15, 1978, at 10:00 a.m. in Room 2360 of the Rayburn House Office Building.

Sincerely,

JOHN J. FLYNT, Jr., *Chairman.*

APPENDIX VII

(United States District Court for the District of Columbia.)

Misc. No. 77-0208; filed October 14, 1977

In the Matter of the Application of—

(United States House of Representatives Committee on the Standards of Official Conduct.)

ORDER CONFERRING IMMUNITY UPON AND COMPELLING TESTIMONY AND PRODUCTION OF INFORMATION FROM HANCHO C. KIM

The United States House of Representatives Committee on the Standards of Official Conduct, having made written application pursuant to Title 18, United States Code, Sections 6002 and 6005, for an order conferring immunity upon Hancho C. Kim (the "Witness") and compelling him to testify and provide other information before it in any proceeding held pursuant to the authority of H. Res. 252, 95th Cong., 1st Sess., and the Court finding that all procedures specified by Section 6005 have been duly followed, it is hereby this 13th day of October, 1977,

Ordered that the said Witness in accordance with the provisions of Title 18, United States Code, Sections 6002 and 6005, shall not be excused from testifying or providing other information in any proceeding of the aforesaid Committee held pursuant to the authority of H. Res. 252, 95th Cong., 1st Sess., on the ground that the testimony or other information sought may tend to incriminate him; and

It is further ordered that the said Witness appear in accordance with any duly authorized Committee subpoena and testify and provide such other information that is sought with respect to the matters under inquiry and investigation by said Committee; and

It is further ordered that no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against the Witness in any criminal case, except a prosecution for perjury, giving a false statement, or failing to comply with this Order.

WILLIAM B. BRYANT,
Chief Judge.

APPENDIX VIII

[House of Representatives Hearings Before the Committee on Standards of Official Conduct—Korean Investigation—Deposition of Hancho C. Kim]

KOREAN INVESTIGATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT,
Washington, D.C., May 15, 1978.

The parties to the deposition met at 10:05 a.m., in room 443, Cannon House Office Building.

Present: Representative Richardson Preyer.

Also present: Thomas M. Fortuin, Counsel; Jeffrey Harris, Deputy Chief Counsel; and David Povich and Robert Barnett, Counsel to witness.

Mr. PREYER. Mr. Kim, will you be sworn?

Do you solemnly swear the evidence you will give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KIM. I do.

Mr. PREYER. Thank you, Mr. Kim.

Mr. FORTUIN. The record should reflect the continued testimony of Hancho C. Kim, pursuant to the order of immunity previously identified for the record.

Mr. Kim, did there come a time when you received some money from Yim Sang Keun?

Mr. KIM. Would you kindly raise that question again, please?

Mr. FORTUIN. Yes.

Did there come a time when you received some money from Kim Sang Keun?

Mr. KIM. I don't understand. Still I don't get it, that money. What money you specifically have in your mind?

Mr. FORTUIN. Any money.

Mr. POVICH. I am going to advise the committee that at the moment there is a criminal tax case pending against the witness and his wife, which is the direct product of the allegations concerning receipt of money by him from Sang Keun Kim, the very subject matter of your inquiry.

As you know, there has already been a trial. Sang Keun Kim has testified that he gave Mr. Kim certain sums in 1974 and 1975, and in connection with that trial also is Mr. Kim's denial that he received any money from Sang Keun Kim in 1974 and 1975, his denial under oath before a grand jury, and Mr. Kim was convicted of perjury with respect to his denial, and conspiracy with respect to his receipt of the money.

In light of that, and because of the pending tax case against him for the receipt of the very money in question, I request him concerning that at this time. The tax case is pending in Baltimore. No trial date has been set, but I am hopeful that the matter can be tried within a reasonable period of time.

We have previously indicated to the committee that we have no objection to answering any questions concerning Mr. Kim's contact with any Member of Congress or any American Government official, but when you get down to the specific question of the receipt of this money, which he has previously denied, and he has denied under oath, and he has been convicted of, I question whether or not it is really a proper inquiry at this time.

We don't wish to obstruct the committee in pursuit of information, but really for all intents and purposes, that matter has been laid to rest.

Mr. FORTUIN. I don't understand how when he got convicted for having denied receiving the money before that lays it to rest. It seems to me it is to the contrary. It hasn't been laid to rest at all. We don't know where the money came from or what happened to it from this witness.

Mr. POVICH. No. You have a witness who has testified to the very specifics with respect to these transactions and this money, and the jury found that the Government had established those matters, I assume beyond a reasonable doubt, and convicted him. If the committee is saying that they are not satisfied with that——

Mr. FORTUIN. No, we are not saying anything. We want to know from this witness what he did with the money, that is all.

Mr. POVICH. This witness has denied receiving the money. He denied under oath. He still denies receiving the money. The conviction doesn't change matters any. If it changed matters, I would be very happy to come in at this stage and say all right, in the normal case, in a criminal case, where a person is convicted you say okay, we have been convicted, I am now willing to tell you everything that happened, but in this case the conviction does not change this witness' testimony. He still denies ever receiving the money.

Mr. FORTUIN. He hasn't denied anything. He is going to have to deny that on the record and under oath.

Mr. POVICH. The problem is that you are inquiring into the very matters of the pending tax case. If you want to ask him the very question that he was asked before the grand jury, did you receive any money, which is essentially what this is, and he says no, and he has now been convicted of it, his answer is the same.

Mr. FORTUIN. Let's get his answer then.

Mr. POVICH. I think that he is in an intolerable situation. He has a pending tax case against him concerning this money. He has just been convicted of answering the very same question that you have already asked. You may want to put it on the record, but it is very detrimental to him at this period of time, and I question how much information.

Mr. FORTUIN. May we have a brief recess?

Mr. PREYER. We will take a short recess. We will be right back.

[Recess.]

Mr. PREYER. We will resume the deposition.

The Chair will direct the witness to answer the question. I would overrule the objections to it.

Mr. BARNETT. Congressman Preyer, can I say something?

Mr. PREYER. Sure.

Mr. BARNETT. It seems to me that Tom is playing games with us, and I think that is unfortunate. We had an understanding up front that Mr. Kim would answer everything possible, but that when the trials were pending, as one of them still is, it would put him in an intolerable position to answer certain questions. We have offered and I think have been as forthcoming as possible in answering any questions about contacts with the U.S. officials or U.S. Congressmen, and in fact, strangely, when Tom restated what he was interested in a moment ago, he said he is interested in what happened to the money, not where the money came from or where it was received.

We also have been willing to answer anything about any payments, and I think have done so.

It puts Mr. Kim in an intolerable position to be asked this question, and it is clear that we were brought up here simply for the purpose of putting him in an intolerable situation, because that was the first question out of the interrogator's mouth. I think that if you would not reconsider your ruling, we would ask for the opportunity to appear before the full committee, and argue to the committee as I understand we have the right to do that at this time that question is both unnecessary and inappropriate, and that is with all due respect to you and the ruling you have made. But I am sure you understand the position we are put in.

Mr. PREYER. Surely.

Mr. FORTUIN. Let me respond to that, because you accused me of playing games with you and in a way I think that is completely unfair. We reached an agreement prior to the first trial which is different from what you state, Mr. Barnett. It was the following, that we would not go into certain areas that the witness claimed to have certain problems if we could be satisfied by the witness' testimony in other areas that we did not have to go into them. In other words, if we were satisfied that the witness was being candid and upfront with us in discussing his dealings with members of Congress, we would not go into that until the trial was concluded.

Mr. BARNETT. The trials were concluded.

Mr. FORTUIN. I don't know whether it is trial or trials.

Mr. BARNETT. I think John Nields will remember.

Mr. FORTUIN. John Nields and I, whatever, we have gone over this testimony. We have had this witness here on, I believe, four occasions and we are not frankly satisfied by his testimony, and Mr. Nields and I and Mr. Harris having discussed it have decided that we could not be satisfied with the witness' testimony, that his testimony is not satisfactory in that area, and it has always been the understanding that we had every right at any time to inquire of the witness in any area if we were not satisfied with the testimony that he gave.

Frankly, we are not satisfied with his testimony. We have always had the right to ask these questions, and at your request, we have foreborne until the critical trial which is the first trial, is over, and we don't believe that we can forebear any longer.

There is testimony before the committee in public that the man received $600,000 in cash with the understanding that he would

distribute it to politicians, principally members of Congress, and I just don't see how we can responsibly leave that testimony on the state of this record without inquiring of this witness if he got that money and if he did get it, what he did with it, and what his understanding was of what he was to do with it when he got it. It seems to me that is very simple.

Mr. POVICH. You have asked him about the payments of money to congressmen, and we have permitted him to answer in those areas, and he has answered fully and you have the benefit of your entire investigation, and there has never been any questions as far I know by the committee or by the U.S. attorney which has equally investigated this matter that he has ever paid any congressman any money.

Mr. FORTUIN. That is what we are trying to find out.

Mr. POVICH. You know you can always say you are trying to find that out. There comes a time when somebody has to be satisfied as the U.S. attorney was in open court when he said we are satisfied he didn't pay any money, he must have put in his pocket.

Now if you have some information at all that any congressman received any money from this man, then I am perfectly happy to say that his denials of that may not be satisfactory to the committee, but I really question whether or not the committee in fact has any information from congressmen or anyone else other than S. K. Kim, and that information is second or thirdhand at most, that this person was supposed to have given or did in fact give any money to any congressman.

Mr. HARRIS. Mr. Povich, one of the other areas that the U.S. attorney is not investigating and that this committee has been specifically mandated to investigate by the Congress is not only the question of whether Mr. Kim gave money to any congressman, but whether any Korean Government official directed him to or conceived or planned to pay Members of Congress, and this committee would be interested to know, for example, the money that was given to an individual, and that individual was supposed to pass it on to Members of Congress. Whether he did or did not is a separate question, but both questions are of interest to the committee, and hence your argument that you just made I think falls short of our complete inquiry.

We are not only interested in what in fact the witness may have done with the money, but what he was directed to do with it if he got it, who directed him, and what his understanding was of the purpose of the transfer to him.

Now whether he carried out that purpose is a separate question.

Mr. POVICH. Are you saying now you are limiting your inquiry as to whether——

Mr. HARRIS. What I am saying, all I am saying is that——

Mr. POVICH. Because those questions have been answered as well.

Mr. HARRIS. What I am saying is that until we get past the question of whether he received the money, the other questions which are of critical importance to us, namely, what was the purpose of the receipt of the money, what was he supposed to do with it, things of that nature, don't arise.

Mr. POVICH. Right. In other words, you are saying that unless there was receipt of the money, then in fact there is no further need to inquire into the rest.

Mr. HARRIS. Well, if he didn't receive the money or if there was no agreement to receive money—what I am saying is that the receipt of the money in one sense is a predicate for the other questions. However, even if he didn't receive it, let's assume there was a plan which was never carried out, that would be of interest to us also.

Mr. POVICH. That there was a plan that was never carried out?

Mr. HARRIS. Let's assume, for example, that the evidence was that some officials of the Korean Government said the money would be sent and it never was. We would be interested to know that also, and that is of importance to us. Basically what I am saying, what I am trying to do is demonstrate to you that our interest is very broad in this matter and that these are matters that are of critical importance to us. We have interests beyond the question of whether he actually ever delivered money to members of Congress. Of course, we are interested in that as well.

Mr. POVICH. But these questions essentially have already been asked and answered, and what you are saying is that you want him to reanswer them again.

Mr. FORTUIN. No, no, we want him to answer them truthfully. He has answered them falsely. Now we want him to answer them truthfully. That is pretty simple it seems to me.

Mr. POVICH. That is not true at all.

Mr. FORTUIN. We would like the truth.

Mr. POVICH. That is not true at all. You are simply saying that you want him in the posture again of being prosecuted again for the very same matters which he has previously testified to. If in fact the earlier testimony is true, it is not going to change. You want to prosecute him again for it. He has already been prosecuted once.

What I tried to do is avoid this statement. What I tried to do was to have you question the witness to matters that he could answer, which related to his contact with congressmen and the Congress of the United States and government officials, which I thought was the very core of the committee's inquiry.

When you get now into other areas which he has previously answered for which he has been the subject of criminal trial for perjury and which he has been convicted essentially you are putting him nothing more than back in the position of restating this very same position, which is his position, and then saying okay, now we will go ahead and prosecute him again for perjury and I think that that is an intolerable position to place this witness in.

Under the circumstances, I have to join with Mr. Barnett and most respectfully ask, Judge Preyer, that the committee consider this.

Mr. PREYER. As you and Mr. Barnett have indicated, you do have the right to appeal this to the full committee. I take it that the witness will decline to answer the question.

For the sake of appealing it to the full committee, I think we should get this declination on the report.

Mr. POVICH. Yes, I think we can state that the witness does not wish to do so until the matter is considered by the full committee.

Mr. FORTUIN. Not until Mr. Povich—the witness must answer the question now or refuse to answer the question. If he refuses to answer the question, that conduct is contemptuous.

Mr. BARNETT. No.

Mr. FORTUIN. Wait a minute, Mr. Barnett, let's get it straight. He cannot then purge that contempt after the committee makes a ruling in the other direction. The ruling here is the ruling.

Mr. BARNETT. He has not refused to answer the question. Let's be clear. We have asked for the right to argue to the full committee our objection to the question, and then he will decide whether to refuse to answer based upon the ruling of the committee. We do not wish to put him in contempt. I think we have tried to avoid doing that.

Mr. POVICH. We have been here four times in an attempt to avoid that.

Mr. BARNETT. Five.

Mr. POVICH. Five.

Mr. FORTUIN. And the witness has been evasive, nonresponsive on each and every occasion.

Mr. POVICH. That remark, I think, is inappropriate. The record will speak for itself.

Mr. HARRIS. Let me just put a procedural matter on the record so we are clear about what is happening here because I think there is some confusion. The procedure here is that the witness will either answer or refuse to answer. What happens before the full committee is an appeal. It is not an argument de novo on the contempt. The contempt is committed here this morning by the refusal. If the committee does not agree with your position when you argue before it, the committee does not agree with your argument, the contempt has already been committed, and at that point you do not have the opportunity to purge, and I think we ought to be very clear about that because I think there may be some confusion.

Mr. BARNETT. Judge Preyer, Mr. Kim does not refuse to answer nor does he decline to answer. We ask that you allow us to argue to the committee as to our basis for his objection to the question.

Mr. PREYER. I think you can argue that point to the committee, but for the purpose of the record here, I think the Chair would have to rule that the witness has declined to answer the question or refused to answer the question, and the matter is referred to the full committee to determine whether or not the witness should be held in contempt of Congress.

Does that put it in the proper parliamentary——

Mr. FORTUIN. I think you should direct the witness to answer the question and we should have his refusal on the record and then you should find that his refusal is contemptuous here and then in essence the committee either decides to back you up and go along with the proceeding or it doesn't, but it seems to me the contempt is committed here and now.

Mr. BARNETT. Judge Preyer, I think it is in no one's interest to force a contempt of Congress. I would ask that we be allowed to appear before the committee and make our argument before we all get ourselves in a situation from which no one can return.

Mr. FORTUIN. The record should be clear that Mr.——

Mr. BARNETT. And I think the chairman would be pleased to allow us that procedure if asked, and I think probably the ranking minority member would agree to that procedure, given what is clearly a misunderstanding about an understanding agreement that has been reached here, in an unfortunate situation in a pretrial context. So I would ask, Judge, that we proceed to the committee without forcing the issue.

Mr. FORTUIN. Judge, the record should be clear that all the objections that were raised here today were previously raised at a hearing before Mr. Flynt and Mr. Spence. Briefs were submitted. We submitted a brief. Mr. Povich and Mr. Barnett submitted a reply brief. We had an oral argument going on for an hour and the very same objections that they are now making were overruled.

Mr. POVICH. Right, but the record should also reflect that in light of all that, this question was not asked. This question was not asked. We have been here four or five times, I don't know, Judge Preyer, but each time we have tried to give you the information without answering the very same question or without being asked and being required to answer the very same question for which this person was just convicted of answering, so the posture is a little different than to say that the matter has been fully argued and heard.

It was fully argued and it was fully heard, and in light of that argument, and in light of those hearings and after consideration by the committee and its chairman and the

ranking minority members, the questions weren't asked, and now they are, and we simply urge most respectfully that before the question is asked and this person be ordered to answer, that the matter be taken before the committee which heard it before.

Mr. BARNETT. Judge, if this man answers the question yes, he is potentially subject to a serious tax liability. He is given the leaks that have come out of the committee about this man before which I am sure you are familiar with also subject to basically removing his right to appeal his previous conviction, because as Justice Frankfurter once said, judges read the newspapers. If he says no, he is subject to perjury, another perjury charge on the same grounds as to which he has already been convicted, and if he says no, I suppose he is also subject to contempt of Congress proceedings, so he is in an intolerable situation, and I think we all understand that, and we ought to find a way to bring it before the committee and let the committee decide how to proceed.

Mr. PREYER. I think it is for the committee to decide how to proceed and to determine if they wish to make any sort of accommodations, but I think the role of the Chair here would not be to make that accommodation or that decision. My role would be limited to directing him to answer the question, and then if he refuses, to send the whole matter to the full committee. Let them resolve the various questions involved. As a matter of procedure, I think that is the role of the Chair here.

Mr. BARNETT. Judge, for the reason that Kim articulated his refusal to answer would put him in an irrevocable situation. That is why I have asked that you refer it to the committee which is your prerogative without directing him to answer and putting an answer on the record. I think the Chair does not want to put himself in the position, allow me to say I don't think you want to put yourself in the position, of in effect deciding this question alone, which is what you would do if you direct him to answer.

We would like to have the opportunity to make our argument to the committee. If we lose, then we will all decide how to proceed, but your directing him to answer will in effect decide the question.

Mr. PREYER. The Chair thinks the way to bring it to the committee procedurally is to direct him to answer, and I have no doubt the committee would have full power to make any sort of accommodations that it sees fit to meet the kind of objections you are raising.

Mr. BARNETT. Could we take a brief adjournment?

Mr. PREYER. Surely.

[Recess.]

Mr. POVICH. We would like to renew our request that the full committee and the chairman and the ranking minority member consider the situation we are in. We don't wish to be in contempt of the committee. We have appeared on four occasions, in an effort not to be in contempt and give the committee the information which it has requested. However, we are in an extremely difficult position which we would like to argue to the committee, and the witness does not decline to answer. He doesn't refuse to answer. He simply at this point, we wish to really stand mute until such time as the committee can consider the situation. If the committee then does consider it, then we will come back and either have to answer or decline or refuse to do so.

Mr. PREYER. Procedurally the Chair feels that it must rule that the witness either answer or refuse to answer, and that if he refuses to answer, that his refusal would be contemptuous and the matter would be referred on appeal to the full committee.

I suggest you formally ask him the question.

Mr. FORTUIN. Mr. Kim, do you recall the question?

Mr. POVICH. I believe the question was, did you receive any money from Sang Keun Kim?

Mr. FORTUIN. That is correct.

Mr. POVICH. Do you recall the question?

Mr. KIM. Yes, I do.

Mr. FORTUIN. What is your answer?

Mr. POVICH. The answer I would make for the witness is the answer which I have just given to Judge Preyer. We don't decline. We don't refuse. In essence, we are mute until such time as we have the advice of the full committee, the chairman and the ranking minority member. We make that request most respectfully in every attempt not to be contemptuous of this committee, to resolve what we think is a very, very difficult problem, one which we have fought with for a long time, and we most respectfully request that the matter be brought to the chairman's attention and that he advise us to what the committee's ruling is.

Mr. BARNETT. And we ask for the opportunity to appear before the committee on behalf of Mr. Kim.

Mr. PREYER. The Chair rules that the witness has refused to answer the question, and that his refusal is contemptuous.

The matter is referred to the full committee on appeal from that ruling, and the witness and counsel are requested to appear before the full committee and permission to argue their position is granted.

The deposition will recess at this time.

Mr. FORTUIN. Judge, before we adjourn——

Mr. BARNETT. I think you shouldn't have a live phone there. Why don't you handle that and then hang it up? It is probably the Washington Post.

Mr. FORTUIN. My understanding is that the committee is meeting at 5:30 on Wednesday, and I would think that the subpoena should be adjourned for further proceedings at that time and that counsel should be directed to make any submissions in a written form that they intend to make prior to that date, and to appear at 5.30 this Wednesday.

Mr. POVICH. It is impossible for me to do that. I will tell you why. I am involved now in trying to prepare by that time, believe it or not, from the end of today to Wednesday, a presentence memorandum for the court in connection with this trial, and I simply have not got time to do another one for the committee, and I most respectfully request that our appearance before the committee be scheduled some other time after the sentencing, which is Friday.

Mr. FORTUIN. Mr. Povich, you have asked for a request to bring something to the committee's attention. I don't know how many lawyers you have over there, but I am sure that you can find some way to do it in that period of time.

Mr. POVICH. I am doing it, Mr. Fortuin. I mean the number of lawyers has nothing to do with it. I am doing it. I am the only one that really knows enough about this case to write it. It would take more time for me to explain it to some associate and have them do it than if I sat down and tried to do it myself. The number of lawyers has nothing to do with it. I am the one that has to write it. I am the one that has to think about it. I am the one that is responsible for it. I can't delegate that to anybody else.

The matter is sufficiently important for me to handle it. I have handled this case for some time. I don't at this point plan on dumping it on someone else.

Mr. PREYER. Ordinarily the Chair would be very sympathetic to that sort of request, but in view of the sentencing that is set for Friday, it would appear to be important to proceed with this matter before then, so the Chair will adjourn the matter until 5:30 Wednesday before the full committee. I will leave it at that.

[Whereupon, at 10:50 a.m., the committee was adjourned.]

APPENDIX IX

EXECUTIVE SESSION—PENDING BUSINESS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS
OF OFFICIAL CONDUCT,
Washington, D.C., May 17, 1978.

The committee met in executive session at 6:25 p.m., in room 2360, Rayburn House Office Building, Hon. John J. Flynt, Jr. (chairman of the committee) presiding.

Present: Representatives Flynt, Bennett, Hamilton, Preyer, Flowers, Spence, Quillen, Fenwick, and Caputo.

Also present: Jeffrey Harris, Thomas M. Fortuin, John W. Nields, Jr., professional staff members; John M. Swanner, staff director; David Belkin, Barbara Rowan, Martha Talley, committee counsel; Robert Bermingham, investigator; Peter White, deputy special counsel; and Leon Jaworski, special counsel to the committee.

Mr. NIELDS. While Kim Dong Jo is not in the country, Hancho Kim is, who was given $600,000 by the KCIA to pass on to congressmen. Until this point in time he has denied receiving the money. He is convicted of perjury and is to be sentenced on Friday. He appeared before Judge Preyer earlier this week and again refused to answer the question and, as I understand, Judge Preyer directed him and his attorney to appear before this committee today to argue the question of whether he should be held in contempt. I think Judge Preyer already held him in contempt. Rather than argue with the committee, we should refer the thing to the House.

Mr. Fortuin, I believe, was the person who handled it and will handle it from here on.

Mr. FORTUIN. The objections this witness raises were raised when he first appeared before the committee on November 17 of last year. Mr. Spence sat and heard those as did Chairman Flynt, and they had an oral argument lasting an hour. They submitted briefs; we submitted an answering brief, and they submitted a reply brief so the arguments have been extensively argued in the past, so it would seem to me that although they have asked to be heard, I think maybe you should hear them, but I don't think it would be inappropriate to perhaps impose a time limitation on how long you want to hear them and how much argument you have on this matter because it has been extensively briefed and both the Chairman and Mr. Spence have ruled in a written opinion, which we have attached as appendix 3 to the report that we have submitted to you, which is the order of Chairman Flynt and Mr. Spence in which he discusses the various claims that have already been raised. They have had an opportunity to be heard before the committee.

Mr. NIELDS. And they are here now.

Mr. BENNETT. Let's have them in.

Mr. PREYER. I might state I didn't honor that appeal just to give us something more to do. They have the right to appeal here from my ruling. Is that right?

Mr. FORTUIN. I am frankly not completely clear on it. They certainly have the right to make the request and it seems to me we granted the request.

Mr. NIELDS. Nothing can happen without a vote of the committee and the vote of the committee is in a sense an appeal and they want to appear before the committee and argue it should not vote.

Mr. BENNETT. I think there is a value in holding in contempt because they were in contempt. Is there something else to be gained?

Mr. NIELDS. Very much so. He has simply refused to answer our questions.

Mr. FORTUIN. We want to know what he did with the $600,000.

Mr. FLYNT. I introduce you to the committee, Mr. Barnett and Mr. Povich.

STATEMENTS OF ROBERT BARNETT AND DAVID POVICH, COUNSEL FOR HANCHO KIM

Mr. BARNETT. Thank you, Mr. Chairman.

Mr. Chairman, if it is all right, I would like to proceed initially and Mr. Povich will have a few comments too, if that is all right. We will be very brief and to the point.

Mr. FLYNT. You may proceed as you see fit.

Mr. BARNETT. May I say at the outset that I am grateful for the opportunity that the committee and the chairman have given us to be here tonight. I will say that this committee has always been very courteous to my law firm and particularly to me. I have been here before and I am grateful for the opportunity to be here again.

I have great respect for the committee and for its goals and I wish to come before the committee today with a particular problem and as briefly as possible explain to you what it is.

We represent, as the Chairman said, Mr. Hancho Kim, who is an American citizen currently standing convicted, as I am sure you all know, of conspiracy and perjury in the United States District Court. He has been before this committee, members of the committee, members of the staff, on several occasions. He has also been before the Senate Ethics Committee, has testified, and has been released from his obligations there. Although he is convicted of these crimes that I mention, I think it is important to put one fact on the record and it is a fact that has been acknowledged by the U.S. attorney and that is that there is no evidence that we are aware of, that he is aware of, and I venture that you are aware of, that he has bribed, defrauded, threatened or in any way compromised the Congress of the United States or a member of the Congress of the United States. That was admitted in open court by the U.S. attorney.

We come before you today with two problems; one, a time problem, and, second, a substantive problem. We have asked Congressman Preyer to allow us to come here today and we have asked the Chairman to allow us to appear and argue briefly and you have allowed us to do that and that is why we are here.

I am sure you know the background. Mr. Kim was asked a question; he did not answer the question; we asked for the opportunity to come here. Mr. Preyer was presiding at the time.

The time problem is this: Mr. Kim is being sentenced on Friday, sentenced for the convictions I have mentiond, for perjury and for conspiracy. On Friday a judge of the United States will possibly take away his freedom, possibly for an extended period of time. We hope not. We will do everything we can to prevent it, but the reality is that is a possibility on Friday.

There is also an appeal pending. As a technical matter, I guess it isn't pending until sentence is pronounced, but you know we will be appealing and there will be an appeal from this conviction. We think there are valid and important grounds we will raise.

There is also a third time factor. There is still another indictment pending against Mr. Kim, in this case against Mr. Kim and his wife, a tax case involving, as you probably all know—and I apologize if I am telling you things you already know—involving the very money which was the subject of the first conviction and is the reason we are here tonight.

We would like tonight to reassert the argument that Mr. Spence and Mr. Flynt have been kind enough to hear from us once before.

We would ask the members of the committee to please read our written brief before you decide this matter. The committee has it. I am certain we can get it made available to you very quickly if you haven't read it.

I will not argue those points tonight. I will simply argue the substantive problem that we are faced with in the time frame which we come before you.

Committee counsel asks Mr. Kim a question. I can't repeat it verbatim, but the sense of it was, "Did there come a time when you received money from S. K. Kim?"

Mr. Hancho Kim, as I say, did not answer that question.

If he answers the question at this time, he will suffer irreparable injury in the context in which we come before you. If he answers "Yes, I received the money," he obviously will under oath have contradictory sworn testimony. If he answers the question, "Yes," there is a high likelihood it will prejudice the appeal. There is an even higher likelihood which I will get to in a moment, that will prejudice his sentencing on Friday. If he answers the question no, he is certainly arguably guilty of perjury again because that is the very question that he was convicted of perjury for.

It is phrased differently, but it is the same question .

He is in an impossible situation at this time and he is particularly in an impossible situation because—and I feel very badly saying this, but I am going to candidly and honestly say I think some people are trying to influence the judicial process in this way. It is not any of you, but I think it is your staff; it may be some members, but I think unfortunately there is a misguided attempt here to influence the ongoing judicial process.

Let me tell you what I mean. The judge has not asked Hancho Kim, "Did you receive the money from S. K. Kim?" The probation officer has not asked Hancho Kim, "Did you receive the money from S. K. Kim?" But this committee has asked it and I believe, if you will question your staff, it is with the full expectation that they will then go to the judge and say, "The man is now admitting his crime, so go hard on him" or "The man is being uncooperative, so go hard on him."

Don't get me wrong. I am not saying this committee doesn't have the perfect right, if asked by the judge sua sponte on its own to go before the judge and make a representation as to Hancho Kim's cooperativeness or noncooperativeness. I understand you have done that before and you will probably do it again. I just dislike, and I really feel badly about and resent the fact that I think we are here tonight at a quarter to nine, after 6 months of possibility of asking this question, 6 months of possibility of coming before a judgment on this issue, in an attempt to influence that process.

I think we have a great system and I think you all believe in it or you wouldn't be here. It separates the judicial from the legislative from the executive. Traditionally the judicial does its job and the legislative does its job. There is often an overlap of functions and that is the genius of the system of checks and balances.

But I feel this is in an improper way, that this is a very improper way for the congressional branch, the legislative branch, to impose itself on the ongoing judicial process. Let the man be sentenced. If he has done something wrong and has been convicted and the judge wants to dump on him, let him dump on him, but don't help. Hancho Kim has, unfortunately, become the Korean punching bag. He is not a sympathetic figure, I recognize that, and I recognize that nothing was done to Tongsun Park—through no fault of your own, may I say—and nothing was done to S. K. Kim and there again there may have been a very valid, legislative reason but Hancho Kim seems to be the only Korean face left and Hancho Kim seems to be put in this unfortunate position of not only being convicted, not only facing a sentence, not only maybe having his appeal rights undercut, maybe not only having his second trial prejudiced, but he is now here tonight at a quarter to nine after 6 months, and I think is going to get the wrath of the Congress dumped on him. I think it is particularly unfortunate because there is a way out of all this and there is a way to deal with it, and I will mention that and then I will leave because I know you have time problems.

It seems to me we could proceed the way we have been proceeding for the past 6 months. That is, ask Hancho Kim anything you want about whether he influenced congressmen, whether he bribed congressmen, whether he bought gifts for congressmen, whether he threatened congressmen, whether he improperly sought to influence congressmen, but leave the area that is the subject of both his current conviction and his pending trial alone until that is completed. Then everyone can make an intelligent and unpressured decision as to whether to answer that question or not answer the question, with full knowledge that if you don't answer the question, the consequences follow.

I ask you to let us over until next week, and by that I don't mean let us escape. By that I don't mean give us some great deal. By that I don't mean let us go home to Korea—he is an American citizen; he is not going there anyway. By that I don't mean let the man wash out and be set free.

But all I ask is that you not in this context, at this time, cause this problem for this man. Let us have the sentencing on Friday; let the judge decide unimpaired by a recommendation or an influence or report or anything from this committee as to what the consequences are of Hancho Kim's act, and he is prepared to accept those, and what the consequences are of his conviction.

I would say that it is a reasonable request I make. I would say it is a request that will not subject this committee to criticism. I would say it is not a request that would make people be able to say, "This committee has cut a deal," or "Let the man off easy" or "Let the man escape."

I say it is a request that will allow people to say this committee had some compassion for this man, who is a compassionate figure at this time, and still allow this committee to proceed with its very important goals and needs after we get past the crunch period of this sentencing and this second trial.

I say again, I am grateful for your listening to me. I ask you, please, to read the argument we have made on the legal points. I am not going to argue those because I know you are busy, and, please consider whether we might not be allowed to answer any question you want. And what I see as the critical area, the contact with congressmen, and leave the other area until a point where it won't so significantly prejudice the man's criminal proceeding, judicial proceeding.

I will be happy to answer any questions and I thank you for listening to me.

Mr. FLYNT. Are there any questions?

Mr. Povich, have you any statement?

Mr. POVICH. I have nothing.

Mr. FORTUIN. There has been an indication here that we are attempting to affect the judiciary in some way. We very frankly are. We think the judge should know on Friday if this man has been contemptuous to the Congress and has refused to answer a very simple question and that is "did you get any money from operatives of the KCIA and if you did, with what understanding, and what did you do with it?"

It is very clear evidence that the man received $600,000. We want to know if he did, what he did with it. He suggested that he would be prejudiced if he answered that

question before the committee. That is frivolous. He has been granted immunity; the proceedings are in executive session.

I know of nothing to date that has occurred with respect to this man that has leaked, and if anything did leak, the defendant would have an application he could make in the District Court to adequately protect him.

I think we have adequately protected him and the idea that his appeal would be hurt in any way or that his sentencing would be hurt in any way if he truthfully answered the question is frivolous. It would not occur.

The problem the witness faces that Mr. Barnett alludes to simply is no problem. If he truthfully answers the question he has no problem. That cannot be used against him in any fashion in any criminal proceeding; it could not be the cause of contempt; it could not even be used in the sentencing proceeding in my understanding of the law.

His only problem is if he refuses to answer the question and that is what he has done. He has answered a very simple type question or has been asked to. We have to have the answers now. The time is coming as to when the man has to make his decision on cooperating or whether he is going to continue to conceal as what appears to be an agent of the Korean Central Intelligence Agency.

This is a tremendous amount of money he took with the understanding he would influence congressmen. Whether he did or did not is the reason we have the inquiry.

The suggestion there is a time problem we have created I think is again completely unfair. I called defense counsel over two weeks ago and I told him we desired to bring this matter on before the sentencing so the judge could be informed. If the man was uncooperative, that he was uncooperative. I got no response.

Last week I asked you, Mr. Chairman, to direct the witness to appear on Monday of this week because I was unable, after I would say many phone calls, to get the counsel in this case to agree to a time convenient to them and convenient to us. It was only then that you directed they appear and it was only for that reason that we are delayed as far as we are. I think it is absolutely compellingly important that we have the testimony of this man and that we have it immediately on the important issues that are raised. He is more than happy to make denials to us about issues that we cannot controvert, that we know nothing about.

On the important issues relating to the money he refuses to answer any questions. It seems to me that answer is contemptuous and the man should be held accountable.

Mr. FLYNT. Do you want to respond to that?

Mr. BARTLETT. No, I think he has basically admitted the point I was making, that it is an attempt to influence the process. I would say he never called me or I never got any message.

Mr. POVICH. He called me.

Mr. FLYNT. I have one question that I want to direct to Mr. Fortuin.

Is the purpose of this to seek to have the judge impose a more severe sentence than he otherwise would?

Mr. FORTUIN. No; but I would say if the man were to be contemptuous and held in contempt—and my hope is he would not be, frankly. I would hope—and my suggestion to the committee would be, Mr. Chairman, that they hold the witness in contempt, with the understanding—and the committee has done this before—that if he purges his contempt by answering the questions within the next 24 hours that the contempt would be of no force and effect.

My hope is, and I think it is the committee's hope that we would get the truthful testimony of this witness in that fashion. It is our hope there would be no contempt proceeding. It is our hope that no untoward consequences would result to the witness.

Mr. FLYNT. Let me clear up one thing. This committee has no powers to vote contempt proceedings. All we can do is recommend to the House.

Mr. FORTUIN. That is correct.

Mr. FLYNT. There is no way that could come up before Friday. There is no way on earth that it could under the rules of the House.

Mr. FORTUIN. But the committee could adopt a resolution that it would not refer the matter for a contempt proceeding if the witness purged his contempt tomorrow. If he did not do that, the committee would proceed.

Mr. FLYNT. The committee could or could not do a lot of things. I don't think it is a question of what the committee could do, but what the committee would do.

Mr. FORTUIN. In that way, hopefully, a contempt proceeding would be avoided, and the witness would be afforded the opportunity to testify. It would only be if, after the ruling tonight by the committee, the witness continued to refuse to answer the question that was put to him that a contempt proceeding would eventuate: so that we are hoping there would be no such proceeding, but that is up to the witness and his attorneys.

Mr. BARNETT. This is very interesting because Mr. Fortuin has already made a judgment on what is a truthful answer. You notice what was said there. He has already judged that if the man said, "No, I did not—" that is an untruthful answer and that is perjury.

The judgment has already been made, what an investigator's opinion is of what the truth is. I don't think that is his job.

Mr. FLYNT. Is that your interpretation of what you said?

Mr. FORTUIN. No. If he answers the question, whatever his answer is, we are bound by it. His contempt is purged whether I believe it is truthful or false. All he has to do is answer the question in any fashion. If it is false, he later subjects himself to penalties, but the contempt would be at an end and the contempt would be purged if he answers the question in any fashion whether I believe it is true or I believe that it is false.

Mr. BARNETT. If he said, "No, I did not receive the money," they go to the judge and say, "Look, he is unredeemed. He is still giving the same story."

If he answers the question "yes" it is the other result.

Mrs. FENWICK. Why doesn't he just tell the truth?

Mr. BARNETT. I think that is precisely what we are after.

Mr. SPENCE. That was the question I wanted to ask. How would he be harmed if he answered this question either way before Friday?

Mr. BARNETT. Let's take the two examples. He must answer the question either yes or no. If he answers the question "yes, I received the money," he has under oath acknowledged the falsity of his statement and has contradictory testimony on the record. That is number one. Number two, there is a likelihood, although one does not like to say this, but things have leaked, as Mr. Flynt and Mr. Spence well know, because we have been before them on this, about this man from this committee.

No fault of yours, I recognize that. The judges read the newspapers. The appeal is severely prejudiced.

Most importantly, the second case is still pending, the tax case. That tax case concerns precisely this issue. He again has in effect waived his right to remain silent, which is his constitutional right, on the precise issue for which he is being tried.

Mr. CAPUTO. It seems to me the tax case and appeal goes way beyond Friday.

Mr. BARNETT. I am asking you to please let us confront the question, answer it or not answer it, answer it one way or the other way after the sentencing on Friday and after the tax case which will hopefully be disposed of fairly soon, if I am not incorrect. I am not asking you to wait until after the appeal.

Mrs. FENWICK. After the tax case might be any time.

I am not a lawyer, obviously, but common sense just tells me that we have got to find out some things, We are not interested in putting Mr. Hancho Kim in jail. We want to know what is going on with members of Congress. It is important to know whether or not this money came directly from the Korean Government for a specific purpose to Mr. Hancho Kim and whether or not he received that money and handed it out to members of Congress.

Mr. BARNETT. Mrs. Fenwick, I respectfully say I agree with you, with a caveat. It seems to me at this time, given the balancing you must do when we leave this room, that is satisfied by asking him—and I hope you come to the deposition and ask him the very question, who did he give money to, when did he give money, what did he do in Korea, who did he pay, who did he bribe, who did he have over to dinner, who did he give gifts to, who does he know personally, what has he done, has he asked people to put things in the record.

He will answer that, but I hope you will understand he is only—asking you to not inquire in the very narrow area of receipt of money from S. K. Kim. Only because it is the very question that he was asked and convicted of perjury for and it puts him in an incredible Catch 22 situation.

Mrs. FENWICK. If he is already convicted of perjury on that particular question, what difference does it make to him to get another?

Mr. BARNETT. Mrs. Fenwick, it makes a lot of difference to him. It makes a great difference to him.

Mr. BENNETT. Tell us why.

Mr. BARNETT. He is convicted of another crime and maybe goes to jail for another 5 years.

Mrs. FENWICK. It is the same old crime.

Mr. BARNETT. But he can be prosecuted for a second perjury.

Mr. FLYNT. It is the same generic crime but not the same offense.

Mr. BENNETT. Why doesn't he just tell the truth?

Mr. BARNETT. Mr. Quie, you make an important comment. You said, "That is the important question." I would respectfully suggest that that is not the important question.

The important question is whether your colleagues were influenced, ought to be influnced or taken over by him and others and were ready to come in here and tell you what you wanted, and we have tried, I think, on five occasions. Some of you had the unfortunate experience of sitting through some of those.

I would suggest that—I recognize that is an important question, Mr. Quie, but, given the possible harm and given the balancing we are asking you to do, it seems to me it is a question: At this time and under these peculiar circumstnces, that is not as critical.

Mr. BENNETT. How can an Ethics Committee decide not to do something that is before it to do simply to make it easier for a man who is convicted of perjury not to pay the penalty that the law says he shall pay?

I am not trying to do you in. I am just trying to understand what I am being asked to do. It looks like to me an Ethics Committee would have no business in making it easier for a criminal to escape penalty.

Mr. BARNETT. No, sir. Please don't misunderstand me.

Mr. BENNETT. That is my impression.

Mr. BARNETT. That is a result of my inarticulateness.

Mr. BENNETT. You are pretty articulate. You have impressed me with this.

Mr. BARNETT. I don't want to lose because I can explain my point.

As I understand, your question is: Are we asking you to go easy on the man?

Mr. BENNETT. You are asking us to delay action so this man will escape a penalty that would otherwise be put upon him.

Mr. BARNETT. I am not asking that. I am asking, do not influence the process with your predicament, or very valid goal, or very valid concern or punishment. Do not at this time influence that process, which I frankly acknowledge is going to come down on his head. I ask, don't add to what the judge already has; don't influence—I feel in an improper way—the ongoing judicial procedure.

Mr. BENNETT. What is improper?

Mr. FLOWERS. You are asking us to believe him when he says he didn't give any of this money to Members of Congress, because we don't have a receipt of the money.

Mr. BARNETT. I missed the question.

Mr. FLOWERS. You are asking us to believe him when he says he didn't give this money to Members of Congress?

Mr. BARNETT. Not if you have contradictory evidence. You can impeach him up and down the road.

Mr. FLOWERS. You are asking us not to ask the question if he had the money to give to them.

Mr. BARNETT. I am asking you not to ask him the very narrow question of where that money came from. Ask him about all the money in the world.

Mr. FLOWERS. Which is the whole conspiracy theory.

Mr. QUIE. Could I ask a question on this thing? What is the difference now if we didn't do anything until after the two cases, the past case and the sentencing on Friday, and then he perjures himself afterwards?

Mr. BARNETT. No; you can recommend to the U.S. attorney that the man be prosecuted again, and you have a perfect right to do that if you believe that is perjurious. I think Mr. Fortuin does. I hope you don't.

Mr. FLOWERS. What if the answer is true?

Mr. BARNETT. You are making the judgment what the truth is in your opinion.

Mr. QUIE. Whatever is the truth.

Mr. BARNETT. If he answers the truth, certainly they wouldn't prosecute him for perjury, but this is——

Mrs. FENWICK. Why do you say he wouldn't be prosecuted for perjury if he answers the truth?

Mr. BARNETT. Mrs. Fenwick, that is what a perjury prosecution seeks to determine, whether his answer which he, under oath, asserted was the truth, was, in fact, the truth—what you and I believe is the truth——

Mrs. FENWICK. I don't care about that. All I am saying is if he comes before us and tells the truth, why is he in danger of perjury from us?

Mr. BARNETT. He is not.

Mr. CAPUTO. His sentence will be stiffer.

Mr. BARNETT. He is not guilty of perjury.

Mrs. FENWICK. If he comes to us and tells a lie, that is a second crime, and he gets a new sentence. If he comes in front of us and tells the truth, presumably that is admitting guilt and will make the sentence he is going to get——

Mr. FORTUIN. That is not true.

Mrs. FENWICK. That is his argument.

Mr. FORTUIN. He has a grant of immunity and could not be brought to the judge. The testimony here cannot be used in any fashion.

Mr. CAPUTO. He is saying it will leak out.

Mrs. FENWICK. It won't and I resent that, Mr. Barnett, if you will excuse me.

Mr. BARNETT. Again, it was an accusation. I will bring in the newspaper articles and show them to you. It has been in the paper, and I think several people are familiar with what has been in the paper. I will show them to you. I am not accusing you of being sieves. I respect you too much for that. But I could, if you wish, submit for the record the things that have leaked about him and try to show you how they prejudiced him.

Mrs. FENWICK. From this committee?

Mr. BARNETT. Yes.

Mr. FORTUIN. I am not aware of any of that, absolutely none of it.

Mrs. FENWICK. Maybe it leaked from the Justice Department, but I am not aware of anything that leaked from this committee.

Mr. BARNETT. I am not saying it came from a member sitting at this table or staff. I can show you the newspaper articles about occurrences in executive session of this committee when Mr. Hancho Kim was present, no Justice Department employee or anybody else.

Mr. POVICH. Excuse me. I have listened long enough to make a statement and then I will leave you.

Mr. FLYNT. Mr. Povich.

Mr. POVICH. I think all the lawyers should leave the room or talk some commonsense. Let me explain what the problem is.

Hancho Kim, in late 1977, was under investigation for this case. He was in Korea. When we learned that he was about to be indicted, we told him he should return, and he did, and face trial. He was charged with two counts and convicted of both. He did not take the stand at the trial and didn't testify. Neither he nor his wife or any member of his family testified.

Three witnesses were presented, and he was convicted. He was convicted on the question, when asked in a grand jury, "Did you receive any money from S. K. Kim in your home," and his answer to the grand jury was no. The jury found he lied when he answered that question.

We have met with this committee on several occasions. We met under an informal arrangement. The arrangement was we felt we had information indicating that Hancho Kim had not corrupted or defrauded the U.S. Congress or any Member of Congress, and we were perfectly willing and happy to give the information to this committee.

During about four or five sessions, we did so, and he was questioned extensively about the information and contacts with Congressmen, and we felt that was in further answer of legitimate business of this committee, and we felt it was fair to the committee because there were some Members of the Congress who were under attack, and we felt the committee and those Members were entitled to that information.

At that very time, the Justice Department was also conducting its investigation. The Justice Department, I should say to you, offered him immunity from prosecution at the beginning of this investigation. They said, "Come forward and tell us the truth," the truth being, of course, admit that you received the money from S. K. Kim and tell us what you did with it.

At that time, they were expecting, of course that he received the money. He hadn't met the Congressmen. I think the only one he knew was Congressman Guyer. There was extensive investigation of Congressman Guyer, and they wanted to question him about it. He denied receiving the money; he denied corrupting anybody, including Congressman Guyer, and I don't think the evidence showed he made a political contribution of $10 to any Congressman, no one whatever.

The Justice Department, after its investigation, came to the conclusion you are right; we are withdrawing the offer of immunity because you cannot be of help to us. We don't want you to come in and say, yes, you received the money. What we are interested in is Congressmen, and since you did not corrupt any Congressmen and made any contribution to any Congressman, the offer of immunity is withdrawn. Mr. Povich, your client goes to trial.

He did not testify. He denies he ever received the money.

That is the posture we are at now. He has been through a terrible ordeal, as I have been with him, for the past year and a half. The trial was horrendous. It was a net worth tax case, essentially. They put in all the expenditures and said it must have come from S. K. Kim, because he had no other source of income. The jury convicted him of conspiracy and lying to the question, "Did you receive money from S. K. Kim," all of this unexplained expenditures that he had.

I wanted to continue working with the committee under the same basis as long as we could talk in terms of corruption, of fraud, of what you have done vis-a-vis the Congress, the Senate, the executive department, fine. But I was not faced with a conviction I wanted to appeal, I was faced with a tax case concerning the money and I said. "Stay away from the money, and please stay away from the question, did you receive any money from S. K. Kim," because that is what precipitated the whole thing.

Mr. Fortuin called and said they wanted to resume the question after the conviction, and I said all right. We finally got around to it and Judge Preyer was present. I entered into the meeting in good faith; I thought we were going to continue with the type of thing—I knew that Mr. Fortuin wanted to ask more questions.

The first question out of the box was, "Did you receive any money from S. K. Kim? It was the confrontation and the only reason it was a confrontation on that day, 2 or 3 days ago, was because he was about ready to be sentenced.

And the chairman's question really has not been answered. I think. "Did you ask that question so that we might have some influence on the sentencing," and I think the question was asked for that purpose. I don't know how a judge would react to a letter or statement from this committee as to whether he did or did not. I have asked Judge Flannery, "Do you want Mr. Kim to give you an explanation of where he received the money that it was shown that he spent?" The judge said, "The man did not testify; he has a right not to testify; I am not going to ask him that question. If he wants to tell me, fine, but I am not going to hold it against him."

Perhaps the committee would tell the judge what happened here, that he has declined to testify. The judge may or may not take it into consideration. I am trying to give you basically the posture we are in.

To be perfectly honest with you, Mr. Kim has never said anything other than the fact of two prongs, "Did you receive the money?"

"No."

"Did you pay or corrupt any Congressmen?"

"No."

That part has proven to be essentially true. There has never been an indication of it. In fact, the Government, in the closing argument, said, It is clear that he received the money, but as far as we are concerned, I guess he didn't pay any Congressmen; he must have put it in his pocket." That was their answer.

Mr. FLYNT. We will recess to answer the quorum and come right back.

[Brief recess.]

Mr. FLYNT. The committee will come to order.

Mr. Spence, were you in the process of asking a question when we recessed?

Mr. SPENCE. I don't think so. I think I had asked what I had.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. Well, I really don't have a question. I do have the same concern I had before. Here we have a committee of Con-

gress and we have a man who is going up through appeal; he has another case and essentially we are being asked to have compassion on him not to ask a precise wording, and as I heard your words, I heard you say that he said that he had not taken the money at his home.

So it looks like a rather technical thing, and I find myself in an awkward position of thinking about judicial processes, adjusting to the calamity that has been brought upon a man of his own violation. In other words, he apparently did something and he is paying a penalty for it. Why should a court adjust to the fact that a man is going to get caught and pay a penalty for what he did.

Now, I must say that I don't understand if somebody is trying to put pressure on the court procedure, and if that is so, for my two bits, I would say it is wrong. I don't think anybody has any business who is working for this committee becoming deeply involved in the outside activities of a man who is up for trial. My own personal reaction is that you ought not to tell the judge about it at all. I mean, not that it is a secret, but I think it is tasteless to get yourself involved in another matter, and we are people who are supposed to be judicial and make a determination on the merits as it may be and leave it up to the people who are employed to be the prosecutors in another trial.

It seems to me, in other words, it is not up to us to rectify all of the sins of humankind.

Mr. BARNETT. That is precisely what I am asking, Mr. Bennett.

Mrs. FENWICK. Will you yield?

Mr. BENNETT. I will yield.

Mr. FLOWERS. Let's don't argue the thing out here.

Mr. BENNETT. I yield back my time.

Mrs. FENWICK. I think that if Mr. Hancho Kim would answer our questions, we would have nothing to say to the judge. There would be no reason. If Mr. Hancho Kim does not answer our questions, I think we should tell the judge. Maybe I am wrong, but I think he should come and talk to us. I think he should tell us what we want to know. That is my judgment.

Mr. SPENCE. Mr. Chairman, I think we should ask any questions we have of the attorneys, and if we don't have any questions to direct at them, we can let them go and make our decision.

Mr. BENNETT. You may have something else to say.

Mr. POVICH. We have answered a lot of questions. The thing that brought us to the stalemate was the problem of that precise question. We are not saying we don't want to answer any questions. We don't wish to be contemptuous. What happened to us was the difficult question was asked 2 days before sentencing. Perhaps, as the chairman inquired, "Was it asked in order to provide a vehicle to go to the court or not"——

Mrs. FENWICK. I foresee all kinds of things. Suppose we say OK, we will be delighted to have Mr. Hancho Kim come here and we won't ask him whether Mr. So-and-So gave him that money; we will only ask him whether he has reason to believe that he ever received any money directly or indirectly through the agency of the Government of Korea. Will he answer that?

Mr. POVICH. I think he would answer all questions. The problem is——

Mrs. FENWICK. Would he answer that question? And then if he said yes, he had received it directly or indirectly, was it for any specific purpose? In other words, I am trying to find out what you really are balking at, because it seems to me that anybody who is an American citizen, who wants to help an investigation of Congress, owes it to that committee to answer the question.

Now if there is one particular peculiar question, I don't think it matters whether he got it in his home or where; we might even consider leaving it off. I am just trying to narrow down as to what your specific objection is.

Mr. POVICH. The specific objection is this: If you ask a precise question——

Mrs. FENWICK. What precise question?

Mr. POVICH. Did you receive any money from Kim Sang Keun.

Mrs. FENWICK. Suppose we didn't use that?

Mr. FLYNT. That is why we are here.

Mrs. FENWICK. Suppose we didn't ask, using that man's name. That is what I am asking you. Did you receive directly or indirectly any money you have reason to believe came from the Government of Korea; would he answer?

Mr. POVICH. Yes; I think he would answer the other question. The problem is if he answered the other question, though, he would——

Mrs. FENWICK. Just answer. If we asked him, did you ever receive any money directly or indirectly that you have reason to believe came from the Government of Korea, would he answer it?

Mr. BARNETT. That is really rephrasing the same question, Mrs. Fenwick.

Mrs. FENWICK. No; it is leaving out the name of the man.

Mr. POVICH. The answer is I would like to think he would, and the problem——

Mrs. FENWICK. Would you advise him to?

Mr. POVICH. I have to advise him, but the decision as to whether he wishes to answer a question or not is his own. But let me say to you the problem is this: If the person who asked the question, then came to the conclusion, and the committee came to the conclusion that answer was wrong, then it would recommend, I assume, a prosecution for perjury.

Mrs. FENWICK. You bet.

Mr. POVICH. Right. But the problem is if the very same question is asked that was asked in this case, which was the subject of the criminal prosecution, and he answered that question, and he answered it in the negative, then the problem is, would that be reported to the judge on the threshold of sentencing, and that is the reason why I am here. I am not concerned about the question being asked after the sentencing.

Mr. FLOWERS. Mr. Chairman?

Mr. BARNETT. You phrased what our concern was, Mr. Bennett. If you can find any way to accommodate that, we would be pleased.

Mrs. FENWICK. Then we will be up against the tax appeal, right?

Mr. BARNETT. No.

May I say one brief thing? I want to thank you for letting us come; I know, if nothing else, we have impressed you that we are serious about this, and that is all we hoped.

Please read our written brief, if you will. I would really appreciate it. And for your courtesy, we are very grateful, as is Mr. Kim, our client.

Thank you all.

Mr. FLYNT. Thank you very much. And will everybody vacate the room except the committee and the staff director and the reporters?

APPENDIX X

[Korean Influence Investigation Pursuant to H. Res. 252]

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE OF STANDARDS OF
OFFICIAL CONDUCT,
Washington. D.C.. May 18, 1978.

Re: Contempt of Hancho C. Kim.

Hon. JOHN J. FLYNT, Jr.,
Chairman, Committee on Standards of Official Conduct, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing you this letter to report to you pursuant to paragraph three of the Resolution adopted by the Committee at its meeting on May 17, 1978 with respect to the contempt of Hancho C. Kim. That Resolution provides, in part, as follows:

"This resolution shall be of no force or effect if the Special Counsel determines that the said Hancho C. Kim has submitted to a full and complete deposition prior to Friday, May 19, 1978."

I regret to report to you that on May 18, 1978, Mr. Kim appeared with his attorneys at a deposition before the Honorable Millicent Fenwick and persisted in his refusal to answer the question which provided the basis for the contempt proceeding against him. Mr. Kim also refused to answer related questions.

Sincerely,

LEON JAWORSKI,
Special Counsel.

EXHIBIT XI

[House of Representatives Hearings Before the Committee on Standards of Official Conduct—Korean Investigation—Deposition of Hancho C. Kim]

KOREAN INVESTIGATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT,
Washington, D.C., May 18, 1978.

The parties to the deposition met at 2:00 p.m., in Room 2125, Rayburn House Office Building, Washington, D.C.

Present: Representative Fenwick.

Also present: John W. Nields, Jr., chief counsel; Jeffrey Harris, deputy chief counsel; Thomas Fortuin, counsel; Robert Bucknam, investigator.

Edward Bennett Williams, Esq.; David Povich, Esq., Robert B. Barnett, Esq., on behalf of Mr. Kim.

Mrs. FENWICK. We are ready to begin. Mr. Kim, do you solemnly swear that the testimony you will give before this committee in the matter now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. KIM. I do.

Mrs. FENWICK. Thank you.

Mr. FORTUIN. The record should reflect the continued deposition of Mr. Hancho C. Kim, pursuant to the order of immunity previously identified for the record.

Mr. Kim——

Mr. WILLIAMS. May I say something before we begin.

My name is Edward Bennett Williams. I am here representing Mr. Kim. I would like to say something before we begin on the record.

My associates, Mr. Barnett and Mr. Povich, brought me up to date on the posture of this matter in the last hour. And I have to say to you that except for the fact that they told me this is the case, I would find it incredible, but they told me, and I know it is true.

As you know, Mrs. Fenwick, Mr. Kim has been convicted by a jury in the District of Columbia of perjury and conspiracy. That took place on April 8. He is to be sentenced by the judge tomorrow morning at 10 a.m., I believe.

I am told by my associates that the question was put to Mr. Kim, precisely the question which was the subject matter of the perjury in the indictment on which he now stands convicted. We are here now presumably because that question will be put to him again.

I am further told, Mrs. Fenwick, that my associates were told that what Mr. Kim did here would be reported to the judge.

Mr. FORTUIN. Let's get that straight for the record.

Mr. WILLIAMS. I would like to finish. You just let me finish and will have plenty of time to make what statement you wish for the record.

I am told that also, by my associates, they

were told by Mr. Fortuin, after he had a conversation with Mr. Nields, that if Mr. Kim answered the question in the same way as he had answered it previously, on which he stands convicted of perjury, that that would be reported to the judge.

So I have concluded, Mrs. Fenwick, that this proceeding is an intrusion into the function of the judiciary. I have concluded that it is a breach of Mr. Kim's immunity grant, a breach of the contract between Mr. Kim and the government of the United States. And I have further concluded this; that Mr. Kim stands in an absolutely incredible position before you here.

He has three options. He can answer the question in accordance with his understanding of a truthful answer, which answer has already been adjudicated perjurious, so that he would be susceptible to another perjury conviction if he answers truthfully.

He can refuse to answer, in which instance he has been threatened with an adjudication of contempt under section 192 of Title 2, and also potential contempt of the House via a proceeding conducted in the very Chambers of the House.

Thirdly, his third option, and apparently this is the only other option, is to give an answer which he believes to be false, to commit perjury here, under oath—he has just been sworn to tell the truth—and if I may coin a phrase, that is a "trilemma" on which no American was ever intended to be hoisted.

So I suggest to you, Mrs. Fenwick, that the immunity which he has been granted, and which we contend has been breached, is not as broad, as his constitutional right, his constitutional right to remain silent, for the reason that he has not been immunized from a possible indictment for perjury for his answer here, and if he testifies in the same way as he previously testified in the prior proceeding, out of which arose his perjury indictment, he faces the possibility of incrimination.

So that we have a unique situation here, one I suppose that was never contemplated by the law-makers when they passed the testimonial immunity statute; that he faces incrimination by giving a truthful answer.

Having said that, I want to say this respectfully to you, Mrs. Fenwick. We are going to refuse to answer.

Mrs. FENWICK. I knew it, Mr. Williams. Don't think that these legalities have obfuscated the matter for me. At least I am not a lawyer. But I presume these are your associates, as you said they were, and I heard them last night. I am not a lawyer. But I must tell you in all honesty, as an American citizen, I am not impressed.

Mr. WILLIAMS. We are not here to impress you.

Mrs. FENWICK. I know, I know. You are here to win your case.

Mr. WILLIAMS. I am here to defend Mr. Kim's rights.

Mrs. FENWICK. I am sure Mr. Fortuin has something more intelligent to say than I have had to say.

Mr. FORTUIN. I think some of the things you have said are incorrect.

I think that there is no question that the immunity is as complete as his fifth amendment right. We have indicated that if the witness chose to take a contempt, we would communicate that to the judge, because we believe under the authorities that the judge could take his refusal to answer pursuant to a grant of immunity under consideration. If he were to answer the questions in a truthful fashion, that could under no circumstances pursuant to the grant of immunity under my understanding be communicated to the judge or be used against him in a sentencing proceeding, and we would not communicate it.

In the third situation, if the witness were to answer a question in a manner which has already been determined by a jury to be perjurious beyond a reasonable doubt, I must say to you quite frankly that I don't know whether or not that could properly be communicated to a judge, although my reaction is that it could. It would seem to me that whether or not that could is a matter for the future. If the witness gave that answer under oath then you could certainly argue to us that pursuant to the grant of immunity it should not be considered by the judge, you could argue to the Department of Justice or to the judge. That would come at a future time.

At this time all the committee wants is answers to its questions. And the immunity has been granted. It is complete. The arguments that you have raised have been raised by your partners, both before the chairman and the ranking minority member, before Judge Preyer, before the entire committee. They have been overruled.

Mr. WILLIAMS. Well——

Mrs. FENWICK. Suppose we proceed from the other end. Suppose that one question that you say is so crucial, we wait until the end to ask. Is that possible?

Mr. NIELDS. No, absolutely not.

Mrs. FENWICK. OK. There doesn't seem to be any common sense way out of a dilemma which lawyers seem to construct. You have a grant of immunity which means that whatever he says cannot be used against him provided it is the truth.

Mr. WILLIAMS. You see, the problem is, Mrs. Fenwick, that he has answered this question. He was defended most vigorously in court by my associates. They contended that he did not commit perjury. That is still our contention and will be on appeal. And if he answers the same way that he answered heretofore, it will be the contention of the counsel here that he has committed perjury. They have already said to you that they would take that to the judge. And they also probably would take it to the Department of Justice. So that he would be clearly facing incrimination. And that is why I say the immunity grant is not sufficient. But I don't want to argue the law here. I just want to state our position. I think we can all remain friends. I have the greatest respect for you, Mrs. Fenwick. I am here to represent this man and to protect his rights. And we don't have to have any bad feelings over it.

I have stated our position, and I would respectfully ask to be excused.

Mr. FORTUIN. I think the record should reflect that we sent to your office this morning a copy of the committee's resolution of last evening, which begin, "*Resolved*, That the chairman of the committee——

Mr. WILLIAMS. We have read it. I agree it should be part of the record.

Mrs. FENWICK. Well, I would like to ask you—and maybe we ought to have a recess—but I would like to ask counsel for the committee why it is we cannot proceed starting in the middle instead of in the beginning.

Mr. NIELDS. Why don't we have a recess.

Mrs. FENWICK. OK.

[Whereupon a recess was taken.]

[The following proceedings were had following the recess.]

Mr. FORTUIN. Mr. Kim, Mrs. Fenwick has suggested, and I think it is a good idea, that we ask you some questions that are not precisely the question that you were asked before the grand jury, and which was found to be perjurious. We do believe we will have to come back to the other question ultimately. But we would like to ask those questions first.

Let me ask you first, you do know a man by the name of Kim Sang Keun, is that correct?

Mr. WILLIAMS. My advice to Mr. Kim is going to be the same. I can save you and Mrs. Fenwick some time. On this record I am going to advise Mr. Kim to assert his constitutional rights not to answer, the privilege against self-incrimination.

I also now gravely doubt whether you are in pursuit of a valid legislative purpose.

Mr. FORTUIN. On what do you base your objection?

Mr. WILLIAMS. On the record as it exists so far. This witness' multiple appearances before this committee, in which he has responded to questions, and the Senate committee, and the whole record as it exists at this moment on the eve of his sentence before Judge Flannery tomorrow morning.

Mr. HARRIS. Have you read the record, Mr. Williams?

Mr. WILLIAMS. No. Which record?

Mr. POVICH. He can't read the record. You have not provided us with a transcript.

Mr. HARRIS. Have you asked to review it?

Mr. WILLIAMS. Why would you ask me if I read it, if you have not given it to us?

Mr. HARRIS. Because other witnesses have had the privilege of reading the record when they requested it.

Mrs. FENWICK. It is available.

I would just like to say, for the purpose of the record, this committee was established under resolution of the House, and that is the purpose of this committee, to carry out the obligation imposed upon us by the House of Representatives, and no other.

We are trying to discover actions involving Congressmen, and that is what is of interest to this committee only.

Mr. NIELDS. I would like to supplement the statements of Mrs. Fenwick. Under House Resolution 252 this committee has several mandates, one of which is to ascertain whether and the extent to which there were efforts on the part of the Korean Government or agents or representatives thereof to influence Congressmen by conferring things of value on them.

Mrs. FENWICK. It is on account of the Congressmen, Mr. Williams.

Mr. BARNETT. Let's let Mrs. Fenwick explain the purpose. I would like to hear it.

Mrs. FENWICK. It is all there in the resolution, which I am sure you have had a copy of, haven't you, 252. Have you got a copy of 252? We have to do our duty.

I would like to understand, Mr. Williams, what you were telling us. We were given to understand yesterday that there was only one key question that Mr. Kim was in a peculiar situation, unwilling or unable—or I don't know exactly which word was used—to answer.

He was not unwilling to answer other questions, but I understand from your statement at this minute that that is not—my understanding was incomplete?

Mr. WILLIAMS. No. I think, Mrs. Fenwick, if the committee really wants the information that it purports to want, that it can get it. But it can get it when this man's criminal proceedings are over.

I don't understand the unwillingness of this committee to await that because I wouldn't be here making the kind of argument that I made here a moment ago if he didn't have criminal proceedings staring him in his face.

He has some tomorrow morning at 10 a.m., and so we are not offering you an insoluble problem.

We are offering you a problem that I think is quite easy of resolution. All you have to do is postpone his appearance until his criminal proceedings are over, and he will come back. We will bring him back. I assure you he will come back.

Mrs. FENWICK. Are you referring to the sentencing tomorrow morning?

Mr. WILLIAMS. He has a sentence tomorrow morning, and he has a case pending against him in Baltimore.

Mrs. FENWICK. I wish you would be more clear. So you are asking this committee to

postpone any further action until this case in Baltimore, which might be next autumn——

Mr. WILLIAMS. I don't think that is likely, Mrs. Fenwick. I think I am probably asking you for not much more than a 40-day adjournment.

Mrs. FENWICK. Forty days?

Mr. WILLIAMS. Yes, 40 days.

Mrs. FENWICK. Well, I would want to—I must say I am afraid that that is longer than we can manage. I thought you were referring to the sentencing tomorrow morning.

Mr. WILLIAMS. That is one of the things that deeply concerns me. In the light of what has been said here.

Mrs. FENWICK. Could I ask you, Mr. Williams, what possible effect on his case in Baltimore could his relations with Congressmen have?

Mr. WILLIAMS. My understanding, Mrs. Fenwick—and I am sure your lawyers will correct me if I am in error—is that he has answered the questions involving Congressmen, and he has answered them fully. He has never declined to answer any question that was put to him about a Congressman.

Mr. NIELDS. I think I should make it clear for the record that the problem for this committee is that it is difficult for us to accept as truth statements that he did not pay any money to any Congressmen when your client's posture is that he never received the money to give them in the first place, when that statement has been found by a jury to be perjurious.

We are then left with a situation that he has denied receiving the money and consequently that he paid any Congressmen. It has been established in a court of law that he did receive the money. That makes it impossible for us to accept on that basis your client's previous testimony to us as being something that we can rely on.

That is the reason we have to continue.

Mr. WILLIAMS. Well, that is the reason we have to continue to refuse to answer, because you want to ask him in thinly veiled questions the same things that he has been convicted of.

We cannot let him answer those questions. You have been very forthright and candid in saying you want to ask him certain questions with a view to getting to the ultimate question for which he stands convicted of perjury.

We cannot let him answer those questions. I don't want to be acrimonious or contentious with you. This is our position. If you don't agree with it, you don't agree with it. Reasonable men can disagree on questions of law. But I just ask you to respect that it is our position, and I ask you if you will let us depart respectfully now, Mrs. Fenwick.

Mr. NIELDS. I hope that you are not really meaning to say that you are preventing your client from answering, that you are not letting him answer.

Mr. WILLIAMS. I am advising him, with respect to what position to take, and I believe that he will follow my advice. I have no reason to think he will not follow it. I am not preventing him, nor have I ever prevented anyone else in my professional life from answering questions.

I have given advice. I don't prevent. I am not in the business of prevention.

Mrs. FENWICK. Are you telling us, then, that your client——

Mr. NIELDS. Because he is under direction to answer from this committee.

Mr. WILLIAMS. I understand that.

Mr. NIELDS. I just want to make sure who it is here that is violating the order of the committee.

Mr. WILLIAMS. Well, you are not throwing any terror into my heart.

Mr. NIELDS. I don't want to do that. I just want to make it absolutely clear who is making the decision final not to—I take it only our client can make that decision I simply want that to be very clear.

Mr. WILLIAMS. You have made it clear.

Mr. FORTUIN. Mr. Kim, you understand we lawyers ultimately all go home, and that any action can only be brought against you, do you understand that?

Mr. WILLIAMS. He understands that.

Mr. FORTUIN. And having understood that, and in view of the proceedings here today, I would like to ask the witness, I think we should have an answer, is it your intention to continue to decline to answer?

Mrs. FENWICK. This cooperation from an American citizen is touching, very fine.

We thank you so much. I think we better adjourn.

[Whereupon, at 2:35 p.m., the deposition was concluded.]

Mr. FLYNT (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the report be dispensed with, and that the report be printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. FLYNT. Mr. Speaker, I offer a privileged resolution (H. Res. 1350) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1350

Resolved, That the Speaker of the House certify the report of the Committee on Standards of Official Conduct with respect to the proceedings against Hancho C. Kim, which report details the refusal of the said Hancho C. Kim, to answer a question in a proceeding being conducted by the said Committee pursuant to the authority of House Resolution 252, 95th Congress, 1st session, to the U.S. Attorney for the District of Columbia, pursuant to title 2, United States Code, sections 192 and 194, to the end that the said Hancho C. Kim may be proceeded against in the manner and form provided by law.

Mr. FLYNT. Mr. Speaker, I yield 30 minutes to the gentleman from South Carolina (Mr. SPENCE), and pending that, I yield myself such time as I may require.

Mr. Speaker, this is a contempt citation from the Committee on Standards of Official Conduct which, if adopted by the House, as I presume it will be, would refer the matter to the Department of Justice and certify this report, together with appendixes, to the U.S. Attorney for the District of Columbia to the end that one Hancho C. Kim, the witness before the House Committee on Standards of Official Conduct, be prosecuted for criminal contempt of Congress pursuant to the provisions of title 2, United States Code, sections 192 and 194.

This report, which has been ordered printed in the RECORD at this point, consists of approximately 7 pages. In addition to that, Mr. Speaker, there are 67 pages of appendixes and supporting documents to support the report and to support the resolution.

Mr. Speaker, there were some unusual circumstances surrounding the adoption of this report and the authorization and instruction to me as chairman of the committee to call up the privileged report and to offer the privileged resolution which the House is now considering. Hancho C. Kim was a witness before this committee in connection with the Korean investigation which has been conducted pursuant to the provisions of House Resolution 252 of the 95th Congress, first session.

Mr. Kim was being deposed by a member of the committee, the gentleman from North Carolina (Mr. PREYER), and by one or more members of the staff. At the time the deposition was being taken, Hancho C. Kim was under indictment on at least two criminal charges, one of which charges was perjury.

A question at the deposition, as put to Mr. Kim, read as follows:

Did there come a time when you received money from Kim Sang Keun?

Thereupon on advice of counsel, the witness refused to answer the question and gave as his reasons therefor several grounds. Upon fully hearing counsel for the witness, Mr. Kim, the member of the committee who was presiding over the taking of the deposition refused to honor the claim of self-incrimination and found Kim's refusal to answer the question contemptuous. Whereupon, this matter was reported to the committee, and subsequently, a quorum of the committee being present, the committee by a vote of 9–0 authorized me as chairman of the committee to file this report and at the proper time to offer a resolution directing the transmission of this report by the Speaker of the House to the U.S. Attorney for the District of Columbia.

After the report was filed, counsel for Mr. Kim asked the committee if a brief, which they had prepared and submitted to the committee, might be published in the CONGRESSIONAL RECORD.

In an effort to be both reasonable and fair, I had no objection to asking unanimous consent that the brief be printed in the RECORD, and I know of no member of the committee who had any such objection. Unanimous consent was granted.

Accordingly, on August 9, 1978, I asked unanimous consent to advise Members that it was my intention to call this report up during the week of September 11, 1978. I further stated that counsel for the respondent requested the committee to include a brief submitted on behalf of the respondent, Hancho C. Kim, to be published in the CONGRESSIONAL RECORD. I stated further, as I did just now, that, in the interest of fairness, that request appeared to be a reasonable one.

Mr. Speaker, there may be some merit to the contention of Mr. Hancho C. Kim that to have answered the question—whatever his answer would have been—would have placed him in an untenable position.

However, Mr. Speaker, I do not believe that that question is one which properly addresses itself either to the committee which I chair or to the House of Representatives. I think that it more properly addresses itself to a judicial determination if and when this report is adopted.

Under the rules of the House, certainly if a witness under subpena is asked a question, the answer to which the committee believes essential to any investigation, the House of Representatives has

a right to expect that witness to answer. The only exception that I know of would be when such witness pleads the fifth amendment and says he refuses to answer on the grounds that his answer might incriminate him or tend to incriminate him.

The committee had previously gone before the U.S. District Court for the District of Columbia and had obtained an order of use immunity which would have absolved this witness, Mr. Hancho C. Kim, of any prosecution for answering, because of the answer which he gave to this particular question.

Mr. Kim and his attorneys thought otherwise. Since he was presently at that time under indictment on a charge of perjury involving the exact set of facts that this question called for an answer to, he took the position that, if he answered the question one way, he in effect would be pleading guilty to an indictment that was pending against him. If he answered it the other way, he contended that he would be inviting a second indictment for perjury on grounds very similar to those for which he had been indicted previously.

Notwithstanding this contention, which I stated earlier may have some merit, it is not for our committee, nor do I believe it is for the House of Representatives, to answer that question or to judge the case on its merits.

Therefore, Mr. Speaker, I ask that the House vote this citation so that the matter may be properly transmitted by the Speaker of the House of Representatives to the U.S. attorney for disposition in the U.S. District Court for the District of Columbia.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER. The gentleman from South Carolina (Mr. SPENCE) is recognized for 30 minutes.

Mr. SPENCE. Mr. Speaker, I yield myself such time as I may consume.

The facts as set forth by the chairman are correct. I concur in what he said. I call upon the House to approve this resolution.

● Ms. HOLTZMAN. Mr. Speaker, as my colleagues are aware, I have fought long and hard for a full and complete investigation of the Korean influence buying scandal. In fact, as a member of the House Judiciary Committee, I offered an amendment requiring that a politically independent, court-appointed Special Prosecutor be created to handle the criminal investigation of Members of Congress and others in connection with Koreagate.

Nevertheless, even though I find his refusal to cooperate with the Federal investigation utterly reprehensible, I must reluctantly vote against House Resolution 1350 authorizing a contempt citation for Hancho Kim. I do so because I have serious constitutional reservations about the propriety of the resolution.

This resolution is based on Kim's refusal to answer a single question posed by the House Committee on Standards of Official Conduct: "Did there come a time when you received money from Kim Sang Keun?" According to committee sources whom I questioned at length on the floor, Hancho Kim would be subjected to possible criminal charges whether he answered yes or no.

In view of this, Kim's claim of possible self-incrimination seems to provide a plausible constitutional basis for his silence. Since I was given no assurance that the resolution does not penalize Kim for validity asserting a constitutional privilege, I feel compelled to vote against it.

I would have liked to support the resolution and wish the committee had been able to assure me that we are not placing Mr. Kim in a constitutionally untenable position. Since that was not the case, I will vote "no" on the resolution.●

Mr. FLYNT. Mr. Speaker, we have no further requests for time, and I yield back the balance of my time.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. FLYNT. Mr. Speaker, on a matter involving a citation of contempt I believe it is the general policy of the House to have a recorded vote.

Accordingly, Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Tht vote was taken by electronic device, and there were—yeas 319, nays 2, answered "present" 3, not voting 108, as follows:

[Roll No. 784]

YEAS—319

Abdnor	Buchanan	Edgar
Addabbo	Burke, Mass.	Edwards, Calif.
Akaka	Burleson, Tex.	Edwards, Okla.
Alexander	Burlison, Mo.	Eilberg
Ambro	Butler	Emery
Anderson, Calif.	Byron	English
	Carr	Erlenborn
Andrews, N.C.	Carter	Ertel
Andrews, N. Dak.	Cavanaugh	Evans, Colo.
	Cederberg	Evans, Del.
Annunzio	Chappell	Evans, Ga.
Applegate	Chisholm	Evans, Ind.
Archer	Clawson, Del	Fary
Ashley	Clay	Fascell
Aspin	Coleman	Fenwick
AuCoin	Collins, Ill.	Findley
Bafalis	Collins, Tex.	Fish
Baldus	Conable	Fisher
Barnard	Conte	Fithian
Baucus	Corcoran	Flippo
Bauman	Cornell	Flood
Bedell	Coughlin	Florio
Beilenson	Cunningham	Flynt
Benjamin	D'Amours	Foley
Bennett	Daniel, Dan	Ford, Mich.
Bevill	Daniel, R. W.	Ford, Tenn.
Biaggi	Danielson	Forsythe
Bingham	Davis	Fountain
Blanchard	de la Garza	Fowler
Blouin	Delaney	Fraser
Boland	Derrick	Frenzel
Bolling	Derwinski	Fuqua
Bonior	Devine	Gammage
Bonker	Dickinson	Garcia
Bowen	Dicks	Gephardt
Brademas	Dingell	Giaimo
Breckinridge	Dodd	Gilman
Brinkley	Dornan	Ginn
Brodhead	Downey	Glickman
Brooks	Drinan	Goodling
Brown, Calif.	Duncan, Oreg.	Gore
Brown, Mich.	Duncan, Tenn.	Gradison
Broyhill	Early	Grassley
Green	Markey	Ruppe
Gudger	Marks	Russo
Hagedorn	Martin	Satterfield
Hall	Mattox	Sawyer
Hamilton	Mazzoli	Scheuer
Hammer-schmidt	Meeds	Schroeder
	Meyner	Schulze
Hanley	Michel	Seiberling
Hansen	Mikulski	Sharp
Harkin	Mikva	Shuster
Harris	Miller, Ohio	Sikes
Hawkins	Mineta	Simon
Hefner	Minish	Skelton
Heftel	Mitchell, Md.	Slack
Hightower	Mitchell, N.Y.	Snyder
Hillis	Moakley	Solarz
Holland	Moffett	Spence
Hollenbeck	Mollohan	St Germain
Holt	Montgomery	Staggers
Horton	Moore	Stangeland
Howard	Moorhead, Calif.	Stanton
Hubbard		Steed
Hughes	Moss	Steers
Hyde	Mottl	Stockman
Ichord	Murphy, N.Y.	Stokes
Ireland	Murphy, Pa.	Stratton
Jacobs	Murtha	Studds
Jenkins	Myers, Michael	Stump
Johnson, Calif.	Natcher	Symms
Johnson, Colo.	Neal	Thompson
Jones, Okla.	Nedzi	Traxler
Jones, Tenn.	Nichols	Treen
Jordan	Nowak	Trible
Kastenmeier	O'Brien	Tucker
Kazen	Oberstar	Udall
Kemp	Obey	Ullman
Keys	Ottinger	Van Deerlin
Kildee	Panetta	Vander Jagt
Kindness	Patten	Vanik
Kostmayer	Patterson	Vento
Krebs	Pattison	Volkmer
LaFalce	Pease	Waggonner
Lagomarsino	Perkins	Walker
Latta	Pettis	Wampler
Le Fante	Preyer	Watkins
Leach	Price	Weaver
Lederer	Pursell	Weiss
Lehman	Quayle	Whalen
Lent	Quillen	Whitehurst
Levitas	Rahall	Whitley
Livingston	Railsback	Whitten
Lloyd, Calif.	Rangel	Wiggins
Lloyd, Tenn.	Regula	Wilson, Bob
Long, La.	Reuss	Winn
Long, Md.	Rhodes	Wirth
Lundine	Richmond	Wolff
McClory	Rinaldo	Wylie
McDade	Roberts	Yates
McDonald	Robinson	Yatron
McEwen	Roe	Young, Fla.
McFall	Rogers	Young, Mo.
McKay	Rose	Young, Tex.
Madigan	Rosenthal	Zablocki
Maguire	Roybal	Zeferetti
Mahon	Rudd	

NAYS—2

Gonzalez	Holtzman

ANSWERED "PRESENT"—3

Burton, Phillip	Guyer	Wilson, C. H.

NOT VOTING—108

Ammerman	Diggs	Marriott
Anderson, Ill.	Eckhardt	Mathis
Armstrong	Edwards, Ala.	Metcalfe
Ashbrook	Flowers	Milford
Badham	Frey	Miller, Calif.
Beard, R.I.	Gaydos	Moorhead, Pa.
Beard, Tenn.	Gibbons	Murphy, Ill.
Boggs	Goldwater	Myers, Gary
Breaux	Hannaford	Myers, John
Broomfield	Harrington	Nix
Brown, Ohio	Harsha	Nolan
Burgener	Heckler	Oakar
Burke, Calif.	Huckaby	Pepper
Burke, Fla.	Jeffords	Pickle
Burton, John	Jenrette	Pike
Caputo	Jones, N.C.	Poage
Carney	Kasten	Pressler
Clausen, Don H.	Kelly	Pritchard
	Krueger	Quie
Cleveland	Leggett	Risenhoover
Cochran	Lott	Rodino
Cohen	Lujan	Roncalio
Conyers	Luken	Rooney
Corman	McCloskey	Rostenkowski
Cornwell	McCormack	Rousselot
Cotter	McHugh	Runnels
Crane	McKinney	Ryan
Dellums	Mann	Santini
Dent	Marlenee	Sarasin

Sebelius	Steiger	Waxman
Shipley	Taylor	White
Sisk	Teague	Wilson, Tex.
Skubitz	Thone	Wright
Smith, Iowa	Thornton	Wydler
Smith, Nebr.	Tsongas	Young, Alaska
Spellman	Walgren	
Stark	Walsh	

Mr. GUYER changed his vote from "yea" to "present."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FLYNT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore (Mr. EARLY). Is there objection to the request of the gentleman from Georgia?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. FRENZEL asked and was given permission to address the House for 1 minute.)

Mr. FRENZEL. Mr. Speaker, I have requested this time for the purpose of asking the distinguished acting majority leader about the program for the remainder of the day and for the next week.

Mr. Speaker, I yield to the distinguished acting majority leader, the gentleman from Indiana (Mr. BRADEMAS).

Mr. BRADEMAS. Mr. Speaker, I thank the distinguished acting minority leader for yielding.

Mr. Speaker, the program for the House of Representatives for the week of September 18, 1978, is as follows:

On Monday, September 18, the House meets at noon on the Consent Calendar.

There are 25 bills to be called up under suspension of the rules. I may say, Mr. Speaker, that the list of all 25 of these bills has been available from Tuesday last, both on the floor and as published in the CONGRESSIONAL RECORD.

For that reason, if the gentleman from Minnesota will yield to me to do so, I would like to ask unanimous consent to dispense with the reading and the numbers and the titles of the 25 bills under suspension.

Mr. FRENZEL. Mr. Speaker, I yield to the gentleman for that purpose.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. BRADEMAS. Mr. Speaker, will the gentleman yield further?

Mr. FRENZEL. I yield to the distinguished acting majority leader.

Mr. BRADEMAS. Mr. Speaker, I may say in this respect that the first seven of these suspensions are tariff bills and can probably be disposed of rapidly. The remainder are substantive and are the most significant of the 80 bills for which requests have been made to be placed on the suspension calendar.

Mr. Speaker, on Tuesday, September 19, the House meets at noon on the Private Calendar. There are 6 bills to be called up under suspension of the rules. Votes on suspensions will be postponed until the end of all suspensions. Those bills are:

H.R. 13149, extend report date on food stamp pilot project workfare provisions;

H.R. 1464, Humane Methods of Slaughter Act amendments;

H.R. 9482, Packers and Stockyards Act amendments;

H.R. 12101, Farmer-to-Consumer Direct Marketing Act amendments;

H.R. 13715, National Weather Service Act; and

H.R. 12559, Native Latex Commercialization Act.

Following the suspensions, Mr. Speaker, there are scheduled for consideration on Tuesday the following conference reports:

S. 1678, FIFRA;

H.R. 12936, HUD appropriations, fiscal year 1979;

S. 3040, Amtrak Improvement Act;

H.R. 12598, foreign relations authorizations, fiscal year 1979;

H.R. 12222, international development and food assistance, fiscal year 1978;

H.R. 11401, NASA authorization, fiscal year 1979; and,

H.R. 8149, Customs Procedural Reform Act.

Mr. Speaker, on Wednesday, September 20, the House meets at 10 o'clock a.m. to complete consideration of the bill H.R. 12611, Air Service Improvement Act of 1978;

H.R. 1, Ethics in Government Act, under a modified open rule, with 2 hours of debate; and,

H.R. 12452, CETA amendments, to complete consideration of that bill.

Mr. Speaker, on Thursday and Friday, September 21 and 22, the House will meet at 10 o'clock a.m. to consider the following bills:

H.R. 11733, Surface Transportation Assistant Act of 1978, to complete consideration of that bill;

H.R. 12005, Justice Department authorizations, under an open rule, with 1 hour of debate;

S. 1613, Magistrate Act of 1977, under an open rule, with 1 hour of debate;

H.R. 13059, Water Resources Development Act of 1978, under an open rule, with 1 hour of debate;

H.R. 13750, Sugar Stabilization Act of 1978, under an open rule, with 2 hours of debate; and finally, there will be the Department of Defense authorizations bill, fiscal year 1979, subject to a rule being granted.

Mr. Speaker, the House will adjourn by 7 p.m. on Monday and Tuesday; by 7:30 p.m. on Thursday, and by 3 p.m. on Friday.

Conference reports may be brought up at any time and any further program will be announced later.

Mr. Speaker, I thank my friend, the gentleman from Minnesota, for having yielded.

Mr. FRENZEL. Mr. Speaker, I thank the distinguished acting majority leader.

Mr. Speaker, I would like to further inquire, on Wednesday there is no closing time reported. May we assume that the House will go no later than 9 o'clock p.m. on Wednesday?

Mr. Speaker, I yield to the distinguished acting majority leader.

Mr. BRADEMAS. Mr. Speaker, let me say 9 o'clock, or thereabouts.

I may say, if the gentleman will yield further, that in respect to the remainder of the program for today, we shall be considering the rule on the bill H.R. 11733, Surface Transportation Assistance Act of 1978.

Two hours of debate are scheduled on that, and we will consider the rule and general debate only.

Mr. FRENZEL. Mr. Speaker, I thank the gentleman.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Minnesota.

Mr. LEVITAS. Mr. Speaker, I thank the gentleman from Minnesota for yielding.

I would like to make this inquiry of the acting majority leader: On an earlier tentative schedule for next week, on Tuesday, on which day certain conference reports were scheduled, one of the proposed scheduled conference reports was a conference report on the FTC Act amendments. I notice that has now been taken off the schedule for Tuesday, but there exists in the gentleman's statement the usual language that conference reports may be brought up at any time.

Mr. Speaker, I would like to inquire. Is there any intention of bringing up the FTC conference report next week?

Mr. BRADEMAS. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Indiana.

Mr. BRADEMAS. Mr. Speaker, as I understand it, if I may respond to the gentleman from Georgia (Mr. LEVITAS), the chairman of the committee with jurisdiction over that bill asked that the conference report be withdrawn from the Speaker's calendar in an effort to work out some problems in the conference report. The matter is before the Committee on Rules, and an effort will be made to seek a rule. So there is a possibility that it will be brought up next week.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Speaker, might I just suggest to the acting majority leader that the leadership explore the possibility of calling up under unanimous consent some of these bills that are listed under suspension for Monday?

There has been a tendency—and I am sure most Members would consider it unfortunate—to ask for rollcall votes on suspension bills simply because they are considered under suspension of the rules. It might be more difficult for an individual Members to object to a bill called up under unanimous consent and take the onus of defeating that legislation himself since the suspension calendar would still be available.

Mr. Speaker, it seems to me that many of these bills are not controversial, but the sheer magnitude of the number of bills listed might suggest to some Members the demanding of rollcall votes that are unnecessary.

Mr. BRADEMAS. Mr. Speaker, if the gentleman from Minnesota will yield further, I can only state that I want to commend the gentleman from Maryland (Mr. BAUMAN) for what I think is a very constructive suggestion, and the gentleman from Indiana will be glad to relay this suggestion to the appropriate authorities.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed on Wednesday of next week.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

ADJOURNMENT TO MONDAY, SEPTEMBER 18, 1978

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

Mr. ANNUNZIO. Mr. Speaker, reserving the right to object, I shall not object, but I would like to ask the distinguished acting majority leader this question:

I know there has been mention made about the completion time next week, but could the gentleman give us a better idea? The gentleman stated the times when we will go into session and as to approximately when we will adjourn or recess on Monday, Tuesday, Wednesday, and Thursday, and that is on our schedule. I ask this question only so that we can make plans.

Mr. BRADEMAS. Yes, Mr. Speaker, if the gentleman will yield, I will be glad to respond.

The House will adjourn by 7 p.m. on Monday and Tuesday, by 7:30 p.m. on Thursday, by 9 p.m. or thereabouts on Wednesday, and by 3 p.m. on Friday.

Mr. ANNUNZIO. Mr. Speaker, I thank the acting majority leader, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

PERMISSION FOR COMMITTEE ON ARMED SERVICES TO FILE REPORT ON H.R. 14042, DEPARTMENT OF DEFENSE AUTHORIZATIONS, 1979

Mr. PRICE. Mr. Speaker, I ask unanimous consent that the Committee on Armed Services may have until midnight tonight, Friday, September 15, 1978, to file a report on the bill (H.R. 14042), authorizing appropriations for the Department of Defense for fiscal year 1979, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1326 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1326

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11733) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes. After general debate, which shall be confined to the bill and amendment made in order by this resolution and shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Public Works and Transportation now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be read for amendment by titles instead of by sections, and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI, clause 1(p)(3), rule X and clause 5, rule XXI are hereby waived. No amendment to title V of said substitute, and no amendment to said substitute changing or modifying said title, shall be in order except amendments recommended by the Committee on Ways and Means. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except on motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, this is a 2-hour rule, open on four titles, closed on one, the Ways and Means title. To the best of my knowledge, there is absolutely nothing unusual about the rule, nor is there any controversy about the rule.

Mr. Speaker, I reserve the balance of my time.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1326 is a 2-hour, modified open rule making in order the consideration of H.R. 11733, the Surface Transportation Assistance Act of 1978. The rule waives section 402 (a) of the Budget Act against the consideration of the bill. Since section 402 (a) of the Budget Act prohibits consideration of legislation authorizing new budget authority which is reported after May 15 preceding the fiscal year in which that authority is to take effect, and, since various sections of the bill authorize new budget authority in fiscal 1979, even though the bill was not reported until August 11 of this year, a waiver is necessary in order to bring it up. On August 16, 1978, Chairman GIAIMO of the Budget Committee wrote to the Rules Committee indicating the Budget Committee's support for this waiver on the grounds that the chairman of the Subcommittee on Surface Transportation, Mr. HOWARD, suffered an unfortunate illness, and the work of the committee was delayed.

Under the terms of this rule, the 2 hours of debate time would be divided between the Public Works and the Ways and Means Committees, and the committee amendment in the nature of a substitute recommended by the Public Works Committee is made in order as an original bill for the purpose of amendment. That substitute in turn is protected against points of order for failure to comply with clause 7 of rule XVI, the germaneness rule; clause 1(p)(3) of rule X, which prohibits specific road legislation in general road legislation; and clause 5, rule XXI, which prohibits appropriations in a legislative measure.

Mr. Speaker, as I mentioned earlier, this is a modified open rule. Beginning at line 15 on page 2 of the rule it is stated that no amendment to title V of the substitute shall be in order except amendments recommended by the Committee on Ways and Means. Title V is that portion of the bill reported by the Ways and Means Committee which extends the highway trust fund for 5 years to September 30, 1984, postponing the tax reductions scheduled to take effect with the expiration of the trust fund.

Mr. Speaker, when the Rules Committee heard testimony on this bill on August 16, no objections were expressed to the rule requested by the two committees and that is the rule before us today.

Mr. Speaker, I have no requests for time, and I reserve the balance of my time.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DAVIS. Mr. Speaker, I object to the vote on the ground that a quorum

is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 318, nays 4, not voting 110, as follows:

[Roll No. 785]

YEAS—318

Abdnor	Emery	Levitas
Addabbo	English	Livingston
Akaka	Erlenborn	Lloyd, Calif.
Alexander	Ertel	Lloyd, Tenn.
Ambro	Evans, Colo.	Long, La.
Anderson, Calif.	Evans, Del.	Long, Md.
	Evans, Ga.	Lundine
Andrews, N.C.	Evans, Ind.	McClory
Andrews, N. Dak.	Fary	McDade
	Fascell	McEwen
Annunzio	Fenwick	McFall
Applegate	Findley	McHugh
Archer	Fish	McKay
Ashley	Fisher	Madigan
Aspin	Fithian	Maguire
AuCoin	Flippo	Mahon
Bafalis	Flood	Markey
Baldus	Florio	Marks
Barnard	Flynt	Martin
Baucus	Foley	Mattox
Bedell	Ford, Tenn.	Mazzoli
Beilenson	Forsythe	Meeds
Benjamin	Fountain	Meyner
Bennett	Fowler	Michel
Bevill	Fraser	Mikulski
Biaggi	Frenzel	Mikva
Bingham	Fuqua	Miller, Ohio
Blanchard	Gammage	Mineta
Blouin	Garcia	Minish
Boland	Gephardt	Mitchell, Md.
Bolling	Giaimo	Mitchell, N.Y.
Bonior	Gilman	Moakley
Bowen	Ginn	Moffett
Brademas	Glickman	Mollohan
Breckinridge	Goodling	Montgomery
Brinkley	Gore	Moorhead, Calif.
Brodhead	Gradison	
Brooks	Grassley	Moss
Brown, Calif.	Green	Mottl
Brown, Mich.	Gudger	Murphy, Pa.
Broyhill	Guyer	Murtha
Buchanan	Hagedorn	Myers, Michael
Burleson, Tex.	Hall	Natcher
Burlison, Mo.	Hamilton	Neal
Burton, Phillip	Hammer-schmidt	Nedzi
Butler		Nichols
Byron	Hanley	Nolan
Carr	Hansen	Nowak
Carter	Harkin	O'Brien
Cavanaugh	Harris	Oberstar
Cederberg	Hawkins	Obey
Chappell	Hefner	Ottinger
Chisholm	Heftel	Panetta
Clawson, Del	Hightower	Patten
Clay	Hillis	Patterson
Coleman	Holland	Pattison
Collins, Ill.	Hollenbeck	Pease
Collins, Tex.	Holt	Perkins
Conable	Holtzman	Pettis
Conte	Horton	Preyer
Corcoran	Howard	Price
Cornell	Hubbard	Pursell
Coughlin	Hughes	Quayle
Cunningham	Hyde	Quillen
D'Amours	Ichord	Rahall
Daniel, Dan	Ireland	Railsback
Daniel, R. W.	Jenkins	Rangel
Danielson	Johnson, Calif.	Regula
Davis	Johnson, Colo.	Reuss
de la Garza	Jones, Okla.	Rhodes
Delaney	Jones, Tenn.	Richmond
Derrick	Jordan	Rinaldo
Derwinski	Kastenmeier	Roberts
Devine	Kazen	Robinson
Dickinson	Kemp	Roe
Dicks	Kildee	Rogers
Dingell	Kindness	Roncalio
Dodd	Kostmayer	Rose
Dornan	Krebs	Rosenthal
Downey	LaFalce	Roybal
Drinan	Lagomarsino	Rudd
Duncan, Oreg.	Latta	Ruppe
Duncan, Tenn.	Le Fante	Russo
Early	Leach	Satterfield
Edgar	Lederer	Sawyer
Edwards, Calif.	Leggett	Scheuer
Edwards, Okla.	Lehman	Schroeder
Eilberg	Lent	Schulze
Sharp	Symms	Weiss
Shuster	Thompson	Whalen
Sikes	Thornton	Whitehurst
Simon	Traxler	Whitley
Skelton	Treen	Whitten
Slack	Trible	Wiggins
Snyder	Tucker	Wilson, Bob
Solarz	Udall	Wilson, C. H.
Spence	Ullman	Winn
St Germain	Van Deerlin	Wirth
Staggers	Vander Jagt	Wolff
Stangeland	Vanik	Wylie
Stanton	Vento	Yates
Steed	Volkmer	Yatron
Steers	Waggonner	Young, Fla.
Stockman	Walgren	Young, Mo.
Stokes	Walker	Zablocki
Stratton	Wampler	Zeferetti
Studds	Watkins	
Stump	Weaver	

NAYS—4

Bauman	McDonald	Moore
Gonzalez		

NOT VOTING—110

Ammerman	Gaydos	Pickle
Anderson, Ill.	Gibbons	Pike
Armstrong	Goldwater	Poage
Ashbrook	Hannaford	Pressler
Badham	Harrington	Pritchard
Beard, R.I.	Harsha	Quie
Beard, Tenn.	Heckler	Risenhoover
Boggs	Huckaby	Rodino
Bonker	Jacobs	Rooney
Breaux	Jeffords	Rostenkowski
Broomfield	Jenrette	Rousselot
Brown, Ohio	Jones, N.C.	Runnels
Burgener	Kasten	Ryan
Burke, Calif.	Kelly	Santini
Burke, Fla.	Keys	Sarasin
Burke, Mass.	Krueger	Sebelius
Burton, John	Lott	Seiberling
Caputo	Lujan	Shipley
Carney	Luken	Sisk
Clausen, Don H.	McCloskey	Skubitz
	McCormack	Smith, Iowa
Cleveland	McKinney	Smith, Nebr.
Cochran	Mann	Spellman
Cohen	Marlenee	Stark
Conyers	Marriott	Steiger
Corman	Mathis	Taylor
Cornwell	Metcalfe	Teague
Cotter	Milford	Thone
Crane	Miller, Calif.	Tsongas
Dellums	Moorhead, Pa.	Walsh
Dent	Murphy, Ill.	Waxman
Diggs	Murphy, N.Y.	White
Eckhardt	Myers, Gary	Wilson, Tex.
Edwards, Ala.	Myers, John	Wright
Flowers	Nix	Wydler
Ford, Mich.	Oakar	Young, Alaska
Frey	Pepper	Young, Tex.

The Clerk announced the following pairs:

Mrs. Boggs with Mr. Anderson of Illinois.
Mrs. Spellman with Mr. Goldwater.
Ms. Keys with Mr. Pressler.
Mrs. Burke of California with Mr. Ashbrook.
Mrs. Smith of Nebraska with Mr. Young of Alaska.
Mrs. Heckler with Mr. Lott.
Ms. Oakar with Mr. Badham.
Mr. Cotter with Mr. Marlenee.
Mr. Rodino with Mr. Wydler.
Mr. Rooney with Mr. Beard of Tennessee.
Mr. Rostenkowski with Mr. Pritchard.
Mr. Jenrette with Mr. Harsha.
Mr. Hannaford with Mr. Broomfield.
Mr. Breaux with Mr. Jeffords.
Mr. Ammerman with Mr. Quie.
Mr. Mann with Mr. Walsh.
Mr. John L. Burton with Mr. McKinney.
Mr. Burke of Massachusetts with Mr. Burgener.
Mr. Corman with Mr. Burke of Florida.
Mr. Cornwell with Mr. Kasten.
Mr. Dellums with Mr. Skubitz.
Mr. Dent with Mr. Thone.
Mr. Gaydos with Mr. Lujan.
Mr. Moorhead of Pennsylvania with Mr. Caputo.
Mr. Miller of California with Mr. Don H. Clausen.
Mr. Murphy of New York with Mr. Marriott.
Mr. Teague with Mr. Steiger.
Mr. Waxman with Mr. Taylor.
Mr. White with Mr. Gary A. Myers.
Mr. Ford of Michigan with Mr. Cleveland.
Mr. Huckaby with Mr. McCloskey.
Mr. Pike with Mr. Cochran of Mississippi.
Mr. Santini with Mr. Cohen.
Mr. Shipley with Mr. John T. Myers.
Mr. Smith of Iowa with Mr. Sebelius.
Mr. Stark with Mr. Seiberling.
Mr. Pepper with Mr. Brown of Ohio.
Mr. Pickle with Mr. Conyers.
Mr. Diggs with Mr. Crane.
Mr. Krueger with Mr. Eckhardt.
Mr. Wright with Mr. Edwards of Alabama.
Mr. Metcalfe with Mr. Milford.
Mr. Carney with Mr. Luken.
Mr. Bonker with Mr. Kelly.
Mr. Beard of Rhode Island with Mr. Frey.
Mr. Jacobs with Mr. Nix.
Mr. Jones of North Carolina with Mr. Rousselot.
Mr. Flowers with Mr. Gibbons.
Mr. McCormack with Mr. Runnels.
Mr. Ryan with Mr. Mathis.
Mr. Sisk with Mr. Risenhoover.
Mr. Murphy of Illinois with Mr. Tsongas.
Mr. Charles Wilson of Texas with Mr. Harrington.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. HOWARD. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11733) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. HOWARD).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MOTTL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 303, nays 6, not voting 123, as follows:

[Roll No. 786]

YEAS—303

Abdnor	Beilenson	Buchanan
Akaka	Benjamin	Burke, Mass.
Alexander	Bennett	Burleson, Tex.
Ambro	Bevill	Burlison, Mo.
Anderson, Calif.	Biaggi	Burton, Phillip
	Bingham	Butler
Andrews, N.C.	Blanchard	Byron
Andrews, N. Dak.	Blouin	Carr
	Boland	Carter
Annunzio	Bolling	Cavanaugh
Applegate	Bonior	Cederberg
Archer	Bonker	Chappell
Ashley	Bowen	Clawson, Del
Aspin	Brademas	Coleman
AuCoin	Breckinridge	Collins, Ill.
Bafalis	Brinkley	Conte
Baldus	Brodhead	Corcoran
Barnard	Brooks	Cornell
Baucus	Brown, Calif.	Coughlin
Bauman	Brown, Mich.	Cunningham
Bedell	Broyhill	D'Amours

Daniel, Dan	Ireland	Quillen
Daniel, R. W.	Jenkins	Rahall
Danielson	Johnson, Calif.	Railsback
Davis	Johnson, Colo.	Rangel
de la Garza	Jones, Okla.	Regula
Delaney	Jones, Tenn.	Reuss
Derrick	Jordan	Rhodes
Devine	Kastenmeier	Richmond
Dickinson	Kazen	Rinaldo
Dicks	Kemp	Roberts
Dodd	Kildee	Robinson
Dornan	Kindness	Roe
Downey	Kostmayer	Roncalio
Drinan	Krebs	Rose
Duncan, Oreg.	LaFalce	Rosenthal
Duncan, Tenn.	Lagomarsino	Roybal
Early	Latta	Rudd
Eckhardt	Leach	Russo
Edgar	Lederer	Ryan
Edwards, Calif.	Le Fante	Satterfield
Edwards, Okla.	Lehman	Sawyer
Eilberg	Levitas	Scheuer
English	Livingston	Schroeder
Erlenborn	Lloyd, Tenn.	Schulze
Ertel	Long, La.	Seiberling
Evans, Colo.	Long, Md.	Sharp
Evans, Del	Lundine	Shuster
Evans, Ga.	McClory	Sikes
Fary	McDade	Simon
Fascell	McEwen	Skelton
Fenwick	McFall	Slack
Findley	McHugh	Snyder
Fish	McKay	Solarz
Fisher	Madigan	Spence
Fithian	Maguire	St Germain
Flippo	Mahon	Staggers
Flood	Marks	Stangeland
Florio	Martin	Stanton
Flynt	Mattox	Steed
Foley	Mazzoli	Steers
Ford, Tenn.	Meeds	Stockman
Forsythe	Meyner	Stokes
Fountain	Michel	Stratton
Fowler	Mikulski	Studds
Frenzel	Mikva	Stump
Fuqua	Miller, Ohio	Thompson
Gammage	Mineta	Thornton
Garcia	Minish	Traxler
Gephardt	Mitchell, Md.	Treen
Giaimo	Mitchell, N.Y.	Trible
Gilman	Moakley	Tucker
Ginn	Moffett	Udall
Gonzalez	Mollohan	Ullman
Goodling	Montgomery	Vander Jagt
Gore	Moore	Vanik
Gradison	Moorhead, Calif.	Vento
Grassley		Volkmer
Green	Moss	Waggonner
Gudger	Motti	Walgren
Guyer	Murphy, N.Y.	Walker
Hagedorn	Murphy, Pa.	Wampler
Hall	Murtha	Watkins
Hamilton	Natcher	Weaver
Hammer-schmidt	Neal	Weiss
	Nedzi	Whalen
Hanley	Nichols	Whitehurst
Hansen	Nolan	Whitley
Harkin	Nowak	Whitten
Harris	O'Brien	Wiggins
Hefner	Oberstar	Wilson, C. H.
Heftel	Obey	Winn
Hightower	Ottinger	Wirth
Hillis	Panetta	Wolff
Holland	Patten	Wylie
Hollenbeck	Patterson	Yates
Holt	Pattison	Yatron
Holtzman	Pease	Young, Fla.
Howard	Perkins	Young, Mo.
Hubbard	Pettis	Zablocki
Hughes	Preyer	Zeferetti
Hyde	Price	
Ichord	Pursell	

NAYS—6

Collins, Tex.	Lloyd, Calif.	Quayle
Conable	McDonald	Wilson, Bob

NOT VOTING—123

Addabbo	Burton, John	Dellums
Ammerman	Caputo	Dent
Anderson, Ill.	Carney	Derwinski
Armstrong	Chisholm	Diggs
Ashbrook	Clausen, Don H.	Dingell
Badham		Edwards, Ala.
Beard, R.I.	Clay	Emery
Beard, Tenn.	Cleveland	Evans, Ind.
Boggs	Cochran	Flowers
Breaux	Cohen	Ford, Mich.
Broomfield	Conyers	Fraser
Brown, Ohio	Corman	Frey
Burgener	Cornwell	Gaydos
Burke, Calif.	Cotter	Gibbons
Burke, Fla.	Crane	Glickman
Goldwater	Marriott	Santini
Hannaford	Mathis	Sarasin
Harrington	Metcalfe	Sebelius
Harsha	Milford	Shipley
Hawkins	Miller, Calif.	Sisk
Heckler	Moorhead, Pa.	Skubitz
Horton	Murphy, Ill.	Smith, Iowa
Huckaby	Myers, Gary	Smith, Nebr.
Jacobs	Myers, John	Spellman
Jeffords	Myers, Michael	Stark
Jenrette	Nix	Steiger
Jones, N.C.	Oakar	Symms
Kasten	Pepper	Taylor
Kelly	Pickle	Teague
Keys	Pike	Thone
Krueger	Poage	Tsongas
Leggett	Pressler	Van Deerlin
Lent	Pritchard	Walsh
Lott	Quie	Waxman
Lujan	Risenhoover	White
Luken	Rodino	Wilson, Tex.
McCloskey	Rogers	Wright
McCormack	Rooney	Wydler
McKinney	Rostenkowski	Young, Alaska
Mann	Rousselot	Young, Tex.
Markey	Runnels	
Marlenee	Ruppe	

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 11733, with Miss JORDAN in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from New Jersey (Mr. HOWARD) will be recognized for 30 minutes, the gentleman from Pennsylvania (Mr. SHUSTER) will be recognized for 30 minutes, the gentleman from Oregon (Mr. ULLMAN) will be recognized for 30 minutes, the gentleman from New York (Mr. CONABLE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. HOWARD).

Mr. HOWARD. Madam Chairman, I yield myself such time as I may consume.

Mr. MINETA. Madam Chairman, will the gentleman yield?

Mr. HOWARD. I yield to the gentleman from California.

Mr. MINETA. Madam Chairman, the Southern Pacific Transportation Co. operates a commuter rail service between San Jose and San Francisco. With 27 stations along the 47 miles between San Jose and San Francisco, over 7,500 commuters are served daily.

Under recent State legislation (AB 1853, Pagan), a "bulk ticket purchase" program was initiated by Santa Clara and San Mateo Counties and the city and county of San Francisco in January 1978. Under this program, the public receives a discount on the tariff fares set by the California Public Utilities Commission. Southern Pacific is reimbursed with public funds so they receive full fare revenues.

Under section 315 of the bill, will the bulk ticket purchase program qualify for Federal funding under a purchase of service or similar arrangement?

Mr. HOWARD. Section 315 provides Federal grants to cover up to 50 percent of the total operating losses of eligible service. It appears that the Southern Pacific service itself is clearly eligible for operating subsidies. The only question I have is how UMTA might determine what the operating losses are under the bulk ticket program.

Mr. MINETA. For the past 4 years, the California Public Utilities Commission has been monitoring Southern Pacific to determine losses on this commuter line. The PUC has legal responsibility, under State law, to establish fares. PUC data, from its monitoring of SP, can be used to determine operating losses.

Mr. HOWARD. Based on that type of documentation of operating losses, UMTA could fund 50 percent under section 315 of this bill.

Mr. MINETA. I thank the gentleman, and I appreciate his yielding to me.

Mr. HOWARD. Madam Chairman, the legislation before the House today encompasses a wholly new approach to the surface transportation needs of all America. For the first time in our history, we are addressing in a single legislative package the destructive congestion of our cities and the equally destructive isolation of small-town, rural America, where millions of people must travel daily over inadequate, dangerous roads and highway bridges to bring their goods to market, their children to school.

I ask my colleagues to consider carefully every aspect of this enormously complex legislation, because it will affect the lives and well-being of all our constituents for many years to come.

H.R. 11733, the Surface Transportation Assistance Act of 1978, is indeed an ambitious measure. It is the largest highway/mass transit program ever presented to the Congress. It calls for the longest spending authorization period ever proposed for a total highway and safety program. But it is a sound program; it has a logical financial framework that meets every budgetary test, and it is well within the capacity of industry and the public sector.

No matter what you may have heard or will hear in the course of this debate, H.R. 11733 is not a budget-busting bill. More than two-thirds of the Federal spending proposed in this legislation will come directly from the assured resources of the user-supported highway trust fund, without adding 1 cent to the present gasoline tax. And the remainder, coming from the general revenue, is well within the limits established in the congressional budget.

Certainly the cost of this legislation demands the most careful consideration by the House. But I ask my colleagues also to weigh that cost against the enormous cost that our deteriorating transportation system imposes on all of us today in terms of wasted lives, wasted energy, wasted productivity.

Title I of this bill calls for spending levels—from the highway trust fund—of slightly more than $8 billion for each of the 4 fiscal years 1979 through 1982. That includes increases in funding for the Interstate System from $3.625 billion to $4 billion a year. We propose this increase to speed completion of the system and an additional $175 million for each of the fiscal years 1980 and 1981, and

$275 million for each of the fiscal years 1982 and 1983 to permit resurfacing, restoration, and rehabilitation of interstate sections that are wearing out after more than 20 years of hard service.

We propose continuing authorizations for noninterstate programs at essentially the present levels, with several important exceptions: primary highway authorizations would be increased by $750 million to $2.1 billion annually, and secondary funding would go up to $250 million to $650 million a year.

In each case, those increased funds must be used for resurfacing, restoration, and rehabilitation of existing roads—the three R's of the highway program.

I call particular attention to this provision because it marks a significant departure in our national highway policy, as a result of which greater emphasis will be placed on upgrading and improving the safety and efficiency of the roads we now have in place rather than on merely building more and more miles of new highways.

A somewhat similar policy applies to funding provided in H.R. 11733 for off-system roads. We have raised the authorization in this category from $200 million to $300 million a year with the stipulation that at least half of each State's spending on these roads go into safety improvements.

We have also liberalized provisions for transferring funds from one program to another in most all noninterstate construction programs and increased the Federal share of costs generally from 70 percent to 80 percent. For safety programs, the Federal share is at 90 percent of cost.

Title II of this legislation greatly expands the Federal role in furthering highway safety and reducing the tragic toll of accidents that has cost us more than 2,100,000 lives since the advent of the automobile.

We have made great progress since Congress first addressed this problem with the enactment of highway safety legislation in 1966. But we still have a long way to go. More than 47,000 of our fellow citizens lost their lives in highway accidents in 1977. In that year, traffic accidents were the sixth leading cause of death in the United States, and the No. 1 killer among persons under 34 years of age.

It was with those casualty lists in mind that we increased the funding authorizations for virtually all our permanent safety programs, including grade crossing, high hazard locations, and roadside obstacles. We also provided funding to help the States enforce the 55-mile-per-hour speed limit, and the Secretary of Transportation will have full authority to reduce any State's share of Federal highway funding for failure to comply with enforcement standards and guidelines.

But far and away the most significant safety measure in this legislation comes under the heading of bridge repair and replacement. In title II of this bill, we propose annual authorizations of $2 billion a year for the 4 fiscal years 1979 through 1982, with 90 percent of project cost to be funded out of the highway trust fund.

We have not lightly proposed this giant step forward. The existing program offers only $180 million and a 75-percent Federal contribution toward the solution of what is perhaps the most critical problem area in our entire highway system. At this very moment, there are some 33,500 bridges on the Federal-aid system alone that are so worn out, so dangerously deficient, that they constitute a hazard to every motorist who dares to cross them. And there are another 72,000 bridges off the Federal system in equally bad condition.

At our current rate of funding, it would take 100 years just to correct the conditions that exist right now on the highway bridges of this country. It would be a shameful dereliction of our duty, Madam Chairman, if we failed to act now on a condition that cries out for immediate action.

Title III of this legislation amends the Urban Mass Transit Assistance Act of 1974 so as to step up the attack on urban congestion and provide assurance of continuing, long-term Federal support for local efforts in this area.

This title authorizes about $4.6 billion for each of the fiscal years 1979 through 1982, extending the UMTA authorizations and greatly expanding the size and scope of Federal assistance to virtually all public transportation services. The Federal share is set at 50–50 for transportation operating costs and 80 percent for capital assistance.

Title III authorizes $1.86 billion a year in discretionary grants for public transportation assistance, but tightens up on the Secretary of Transportation's authority by establishing specific categories with specific dollar amounts to be earmarked each year, including $307 million for bus and bus-related purchases, $223 million for fixed-rail rolling stock, $558 million for rail modernization, $707 million for new starts and extension, and $65 million for planning and technical studies. The specific set-aside in existing law for capital assistance to rural and small urban areas is being replaced with an expanded formula program of $125 million annually for transportation operating costs as well as capital grants.

Title III retains the existing formula grant program for capital and operating assistance at the current levels of $850 million for fiscal 1979 and $900 million for 1980, and provides an additional $900 million a year for 1981 and 1982, retaining the present criteria—half based on population numbers and half on population density.

However, as a result of testimony showing the need for greater help to our most heavily urbanized areas, we established a new "tier II" formula, authorized at $250 million annually for fiscal years 1979 through 1982. Our committee agreed to continue the half-and-half population/population density for these "tier II" grants, with the proviso that 85 percent of the funds would go to the 33 urbanized areas in the United States that have populations of 750,000 and more, and the remaining 15 percent to smaller urban centers.

Title IV of H.R. 11733 provides for domestic preference in the acquisition of products and supplies on projects financed under the act, as well as congressional authority to review rules and regulations issued under the act.

Madam Chairman, I ask the Members of this body to approve H.R. 11733, the Surface Transportation Assistance Act of 1978.

Madam Chairman, at this time I am very happy to yield to our great chairman of the full committee, the gentleman from California (Mr. JOHNSON) who has given us so much leeway when we needed it, and who has given us so much help when we needed it.

Mr. JOHNSON of California. Madam Chairman, I thank the gentleman from New Jersey (Mr. HOWARD) for yielding.

I take this time to commend the chairman of the Subcommittee on Transportation (Mr. HOWARD) and the ranking minority member, the gentleman from Pennsylvania (Mr. SHUSTER), for the wonderful job they have done over the past 3 years in putting this bill together. They held long and complete hearings. There was a detailed and exhaustive markup of the legislation both in the subcommittee and the full committee.

Madam Chairman, I want to say to the chairman of the subcommittee that he is looking very well today. I hope we will take a short period of time on this bill today. Our able colleague, the gentleman from New Jersey (Mr. ROE) did a very fine job in the subcommittee as a backup for the chairman of the subcommittee. We moved this bill along.

Madam Chairman, I hope this body will adopt H.R. 11733 when it comes before it next week under the 5-minute rule. I want to say that I thoroughly support the bill which was put together by the subcommittee and adopted by the full committee by a very large majority vote.

Madam Chairman, the Surface Transportation Assistance Act of 1979 which comes before the House today is the product of more than 3 years of conscientious effort by the Committee on Public Works and Transportation to bring forward a long-range program that lies well within our budgetary capability and serves most effectively the truly critical transportation needs of all our people.

In the course of our prolonged hearings, we have received and considered carefully, testimony from literally hundreds of authoritative witnesses bearing on most every provision contained in this legislation.

You will find, I believe, that the hearing record amply supports the committee judgments we ask the House to support today.

Our sole purpose is to enact into law a program that will provide greater and more flexible Federal assistance to the States, the cities, small towns, and rural areas that are struggling with limited resources to deal with traffic congestion, de-

teriorating highways and highway bridges, inadequate public transportation, the essential needs of the elderly and handicapped, and the endless cycle of highway accidents that have claimed more American lives than all the wars in our history.

H.R. 11733 attacks all of these crisis areas head on. It is a total highway, highway safety, and mass transit bill that can and will do the job that must be done.

The Surface Transportation Assistance Act of 1978 calls for completion of the interstate highway system as fast as is humanly possible to avoid the wasteful cost that inflation imposes on every hour of delay. It calls for a significantly increased investment in the three R's of the highway program—the restoring and rehabilitation of the Federal-aid system that is wearing out today faster than we can rebuild.

H.R. 11733 calls for a long-overdue salvage and rescue job on the huge backlog of dangerous bridges that scar our highways all over America—at a funding level more appropriate to the need than our present inadequate funding.

H.R. 11733 deals forcefully with a major problem that threatens the present and future well-being of all Americans wherever they may live and work—the inadequacy of affordable, convenient, and accessible public transportation in urban and nonurban areas.

The bill before the House today significantly expanded the level of Federal aid for capital and operating purposes for all areas of the country while, at the same time, giving greater recognition to the long-neglected needs of our larger cities.

Madam Chairman, this is the largest program ever established for highways and mass transit, and it calls for the longest authorization period that has ever been proposed, because it recognizes both the enormity of the needs and the continuing nature of those needs.

Finally, Madam Chairman, I should like to pay a special tribute to Congressman JIM HOWARD, the chairman of our Surface Transportation Subcommittee, who has devoted himself unremittingly, too often at the risk of his health, to the completion of this monumental legislation. And I should like the House to know also that he has been most ably supported throughout by the ranking minority member of the subcommittee, Congressman BUD SHUSTER.

To Mr. HOWARD and Mr. SHUSTER, and to all the members of the Public Works and Transportation Committee, on both the majority and minority sides, I express my heartfelt thanks.

Madam Chairman, I ask approval of H.R. 11733.

Mr. HOWARD. Madam Chairman, I would like to say that this legislation did pass out of the subcommittee and out of the full committee by a voice vote.

Madam Chairman, I reserve the balance of my time.

Mr. SHUSTER. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I rise in strong support of H.R. 11733, the Surface Transportation Assistance Act of 1978, and urge its enactment by the overwhelming vote it deserves.

The overall case for this bill has been ably stated by the gentleman from New Jersey, the chairman of the Subcommittee on Surface Transportation, whose leadership, hard work, and cooperation have been decisive in bringing a bill of this magnitude to the floor.

Rather than repeat the substance of his comments, with which I associate myself, I want to elaborate on a few key aspects of this bill from my perspective as ranking minority member of the subcommittee and chairman of the National Transportational Policy Commission.

H.R. 11733 is by no means a routine bill, though it does indeed extend and expand a number of existing programs. But beyond that, it substantially redirects and refocuses emphasis on changing needs and priorities for the safe, economical, and efficient movement of people and goods.

It does so on the basis of comprehensive consideration of all the elements of our highway and public transportation programs, viewed as complementary rather than competing or conflicting, and thus represents a balanced and coordinated package. To this extent it speaks well of the congressional reorganization which placed responsibility for these programs under the jurisdiction of a single committee.

Nor is it merely a big money bill, though the dollar figures are the highest yet. Its refinements and new or expanded initiatives are a direct response to the needs documented in more than 3 years of work. Significantly, during the extensive consideration of this bill, there has been virtually unanimous recognition of the genuine needs we face in the area of highways and public transportation. It has been gratifying to note the comparative lack of the old worn-out rhetoric about transit give-aways or paving over the country with highways. I like to think that this reflects the realism of our bill, and perhaps a new public awareness that our prosperity and the best in our way of life depend heavily on mobility.

Finally, the bill is sound financially, with nearly all of the highway authorizations financed by the highway trust fund, which is extended for 5 years. The extension of this time-tested, self-financing, deficit-proof and inflation-proof financing mechanism—preserving the pay-as-you-go principle that has insured its success for more than two decades—alone justifies enactment of H.R. 11733.

I want to call particular attention to the relation between the authorizations, the duration of the trust fund extension and revenues flowing into the fund. The reported bill before you is premised upon a 6-year extension of the fund. Such an extension would have restored the original relationship between the life of the trust fund and the life of the program authorizations which it sustains, established in the 1956 highway and highway revenue acts. However, members of the Committee on Public Works and Transportation and the Committee on Ways and Means have recognized considerable concern among the House membership at large and the public with respect to levels of Federal spending, whatever the source. There also has been concern over future highway program levels beyond the expiration of H.R. 11733.

The result has been action by the Committee on Ways and Means to approve a 5-year extension of the trust fund. For our part on the Committee on Public Works and Transportation, the managers of this bill have pledged to offer an amendment to reduce overall funding in the bill by over $1.3 billion per year—$1 billion in the highway program and a proportionate $375 million in public transportation.

In combination, these provisions will produce a program level and funding source which can be sustained through the life of this legislation—and continued by subsequent legislation—with no deficit in the fund, no need for any increase in highway user taxes, no need for supplementary revenues from any source, and no need to curtail program levels in future legislation.

Madam Chairman, I mentioned a moment ago that the old antihighway, antipublic transit rhetoric has fortunately subsided. I am afraid, though, that it has been replaced by a new mythology to the effect that what this legislation proposed—and what has been going on since 1956—is somehow unsound. It is based on the fact that annual authorizations do not coincide with annual trust fund receipts for the same year. And it stems from a persistent tendency on the part of some to equate authorizations with outlays. If they were, any disparity could indeed be plausible grounds for concern, conjuring up visions of the social security system and all its woes. But it just happens to be indisputable fact that authorizations are not the same as expenditures or outlays, which may occur 4, 5, 6, 7 or 8 years after initial authorization. This has been true year after year over the life of the program since 1956.

A second factor is the balance in the trust fund, which has grown to the $11 billion range, largely as a result of executive impoundment in years past. It is unnecessarily high and should be worked down. The highway trust fund was created, and taxes levied on the highway user, to construct and reconstruct highways. It was never intended that we build up a balance to sit there and provide a dandy source to finance deficit spending in other arms. In sum, through a combination of an inflated balance, interest on that balance, and annual receipts into the trust fund, the funds will be there to pay the bills when they fall due.

The next time anyone tries to tell you that this use of the balance is a radical or unsound departure from past practice, refer him to a report from the Department of Transportation which describes precisely this approach as a thoroughly respectable way of increasing

authorizations without increasing highway taxes, in short, without violating the fiscal integrity of the trust fund.

That brings me to the Byrd amendment, a requirement in existing law that assures that the funds will indeed be there. Whatever the amount authorized, no funds can be made available to the States for commitment to projects unless there is absolute assurance that funds will be available to liquidate the obligations of the United States. I would venture the guess that if the social security fund had that sort of safeguard, it would not have run into the trouble it did.

I have gone into this at some length, Madam Chairman, because I expect there to be some concern on this score among Members who serve on neither the Ways and Means Committee nor the Committee on Public Works and Transportation. We have all been immersed in a debate over this proposal for some time and it has been a reeducation for us all. This was all thrashed out in the Ways and Means Committee, whose members thoroughly considered, and rightly objected, proposals to tie annual authorizations to same year receipts in the trust fund.

Finally, I want to meet head on the issue of inflation. I will do so briefly because we went into the question in our committee report, beginning on page 85. I will take the time to quote only one statement: "Taken alone, H.R. 11733 will not cause inflationary pressure on the economy." And then it goes into the econometric data on which that statement is based. Rather than take your time with that, let me point out that the trust fund is inherently inflation-proof, just as it is deficit-proof. You have a dedicated source of funding, which cannot be used for any other purpose. And you have a program financed solely by that dedicated source, rather than deficit ridden general revenues. What goes out comes in and vice versa. Actual outlays—expenditures—are covered by receipts. To some extent, under our proposal outlays will be covered by receipts and—to a negligible extent from an inflationary standpoint—the balance which is composed of prior receipts. In any event, there is a precise balance over the life of the program rather than the persistent accumulation of deficits in our general fund programs.

I will conclude my remarks with a final observation concerning fiscal responsibility. We are in an inflationary period, no question about that. And I suppose inflation hits the highway program as hard as any area of Government activity you want to name. Prudence, fiscal integrity, wise financial management would therefore dictate that—in the face of a staggering accumulation of undisputed needs—we gear our program to the maximum levels which the trust fund will sustain safely. That is one sound way to get the jump on inflation. Conversely, to hold back the program in the interests of a spurious symmetry—to hold authorizations artifically to same year receipts—is merely to expose the program needlessly to the effects of inflation.

Needless to say, this would result in further accumulation of unmet needs, further deterioration of our highway system, additional costs in terms of congestion, delays, injuries, and fatalities, higher costs in the long-run and greater pressure for tax increases down the road.

I urge adoption of this landmark surface transportation legislation.

Mr. HOWARD. Madam Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from New Jersey.

Mr. HOWARD. Madam Chairman, I would like to thank the gentleman from Pennsylvania (Mr. SHUSTER) also for his work.

I think as we went through the work on this legislation, no one could tell who was a member of which party on the entire subcommittee. That is why we are so unanimous and so happy about the way in which this bill has been produced.

I also want to express special thanks to my esteemed colleague from New Jersey, the Honorable ROBERT ROE, not only for his standing in for me while I was ill but also for the outstanding manner of his performance.

Mr. SHUSTER. Madam Chairman, I thank the chairman, and I would certainly echo his remarks that this is clearly a bipartisan effort.

Madam Chairman, rather than repeat the substance of the comments of the gentleman from New Jersey made previously, I want to say that I associate myself with his remarks.

Mr. HAMMERSCHMIDT. Madam Chairman, I want to commend the gentleman from New Jersey (Mr. HOWARD) for the tremendous job he has done in leading his subcommittee during the 3½ years of hearings and dozens of witnesses.

I also want to commend the gentleman from Pennsylvania (Mr. SHUSTER), the ranking minority member, for his leadership.

Madam Chairman, I rise in strong support of H.R. 11733, a measure to step up significantly our efforts to meet the enormous transportation needs of the country.

I want to compliment my colleagues on the Surface Transportation Subcommittee for the excellent job they have done with this bill, which I have been pleased to support on the full committee on public Works and Transportation.

This Nation and my own State of Arkansas will benefit substantially from the general provisions of this comprehensive bill, which are responsive to the needs of rural America as well as the more populous States and urban areas.

This legislation also meets specific needs, and I am grateful for the committee's support for my efforts in connection with individually authorized projects, as well as other special category projects.

Among general provisions key to the bill is the substantial increase in funding for restoration and rehabilitation of primary and secondary highways on the Federal-aid system and expansion of their capacity. This increase, roughly one-third, is in addition to the primary and secondary authorizations available for both new construction and rehabilitation of existing highways. Work in this area will be increasingly important to the State of Arkansas as we approach completion of our portion of the Interstate System.

Also of critical importance is the newly expanded authorization of $2 billion per year for bridge reconstruction. Even if scaled down to $1.5 billion in the interests of reducing the overall spending in the bill, it will go far toward cutting into the backlog of unsafe bridges in this country. I particularly support the provision making a minimum of 25 percent and a maximum of 35 percent of bridge apportionments available for bridge projects not located on any Federal-aid system. This eligibility for off-system bridges for Federal assistance will be of particular benefit to rural communities.

The same may be said of the safer off-system roads program, for which Federal assistance is being increased from $200 to $300 million per year.

The same balanced attempt to meet needs of all the Nation's communities, regardless of size, is found in the public transportation title, which provides both operating and capital assistance for systems in areas and small towns along with larger cities across the country.

As to specific projects, I am pleased that the committee has specifically named Highway 71 from Interstate 40 north to the Missouri line as eligible to share in the $125 million priority primary program.

Also of particular interest to my State is the increase of $85 million in funding for urban high-density traffic routes, to assure full funding of earlier designated projects, including one for Little Rock. A final item of direct benefit to Arkansas is the section raising from 70 to 95 percent the Federal share of the costs of certain rail-highway crossing demonstration projects. This will assure that projects such as one at Pine Bluff, initially approved at the 70-percent level, will enjoy the same level of assistance as other projects receiving a 95-percent Federal share.

Thus, this legislation is responsive to general and specific needs of our States and communities. I strongly urge its enactment.

Mr. HAGEDORN. Madam Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from Minnesota.

Mr. HAGEDORN. I thank the gentleman for yielding.

I want to commend the gentleman in the well, the ranking member, and the chairman of the Subcommittee on Surface Transportation, the gentleman from New Jersey (Mr. HOWARD) for the outstanding work that they have done in putting this package together. The long hours, the many days of hearings that this committee conducted, I think have proven to be very worthwhile. I think what the committee is presenting to this Congress today is a balanced package. It deals with new highway construction, restoration, and mass transit. While no bill is perfect, I think this bill comes as close to anything we could bring out and still expect to get broad support from all Members of the House.

Mr. SHUSTER. I thank the gentleman from Minnesota for his comments.

Mr. ABDNOR. Madam Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from South Dakota.

Mr. ABDNOR. I thank the gentleman for yielding.

Madam Chairman, I rise in support of H.R. 11733, the Surface Transportation Assistance Act of 1978.

Allow me to commend Subcommittee Chairman Mr. HOWARD and Mr. SHUSTER, ranking minority member, respectively, of the Surface Transportation Subcommittee for their diligent efforts in formulating a comprehensive, farsighted approach to our Nation's surface transportation mode. Also to be recommended are HAROLD T. "BIZZ" JOHNSON and WILLIAM HARSHA, chairman and ranking minority member, respectively, of the Public Works and Transportation Committee, of which I am a member, for their persistence in producing this legislation during the 95th Congress.

H.R. 11733 encompasses for the first time all highway and mass transit programs. It increases substantially the amount of funds authorized for the highway bridge replacement program affecting some 34,000 bridges nationwide and approximately 2,000 bridges in my own State of South Dakota.

H.R. 11733 amends the Highway Beautification Act of 1965. Congress should take note that millions of signs have not been erected and hundreds of thousands of signs have been removed because of the act. The amendment will expedite this program because it will clarify the act and resolve present-day litigation caused by the hard-line stance of the Federal Highway Administration.

The bill provides a set-aside of 2 percent of the Urban Mass Transportation Administration funds for projects in assisting the elderly and handicapped. It prohibits the use of this Federal money for the enforcement of antilock requirements contained in Federal Motor Vehicle Safety Standard 121 affecting trailers, trucks and buses. Also, it extends for 5 years the highway trust fund. This method of highway financing has operated well over the past 22 years of its existence. The Ways and Means Committee's decision to extend this program allows its continued operation on the same basis as its original form in 1956 without causing the trust fund to come anywhere near a deficit position.

For these and many other reasons, H.R. 11733 should be considered favorably on the House floor today.

Mr. SHUSTER. I thank the gentleman from South Dakota for his comments.

Madam Chairman, I reserve the remainder of my time.

Mr. HOWARD. Madam Chairman, I yield such time as he may consume to the gentleman from California (Mr. ANDERSON).

Mr. ANDERSON of California. Madam Chairman, the bill before us today is the culmination of more than 3 years of work by our Public Works and Transportation Committee. All of us gathered today here on the floor of the House owe this bill to the masterful guidance of JIM HOWARD, the chairman of our Surface Transportation Subcommittee, and of course to the overall leadership of our Public Works and Transportation chairman, HAROLD "BIZZ" JOHNSON.

As the ranking member on JIM's subcommittee, I can attest to the many, many hours he has personally devoted to the formulation of this legislation that addresses the proven need for highways, safety, and public transportation.

Recognition for this excellent bill must also be given to Congressman BUD SHUSTER, who, as ranking member for the minority, has been there working side-by-side with Chairman HOWARD to develop a bill worthy of our complete and undivided support.

H.R. 11733 has faced a rocky road over the past several months. There have been those who have criticized the funding levels as excessive. If these same critics had taken the time to listen to witness after witness before our subcommittee, it would be abundantly clear that this bill realistically addresses the need. It is true that this bill provides for the largest program ever established in highway and mass transit history—but such dedication is necessary and must be maintained.

The cooperation and expertise of State, city, county, and private elements have allowed us to bring to the House a bill with a logical framework of financing within the limits of the highway trust fund. Thus, efforts to tie highway expenditures to revenues on a year-by-basis must be turned back. The action by the Ways and Means Committee that appears as title V of H.R. 11733 reflects their usual good work.

Madam Chairman, I will be speaking in strong support of individual sections of this bill at the appropriate time. But I wanted to take this time to state at the outset my intention to support the bill as written by our committee.

Thank you for allowing me this time, and again, congratulations on a job very well done.

Now, Madam Chairman, I would like to ask you a question.

Our colleague, Congressman RON DE LUGO, has brought to my attention a unique situation in his district of the Virgin Islands. His district contains 100,000 persons, but no one island has a population of greater than 50,000. As a result, the Virgin Islands has been excluded from past opportunities for operating assistance for its two bus lines because it cannot meet the necessary criteria for urban assistance.

However, it does meet the necessary rural criteria. Therefore, I rise to ask my good friend if the Virgin Islands would be eligible for aid under the rural assistance program portion of this legislation?

Mr. HOWARD. Madam Chairman, I would like to state, if the gentleman from California will yield, that they would be eligible under the rural portion of this legislation.

I am happy the gentleman did bring this up, so we could clear it up.

Mr. ANDERSON of California. Madam Chairman, I thank the gentleman from New Jersey.

Mr. HOWARD. Madam Chairman, I yield 4 minutes to a fine and hard-working Member, the gentleman from Pennsylvania (Mr. EDGAR).

Mr. EDGAR. Madam Chairman, I rise in strong support of H.R. 11733, the Surface Transportation Assistance Act of 1978.

Because I have had differences with the Public Works and Transportation Committee over many public works projects, some of my colleagues may wonder why I so strongly support this bill, which has been dubbed by the Washington Post as the "Pet Projects Protection Act."

I will concede at the start that this bill authorizes too many individual highway projects and other so-called demonstrations. I urge my colleagues to consider these demonstrations in context: there is a lot more to this bill than demonstration projects. Here are some of its major provisions:

First, the bill sets forth a sensible way to expedite completion of the Interstate system.

Second, the bill takes the historic step of recognizing that, with the exception of uncompleted interstate highways, our Nation's highway system is essentially in place. The days of new construction are almost over. The national interest now requires that we maintain the system we have, and this bill provides desperately needed funding to accelerate the restoration of the Federal-aid primary system, the system of U.S. highways which has been neglected during the interstate boom. Our committee has tried to find a balance between our desire to restore existing highways, on the one hand, and maintain the role of States in maintaining highways, on the other hand. We are not permitting these funds to be used for routine maintenance; we will permit them to be used for major restoration, intersection improvements to increase capacity, and safety improvements. There is a fine line between restoration and maintenance. There is a real danger that routine maintenance might be delayed by a State in order to qualify for federally funded restoration and resurfacing. This danger will be avoided only if the Federal Highway Administration starts enforcing the requirement that States maintain roads that were constructed with Federal assistance. I have been very disappointed to find that the Federal Highway Administration does not take this enforcement role seriously. In this bill, we are responding to the need of our existing highways for restoration, safety improvements. and resurfacing. I hope that the States do not abuse this Federal effort.

The third thing this bill does is address the Nation's serious bridge problem. The current bridge program is grossly inadequate to the need for bridge reconstruction. One of the reasons the current bridge program is failing is its restric-

tion to bridge reconstruction, rather than less ambitious rehabilitation activities. Our bill takes care of this problem, and I believe I am stating the sense of the committee—certainly it is my hope—that States will use these funds prudently and devise low-cost solutions to their bridge problems. Unsafe bridges should be restored first. The so-called "functional obsolescence"—where a bridge does not have the width of the main road or the capacity it needs—is a serious problem but less serious, in my view, than safety problems. In any event, we are leaving it to States to decide how to use these funds, because the Federal highway program historically has been a federally-assisted State program. Again I hope the States will live up to the responsibility we have given them.

The fourth thing this bill does is improve enforcement of the national maximum speed limit of 55 miles-per-hour.

The fifth thing this bill does is establish a system granting some degree of "domestic preference" in procurements and projects utilizing Federal highway and mass transit funds. This is not a "Buy America or Buy Nothing at All" section, but rather it is designed to give Federal contracts to domestic suppliers when the cost is reasonable. I assisted in the development of this section after researching the particular problems being faced by American rail car manufacturers. I am extremely disappointed that the administration has shown little sensitivity to the American rail car manufacturing industry, and indeed is actively promoting foreign manufacturers to compete for business in America. This situation demands a swift congressional response.

Finally, this bill sets forth the most important public transportation legislation to come before this body since 1974. The bill, on which I have been working for the past 2 years, does a good job in addressing each of the major problems confronting urban transportation today. Among other things, the bill:

First. Seeks to keep transit fares reasonable by improving the delivery of Federal operating assistance to transit authorities. Our committee has developed a good, compromise distribution formula that most cities seem satisfied with;

Second. Seeks to maintain previous commitments made by the Urban Mass Transportation Administration for new construction projects;

Third. Seeks to accelerate the modernization and rehabilitation of existing public mass transportation systems. The Urban Mass Transportation Administration estimates that $14 billion will be needed over the next decade to bring existing mass transit systems, many built over 50 years ago, up to acceptable present-day standards. We cannot fully fund this need, but we have made a reasonable start in addressing it. No civilized nation should tolerate poorly lighted subway stations that have the stench of urine and the disgrace of graffiti, yet dozens of American subway stations fit this description. It is my hope that the Urban Mass Transportation Administration will start paying less attention to exotic "people mover" systems and the technologies of tomorrow, and start paying more attention to the very real needs of existing public transit systems.

Fourth. The bill seeks also to institute a new program of public transit assistance in rural areas. In order to get this program underway with a minimum of redtape, we have given the Secretary of Transportation wide latitude to waive rules in the Urban Mass Transportation Act that might not apply to the needs of rural public transit;

Fifth. Finally, the bill simplifies the delivery of grants for bus acquisition so that transit operators will be better able to plan around their long-term bus replacement needs.

As you can see from my remarks, this is a serious bill that demands the serious attention of the House of Representatives. The Members of this body should particularly congratulate JIM HOWARD, the chairman of the Surface Transportation Subcommittee, and BUD SHUSTER, whose dedication and attention to this bill has been nothing short of remarkable.

Mr. SHUSTER. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I would like to gain the attention of the distinguished chairman of the subcommittee so that we might engage in a colloquy.

Madam Chairman, section 209 of this bill authorizes a new highway safety education and information program, which I authored, designed to vigorously promote the cause of highway safety through the use of mass media, including radio and television. Several limited campaigns have produced encouraging results and the purpose of the new program is to reduce traffic accidents, injuries, and deaths through voluntary emphasis on highway safety.

Subsection (a) of this section authorizes six pilot projects to develop, refine, and evaluate techniques which could then be applied on a national scale. These 1-year projects are critical in that the techniques developed must be capable of producing measurable results in order to evaluate their effectiveness.

Madam Chairman, in drafting this proposal, it became clear that in order for the pilot projects to accomplish these objectives, they must be located in areas that lend themselves to measurement. While not spelled out in the bill, a number of conditions should obviously be present in the pilot project areas:

First, the area must be a well-defined television market area.

Second, it must have a high traffic accident and fatality rate, defined as substantially above the national and State average.

Third, the area must have an accurate system for gathering and reporting statistics on the number and kinds of traffic accidents and fatalities.

In order to confirm this legislative intent, I would like to ask the chairman of the sponsoring subcommittee if he concurs with my assessment.

Mr. HOWARD. Madam Chairman, if the gentleman will yield, I would like to say to the gentleman from Pennsylvania that he is correct in his interpretation of legislative intent, and his description is consistent with discussions we have had in the past.

Mr. SHUSTER. Thank you. Madam Chairman, continuing, it also became clear that in order to insure that the results from the pilot projects could be applied on a national scale, in all types of areas, such as urban, rural, suburban, small town, and so forth, it would be necessary to conduct the pilot projects in a variety of areas. Of the six pilot projects authorized, at least one shall be carried out in an area which is rural; at least one shall be carried out in a major metropolitan area; and at least one shall be carried out in an area which has a small city and some rural areas, within which there is a variety of highways, including those on the Federal-aid primary, priority primary, secondary, urban and Interstate Systems; which also has a significant number of rail highway crossings and which, as a result of recent or imminent change, including but not limited to change in population or traffic flow resulting from the construction of Federal projects, shows a need for such a project.

Does the chairman of the subcommittee concur in this legislative intent?

Mr. HOWARD. The gentleman from Pennsylvania has accurately stated the intention of the chairman in defining the kinds of areas that should be selected for the pilot projects.

Mr. SHUSTER. Would the gentleman agree that the radio market located in the Third Congressional District in New Jersey and the radio-TV market serving in the Ninth District of Pennsylvania would appear to qualify under the conditions described and be prime candidates for selection at an early date?

Mr. HOWARD. If the gentleman will yield, I am not sure about mine, but I am sure about his.

Mr. SHUSTER. Madam Chairman, the Federal-Aid Highway Act of 1973 authorized the creation of a special category of primary roads, below the interstate in importance but above the balance of the primary system, designed to serve as connectors between interstate routes and supplement the Interstate System as major traffic arteries.

The 1973 law authorized each State to designate approximately 5 percent of its eligible mileage as priority primary routes.

Highway 71, stretching from I–44 in the State of Missouri to the Arkansas border, hooks up with Highway 71 in the State of Arkansas. This route is designated priority primary in Arkansas, but has never been so designated in Missouri.

The gentleman from Missouri (Mr. TAYLOR) has asked me if there are any reasons why Highway 71 in Missouri could not be designated priority primary.

I would indicate that Highway 71 would appear to meet all the qualifications for designation as a priority primary route. However, the State must make such selection and submit a request to the Secretary of Transportation for approval.

In view of the special funding considerations associated with priority primary routes, I can think of no reason why this route was not selected for priority

primary status. I will even go beyond that and suggest that given the availability of priority funding, the need for improvement of Highway 71, and the fact that it links up with a priority primary segment in Arkansas, the State of Missouri, if interested, should move expeditiously in pursuing this funding source.

I would ask the distinguished chairman of the subcommittee if he concurs with this assessment.

Mr. HOWARD. Madam Chairman, I do concur.

Mr. SHUSTER. Madam Chairman, H.R. 11733 authorizes $15 million for each of fiscal years 1979–82 to continue the program of construction or reconstruction of access highways to public recreation areas on certain lakes and waterways. This program was first authorized in 1974 and is needed to improve traffic routes in the area of Federal projects where traffic density is increasing but as a result of a lower tax base in the Federal lake area, the local governments do not have the financial capability to make necessary improvements.

It has come to the committee's attention that the Clinton Parkway project in Lawrence, Kans., previously approved for funding under this program, will cost more to complete than has been approved by the Federal Highway Administration. Recent cost estimates place the total cost of the project at $9,730,000 requireing a Federal share of $6,811,000. The FHWA approval based on the initial cost estimates was for only $4,130,000, leaving a shortage of $2,681,000 in Federal funds to complete the project.

May I ask the chairman of the subcommittee at this time if it is his intent and the intent of the committee that all projects previously authorized pursuant to section 155 of title 23 should be fully funded?

Mr. HOWARD. It is the intent of the committee that all such projects should be fully funded. I understand that less than half the amount authorized by this committee for access roads projects has been appropriated, and that all appropriated funds have been allocated. Therefore, less than fully funded projects could receive additional funding from either future appropriations authorized by previous acts, or from the new authorization contained in this act.

Mr. SHUSTER. With respect to the Clinton Parkway project, I would again ask the subcommittee chairman if it is his intention that this project be fully funded in line with recent cost esti mates?

Mr. HOWARD. It is my intention that the Clinton Parkway project receive full funding, and it is my expectation that the additional $2,681,000 will be approved by FHWA from new appropriations authorized by this or previous acts.

Mr. SHUSTER. Thank you very much Madam Chairman.

Mr. HOWARD. Madam Chairman, I yield 1 minute to a distinguished member of the committee who has worked hard on this legislation, the gentleman from West Virginia (Mr. RAHALL).

Mr. RAHALL. Madam Chairman, I rise to support H.R. 11733, the Surface Transportation Assistance Act of 1978. This bill would establish a comprehensive road program, to enable our Nation to complete, restore, and replace segments of our Interstate and Defense Systems as well as a replacement and reconstruction program for our faltering bridges. The legislation before the House today is complex and often controversial, but it represents an honest, responsible effort to restore and complete our battered roads. For 3 years the Public Works and Transportation Committee has studied our highway needs for the present and the future, and I firmly believe the committee has adopted a bill that will go a long way toward combating our road needs.

This legislation is not only vital for our Nation but it is vital for the survival of the residents of the Appalachian region of our country. In many instances the most pressing problem facing the residents of my district in southern West Virginia is the replacement, repair, and often times initial construction of roads. The increased secondary system authorization from $400 million in fiscal year 1978 to $650 million for each of the fiscal years 1979–82 and the increasd authorizations for safer off-system roads will substantially help in this area.

Another important feature of this legislation is the bridge replacement program. The West Virginia Department of Highways has informed me that there are 6,100 bridges in the State and that 57 percent of these were constructed before 1934. Of these, 200 have safe load capacities of less than 3 tons, in other words it is not safe for an auto that weighs 3,600 pounds to use 200 West Virginia bridges, and that more than 600 have critical or structural conditions which require replacements or repair. The $1.8 billion will help dramatically in alleviating the dangerous bridge problem that exists throughout the Nation.

If our Nation is to meet our national energy challenges and we are to increase coal production as we all desire, the section of H.R. 11733 dealing with energy impacted public roads is vital. The $50 million authorization a year for fiscal years 1979–82 is necessary in meeting our national energy needs. In addition, the same money levels, for energy impacted railroad crossings are required to help alleviate traffic jams at such junctions in small towns in Appalachia where coal train traffic will be on the increase.

Madam Chairman, I want to take this opportunity to thank Chairman HOWARD who by inspecting the future sight of the East End Huntington Bridge in Huntington, W.Va., gave the residents of the area the hope that Federal assistance is not a thing of the past.

In conclusion, Madam Chairman, I hope that my colleagues will join me in supporting this bill which takes major steps forward toward our goal of a complete, safe highway system for our citizens.

Mr. HOWARD. Madam Chairman, I yield 1 minute to the gentleman from Indiana (Mr. BENJAMIN).

Mr. BENJAMIN. Madam Chairman, I appreciate the opportunity to address the House to urge support of H.R. 11733, the Surface Transportation Assistance Act of 1978.

Chairman JAMES HOWARD has brilliantly fashioned a substantive legislative measure by undertaking a comprehensive analysis of the surface transportation system of the United States, examining its short comings and developing creative solutions to cure current legislative faults as well as meet anticipated demands.

The process has been a consuming one, but JIM HOWARD has handled it with typical talent, aplomb and constant good grace. In a word, Chairman HOWARD has conducted himself as a gentleman and in a manner consistent with the highest standards of this House. He is to be commended.

My support of H.R. 11733 is predicated on its answer to national economic, environmental, and energy needs. However, four provisions of the bill deserve particular, even if somewhat parochial attention. I would also like to focus on an amendment, which I hope the committee will accept to provide additional local flexibility without necessitating any authorization increase.

First, I wish to express my appreciation for section 104(b)(2) which authorizes an additional $85 million from the highway trust fund for the purpose of completing routes designated under the urban high density traffic program. These include routes so designated prior to May 5, 1976, in Little Rock, Fort Worth, and northwest Indiana.

The programs were initiated because of their critical importance to facilitate an improved transportation network in highly concentrated urban areas. It became apparent, through careful analysis, that the current authorization levels were inadequate to complete these vital roadways. Through the work and cooperation of my distinguished colleagues, Messrs. WRIGHT and TUCKER, and representatives of the Indiana State Highway Commission, a determination was made that these projects can be completed with the level of funding provided in section 104(b)(2).

I am also grateful for section 106 which contains three important measures.

First, the railroad grade crossing elimination demonstration project in Hammond, Ind., authorized in title III of Public Law 93–503 and amended by section 140(f) of Public Law 94–280, is now placed with the other enumerated demonstration projects authorized in section 163 of the Federal-Aid Highway Act of 1973, as amended. This change, although technical in nature, transfers the authorized project from the urban mass transportation chapter and places it with similar projects under the chapter dealing with Federal-aid highways.

It also removes the individual funding designation, and in substitution, allows the Hammond project to draw from the funds authorized in section 163(p)—(as relettered by the bill. The amendment made by section 106 of the bill thus consolidates all rail demonstration projects under one program and funding au-

thorization and improves the existing law.

The same section also changes the Federal share in these projects from 70 to 95 percent of the cost of the demonstration work on projects authorized by the 1976 act. As the committee report states:

The increase in the Federal share of these safety related demonstration projects is consistent with the Federal share for demonstration projects approved prior to the passage of the 1976 act.

Finally, section 106 provides for partial funding for these projects. Although full funding is not provided for in this instance, I appreciate the problem faced in controlling the spending limits of H.R. 11733 and therefore support the committee's proposal here as fiscally responsible.

I also commend the Surface Transportation Subcommittee and its chairman for section 135 which provides for a study of the Indiana East-West Toll Road, a vital link in the country's Interstate System.

Indiana statutes permit, but do not require tolls to be removed upon retirement of the bond issue. In 1961, 1962, and 1963, the Commission entered into three agreements with the Secretary of Commerce and the Indiana Highway Commission—tripartite agreements—in connection with the construction of access roads to toll road entrances. Federal funds in the amount of $2,089,244.56 were granted for these three projects. The tripartite agreements, as required by 23 U.S.C. 129, contained a covenant by the Commission that the toll road would be free of tolls when the then outstanding bonds were retired and that no additional bonds would be issued.

The toll road has been in service for in excess of 21 years. This Commission has followed high standards of maintenance and operation of the toll road. In the year, 1977, the Commission expended approximately $4 million for current roadway maintenance and almost $1.1 million for patrolling the toll road. To demonstrate the difference in the level of maintenance, the toll road cost of maintenance is approximately $25,000 per mile as compared with an estimated $10,700 per mile for the Interstate System roads maintained by the Indiana Highway Commission.

In addition, due to the age of the toll road, a major resurfacing and improvement project is underway. The Commission is in the fifth year of an 8-year program having an aggregate cost of $35.5 million, of which $11.5 million has been expended, approximately $8 million will be expended in 1978 and in each of the following 2 years. The aggregate annual cost of current maintenance, operation, and renovation, therefore, is currently at a level of $13.1 million.

If the standards of maintenance and operation now in practice on the toll road are to be continued, including its snow removal program which keeps the road open at all times, the ordinary maintenance and operation costs will not decline. While the concentrated resurfacing program will not continue at the $8 million annual level, the annual improvement program necessarily will be at a substantial level. The standards of original construction, including guard rails and width of bridges and underpasses, do not meet modern standards, particularly those of the Interstate System. The upgrading and major renovation of the toll road requires a continuous program, estimated at $6 million a year or a total estimated maintenance, operation, upgrading, and rehabilitation expense of $11.1 million.

In addition, the toll road has a total of 12 interchanges with Indiana highways in the 157 miles. The improvement standards for the Interstate System indicate a normal interchange incidence of one entrance every 2 miles in urban areas and one entrance every 6 miles in rural areas.

In consideration of the covenants made by the Commission and the needs of the citizens of Indiana and the country who will travel the toll road and benefit from its existence, particularly in relation to access to the road, it is my belief that pertinent factual information concerning future funding needs, toll collection methods, increased access, and maintenance must be obtained well in advance of the anticipated retirement of the Commission bond issues in the mid-1980's. Then, Congress may consider the various alternatives open to it in this matter in an informed, deliberate, and timely manner and decide whether the tripartite agreement may be dissolved, amended, or otherwise disposed of to facilitate travel across northern Indiana.

I worked closely with all of the members of the Indiana delegation on this matter, in particular with Representative CORNWELL to insure the inclusion of this provision and I urge your support for it.

If I may digress for a moment, I would also, at this point, like to express my appreciation to DAVID CORNWELL, Indiana's Eighth District Representative and member of the Public Works and Transportation Committee, for his selfless cooperation, not only with regard to section 135, but also on the other provisions I have discussed. His assistance and counsel have benefited those he immediately represents, and also all citizens in the State of Indiana.

The last provision I wish to discuss is one contained in section 315 of the bill.

As the committee report explains:

This section repeals sections 17 and 18(d) of the Urban Mass Transportation Act and expands the existing section 18 to make all commuter and rail passenger service which is not operated by Amtrak under 45 U.S.C. 563(b) eligible assistance.

Of particular note is that portion of section 18 as amended by this bill which would allow all commuter rail passenger 187 on November 16, 1977, provided:

Section 18 (a) and (b), as originally enacted as section 2 of Public Law 95–187 on November 16, 1977, provided:

SEC. 18(a). The Secretary shall provide financial assistance annually for the purpose of reimbursing States, local public bodies and agencies thereof for the cost of financially supporting or operating rail passenger service provided by railroads designated as class I.

(b) Financial assistance under subsection (a) of this section shall not be available to support (1) intercity rail passenger service provided pursuant to an agreement with the National Railroad Passenger Corporation under section 403(b)(2) of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 562(b); and (2) rail passenger service required by section 304 (e)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744(e)).

Unfortunately, because the phrase "railroads designated as class I" was taken from regulatory language, two problems immediately arose.

First, railroads which provide commuter passenger service, but not designated as "class I" under the Interstate Commerce Commission regulations—such as the Chicago South Shore, and South Bend Railroad—were ineligible for assistance. Thus, certain railroads, that were to be assisted under the act, were inadvertently excluded from its coverage. Second, since the Congress used language taken from that promulgated by a regulatory agency, if the agency changed their definition of the language, the coverage of the act could be changed without congressional action and in possible contravention of congressional intent. Such a redefinition occurred in January.

In order to include all those intended to be assisted and to prevent possible future usurpation of the congressional function by an agency, I proposed the change incorporated in the bill as section 315(d)(2) and recommend it for your approval.

Although I urge the House to adopt the Surface Transportation Assistance Act of 1978, and again commend Chairman HOWARD for his tireless efforts on behalf of an improved transportation system for the United States, I will be offering one amendment for your consideration which has not been accepted by the subcommittee.

My amendment would establish a 2-year program to permit the Governor or designated recipient of section 5 Urban Mass Transportation Assistance Act funds to permit one project per year to be eligible for a 80–20 matching requirement for section 5 operating expense funding. There is a $1,000,000 Federal share ceiling per year per project under my proposal.

I believe this amendment would facilitate greater local utilization of Federal funds made available under section 5 and permit local and State transportation authorities to more easily fund that part of the area's mass transportation system most in need of financial assistance without increasing the levels authorized in H.R. 11733 or increasing the funds received by any political subdivision.

Under section 5(e) of the Urban Mass Transportation Assistance Act:

The Federal grant for any project for the payment of subsidies for operating expenses shall not exceed 50 per centum of the cost of such operating expense project.

As a result of the 50–50 matching requirement for operating expenses, many localities are prohibited from utilizing

the moneys that the Federal Government has made available. The Urban Mass Transportation Administration has advised me that $44,427,027 of the funds allocated in 1976 under section 5 may lapse on September 30, 1978, as a result of State and local transportation authorities inability to meet the 50–50 matching requirement.

The Chicago to Valparaiso ConRail Line—previously the Penn Central Chicago-Valparaiso suburban service—carries approximately 800 commuters daily between Chicago and northwestern Indiana, approximately 44 miles. This line is a vital part of the mass transportation system of Indiana's Lake and Porter Counties and one of the major transit links to downtown Chicago.

The Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210) created the Consolidated Railroad Corporation (ConRail) to operate several bankrupt rail services including the Penn Central. That act specified that any unprofitable freight or commuter service would be discontinued unless the deficit could be subsidized by a responsible party.

For transition, section 808 provided that 90 percent of the first year's loss would be assumed by the Federal Urban Mass Transportation Authority. The other 10 percent was to come from local sources.

Presently the matching requirement for ConRail operating expenses is 80–20. Unfortunately, the local matching requirement will increase to 50 percent on September 30, 1978.

Under the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, continuation of the service is required only if ConRail is offered a subsidy to cover the losses incurred on the service. Because of the increased local share that will be required as of September 30, and the local and State transportation authority's lack of ability to provide the required $450,000 local share of the $900,000 operating deficit, ConRail has posted notices of discontinuance for the Valparaiso to Chicago line as of September 30.

Despite the tremendous efforts that have been put forth by Don Erker and State Representative Esther Wilson in conjunction with my friends and colleagues from Indiana, Messrs. BAYH and FITHIAN, it seems evident that this valuable commuter service will be discontinued on September 30.

Don Erker, chairman of the Chicago-Indiana Railroad Commuters Association (CIRCA) and Esther Wilson worked diligently and tirelessly for several years to guarantee the maintenance of this service on behalf of the 800 passengers of the ConRail Line. Ms. Wilson worked with competence and devotion in the State legislature on behalf of northwestern Indiana commuters. The advice and counsel of Don Erker has been most valuable to the efforts of the public officials working to maintain the service. I am honored to be able to compliment and commend these individuals, for the record, on behalf of the citizens of northwestern Indiana.

As a result of the scheduled discontinuance, the 800 passengers will be forced to find other means of transportation between Chicago and northwestern Indiana. Unfortunately, there is no convenient, cost efficient, safe and environmentally sound alternative available at this time.

I am not alone in my concern for the irreparable damage that this immediate increase in local share of ConRail operating expenses will have on urban mass transportation systems throughout our country. My amendment would permit the localities to temporarily continue funding of these necessary services at an 80–20 matching requirement, hopefully giving the communities adequate time to make arrangements for funding at a 50–50 match or for developing an alternative means of transportation if the service cannot be continued at the new matching requirement.

By requiring that the Federal share for any project for operating expenses not exceed 50 percent, a transportation authority in financial difficulty is unnecessarily prohibited from allocating more moneys to a certain project even if that project is determined to be the hub of the area's mass transportation system. In this situation, the funding decision has been taken out of the hands of the local transportation authority, those closest to the situation, prohibiting them from implementing a comprehensive transportation system. My amendment would restore a great deal of flexibility to the local transportation authority's planning process by permitting them to allocate more moneys to a project that they have determined to be vital to their comprehensive mass transportation system, while making additional local funds available for other important aspects of the system.

I recognize the concern of the Public Works and Transportation Committee and all of my colleagues who support a ceiling of 50 percent of Federal share of operating expenses for urban mass transportation projects. However, I believe that the irreparable damage that will be realized as a result of an immediate increase of local share from 20 to 50 percent as in the case of the Chicago to Valparaiso line, is unnecessary and contrary to our national urban mass transportation policy.

Again permit me to reemphasize that this is a temporary—2 year—program and would not alter the funding formula as set forth in section 5(b) of the UMTA Act and so the authorization level in H.R. 11733 will not be increased and the amount of funds allocated to any political subdivision will not be affected.

For these reasons and on the merits, I strongly urge your support of this amendment. Thank you, Madam Chairman, for this opportunity to speak in support of H.R. 11733 and my amendment to the same.

Mr. SHUSTER. Madam Chairman, I yield 5 minutes to the distinguished gentleman from Ohio (Mr. MILLER).

Mr. MILLER of Ohio. Madam Chairman, I wish to express my sincere thanks to the gentleman from New Jersey (Mr. HOWARD), the chairman of the subcommittee, and the ranking minority member, the gentleman from Pennsylvania (Mr. SHUSTER), for their hard work and dedication on the surface transportation bill.

Madam Chairman, I want to direct the attention of my House colleagues to a special provision of the Surface Transportation Assistance Act of 1978 which affects hundreds of miles of unfinished highway throughout the Appalachian region. Section 125 of the act permits the Federal share for construction of the Appalachian highway system to increase from 70 to 90 percent, thereby lowering the State's share to 10 percent of the project's construction cost.

This particular provision is in direct response to the legislative initiative we undertook more than 2 years ago in introducing a bill to alter the ARC highway funding formula from 70 to 30 percent to 90 to 10 percent and make the completion of the 2,900-mile Appalachian highway network competitive with the vast Interstate Highway System. The bill was also designed to lessen the State matching burden and stretch State dollars further in the actual construction of new miles of Appalachian highway.

We coordinated our efforts carefully with officials of the Appalachian Regional Commission, representatives of Appalachian States, congressional committees and various organizations which are deeply concerned about the future of the 13-State region. In June 1977, I testified before the Subcommittee on Surface Transportation of the House Public Works and Transportation Committee to detail the provisions of my bill and to urge the subcommittee to either approve my bill or incorporate its ARC highway formula change in any forthcoming Federal-aid highway assistance measure.

The bill before the House today responds to our request of the subcommittee last year, and I want to express my gratitude to the subcommittee membership for acting favorably upon our recommendation.

Section 125 will allow the total Federal share of funds for Appalachian highway projects to rise to a maximum of 90 percent when an appropriate amount of regular (non-interstate) Federal-aid highway funds are combined by Appalachian States with ARC highway funds.

Under this provision, use of Federal-aid highway funds to take advantage of the higher Federal ceiling would be optional with the Governors of each of the region's 13 States. Under the option, a State's share of a highway project's cost could range from the current 30 percent level to as low as 10 percent.

The maximum amount of Federal-aid (title 23—highway trust) funds that

could be used would be 45 percent of the project's total cost while the maximum amount of ARC funds would be 60 percent. Any combination of these two Federal funds would be permitted as long as neither exceeds its specified maximum level and the two combined constitute no more than 90 percent of the project's total cost.

Three examples:

If a State decides to pay for 10 percent of a project with its own funds, it could use ARC funds to a maximum of 60 percent and pay for the remaining 30 percent with highway trust funds.

Using the same 10-percent minimum in State funds, a project could be financed with a maximum of 45 percent in highway trust funds, in which case 45 percent would be paid for with ARC highway dollars.

Should a State decide to invest 20 percent of its own funds in a project, the remaining 80 percent could be financed by various combinations of highway trust and ARC funds, as long as the former does not exceed 45 percent and the latter does not exceed 60 percent of the total cost.

Madam Chairman, it is critical that I point out that the funding formula change does not constitute a raid on the highway trust fund. Section 125 of the act has no effect on the apportionments made from the trust fund. Non-Appalachian States will continue to receive their usual allocations and not one cent less as a result of our ARC Highway formula proposal. At the same time, I underscore the fact that the Federal Government will not be called upon to provide even one additional dollar to enact the formula change.

Section 125 language simply changes the manner in which ARC dollars, highway trust funds, and State funds can be mixed and matched to complete the Appalachian highway network. The provision provides—at a time when State funds are scarce—an option for stretching State funds by lowering the State's matching burden to 10 percent. Not only will Appalachian highway work be stimulated but actual construction will also generate jobs and favorably affect the economic health of the entire region.

A frequent cry from the Appalachian States is that they are pinched by a lack of State matching funds. I am sure this is true. But it cannot be said that there has been a lack of Federal funds specifically for ARC corridor construction. A total of $1,977,515,000 in Federal funds for the ARC highway network has been allocated to the 13 States from the beginning of the program through fiscal year 1978 (September 30, 1978). This figure is for actual corridor work, and does not include additional funds for the ARC access road program. The chart clearly shows that there is no shortage of ARC obligated funds to the States:

Total ARC Highway funds allocated through fiscal year 1978

State:	
Alabama	$27,928,000
Georgia	43,939,000
Kentucky	351,666,000
Maryland	80,480,000
Mississippi	25,994,000
New York	197,115,000
North Carolina	114,859,000
Ohio	85,103,000
Pennsylvania	282,373,000
South Carolina	2,750,000
Tennessee	203,009,000
Virginia	96,811,000
West Virginia	465,488,000
Total	1,977,515,000

Let me remind the House of the objective set forth by the Appalachian Regional Development Act of 1965 with respect to highways:

To provide a highway system which will open up an area or areas with a developmental potential where commerce and communication have been inhibited by a lack of access.

The key words are "open up" and "access." Social, cultural, industrial, educational, and economic access start with good roads. The act says so, and every piece of tangible evidence gathered to date showing any semblance of progress throughout the region points to good roads as the reason for that growth. The Comptroller General told the Congress in a detailed November 1976, report on the ARC highway system in West Virginia:

While West Virginia has made progress in completing its portion of the system, lack of progress in adjoining states has limited regional accessibility and, consequently, Appalachian economic development. Continued funding limitations which delay highway program implementation appear inconsistent with the purpose of the Act.

The Comptroller General recommended that the Congress consider "proposals for accelerating completion of the highway system to achieve the overall objective of improving the economic status of Appalachia."

Section 125 of the act before us, gentlemen, does exactly that.

Altogether, 24 highway corridors were originally designated for inclusion into the ARC highway network. The network was designed to tie into the Interstate System and other existing Federal highways.

According to the Appalachian Regional Commission, of the 2,900-mile system, a total of 1,415 miles is actually completed (of which 1,397 miles has been opened to traffic) with an additional 206 miles under construction as of March 31, 1978.

Throughout our efforts to alter the funding formula we have stressed that the ARC highway program needs to be competitive with the Interstate Highway System. All phases of ARC highway work are now done on a 70–30 Federal-State percentage funding basis. The Interstate System is constructed and maintained on a 90–10 basis. Because of these disparate ratios, States tend to invest funds first in the program providing a higher return on the dollar. Consequently, the Appalachia program ends up with leftover and hand-me-down dollars. Boosting the ARC highway funding formula to 90-10 would reject some long-overdue equity into State highway construction plans. Ignoring the ARC network further through inequitable formulas will prove far more costly than ever expected.

Lacking equal footing with the interstate program, the important links in the Appalachia highway chain will most likely remain uncoupled. Highway construction is an economic snowball. Preceding the final purpose of laying a new roadway is the immediate objective of putting people to work. ARC spokesman, John Whisman, commented on this feature of the ARC highway program during a Public Works Subcommittee appearance in March 1975. His words are worth recalling:

While the primary purpose of the Appalachian Development Highway Program is long-range development of the Region, it is important to remember the immediate effects of its construction. The Federal Highway Administration has estimated that nationwide in 1973 each $100 million of federal-aid construction in highways generates an average of 3,500 direct and 3,500 indirect jobs—1,800 in the manufacturing sector; 1,300 in wholesale trades, transportation and service sectors; and 400 in mining and other sectors. On this basis the Appalachian Highway program would be generating approximately 7,000 direct and 7,000 indirect jobs in both 1975 and 1976. In discussing the longer-range development impact of the Appalachian Highway program, it must be remembered that since the Appalachian and Interstate Highway were designed to complement each other, it is difficult to sort out the contribution of either partner alone; and, neither highway system has been completed. However, some early effects of the combined highway programs are already visible. The major economic effects of the highway system are those dealing with changes in employment and industrial growth * * * An earlier ARC study showed that more than three-fifths of all new industrial locations are within 20 minutes of a new highway, and almost one-half were within 10 minutes travel time. This same study identified 1,149 new plants since 1965, representing over 200,000 new jobs * * *

In light of the importance of section 125 and the significant economic impact this formula change will have upon the future growth and development of the Appalachian region, I urge the House to approve the Surface Transportation Assistance Act of 1978.

Mr. ULLMAN. Madam Chairman, I yield myself 5 minutes.

Madam Chairman, let me first state that it has been a pleasure to work with the distinguished gentleman from New Jersey (Mr. HOWARD), the distinguished gentleman from Pennsylvania (Mr. SHUSTER), the distinguished chairman of the full committee, the gentleman from California (Mr. JOHNSON), and the distinguished gentleman from Ohio (Mr. HARSHA), on this matter that has been under way now for a couple of years, and that is finally culminating in this year's revenue act of 1978.

The Committee on Ways and Means is, as has been our custom, cooperating and coordinating with the Committee on Public Works and Transportation in providing revenues through the trust fund to

accommodate the programing of the Committee on Public Works and Transportation. I think, everyone recognizes there has been some controversy with respect to the size of the program. The Committee on Ways and Means has looked at it very carefully, we have made a number of proposals, the committee has worked its will, and we bring to you a bill which we think is sound.

Madam Chairman, most of our highway programs, including the Interstate System, are financed by the proceeds of a series of highway-related excise taxes which are allocated to the highway trust fund. Under present law, this fund is scheduled to expire on October 1, 1979, and at that time many of the taxes which are now allocated to the fund are scheduled to expire or be reduced. The following table shows the existing highway excise taxes, the rates, and the scheduled rates as of October 1, 1979, under present law:

EXCISE TAXES ALLOCATED TO THE HIGHWAY TRUST FUND AND PRESENT LAW TAX RATES

Excise Tax (and section of the Code)	Present tax rate	Tax rates scheduled as of Oct. 1, 1979 [1]
Retailers: Diesel and special motor fuels (sec. 4041).	4 cents per gallon.	1½ cents per gallon.
Manufacturers:		
Gasoline (sec. 4081).	4 cents per gallon.	1½ cents per gallon.
Lubricating oil (sec. 4091).	6 cents per gallon.	6 cents per gallon.
Trucks, buses, trailers (sec. 4061(a)).	10 percent of manufacturers price.	5 percent of manufacturers price.
Truck and bus parts (sec. 4061(b)).	8 percent of manufacturers price.	5 percent of manufacturers price.
Tires for highway use (sec. 4071(a)(1)).[2]	10 cents per pound.	5 cents per pound.
Tubes (sec. 4071(a)(3)).	10 cents per pound.	9 cents per pound.
Tread rubber (sec. 4071(a)(4)).	5 cents per pound.	None.
Other:		
Use tax on highway vehicles in excess of 26,000 pounds gross weight (sec. 4481).	Annual tax of $3 per 1,000 pounds.	None.

[1] At that time, revenues would go into the general fund, absent legislation to extend the trust fund.

[2] Sec. 4071 also imposes a tax of 5 cents per pound for nonhighway tires, except for a tax of 1 cent per pound on "laminated tires" (not used on highway vehicles). Revenues from these two taxes also go into the trust fund but are not scheduled for a change in rate on Oct. 1, 1979.

NOTE.—Under the House and Senate energy tax bills (H.R. 5263 in conference), the excise taxes (except for the use tax on heavy highway vehicles) applicable to buses used in public transportation and school buses would be repealed; that is, the taxes on gasoline, diesel and other motor fuels; the taxes on the purchase of buses and bus parts; the tax on lubricating oil; and the taxes on tires, tubes and tread rubber.

As approved by the Committee on Ways and Means, title V provides for a 5-year extension of the highway trust fund, from September 30, 1979, through September 30, 1984, and postpones the scheduled rate reductions of the taxes allocated to the trust fund for 5 years, from October 1, 1979, to October 1, 1984. Receipts from the taxes allocated to the trust fund are estimated to total $41.2 billion during the 5-year extension period.

The bill makes certain changes in the operation of the trust fund Byrd amendment, which currently provides for reductions in apportionments for the Interstate System when anticipated revenues will be inadequate to cover existing expenditures. The changes made by the bill essentially provide that any reductions will be made on a pro rata basis from all apportioned programs which are financed from the highway trust fund.

The bill also provides an exemption from—or credit or refund of—Federal motor fuel excise taxes for fuel used in taxicabs for qualified taxicab services. This exemption applies only to fuel used for business purposes and where the taxicabs are not prevented from implementing a shared-ride program by either Government regulation or company policy. The exemption does not apply for fuel-inefficient taxicabs of 1978 or later model years purchased after 1978.

The bill also contains a requirement for a highway cost allocation study. The Secretary of Transportation is directed to undertake an investigation of the costs of Federal-aid highways occasioned by the use of different types of vehicles and the proportionate share of such costs attributable to each category of users and vehicles using these highways. A final report is due to the Congress on or before January 15, 1982.

In addition, the bill directs the Secretary of the Treasury to review and analyze each excise tax now dedicated to the highway trust fund with respect to such factors as the ease or difficulty of administration and compliance burdens. This study is to be conducted in conjunction with the cost allocation study. A final report is due on or before April 15, 1982.

Madam Chairman, I urge that title V be adopted.

Mr. CONABLE. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, the distinguished chairman of the Committee on Ways and Means has discussed title V in detail; and I have very little to add to it.

I do want to talk a little from a philosophical viewpoint and a fiscal viewpoint about the condition of the trust fund. I do not pretend to be an expert on highways. That is not the responsibility of the Committee on Ways and Means, and I am grateful for the detailed work which has gone into the highway program through the diligence of the subcommittee, of which the distinguished gentleman from New Jersey (Mr. HOWARD) is the chairman.

I am committed to a sound highway trust fund, and I am anxious to maintain the fiscal integrity of the fund in future years.

Madam Chairman, when this measure came to the Committee on Ways and Means as a result of concurrent jurisdiction, the extremely high level of authorizations provided in the bill when compared to anticipated trust fund revenues would have forced us into uncomfortable options of either a sharp increase in highway excise taxes or sharp cutbacks in program levels or, regretfully, a dip into the general revenues for financing to save the fund. Such a choice would have been upon us when the Nation could ill afford any of these options.

Madam Chairman, it is well known that in cooperation with the gentleman from Florida (Mr. GIBBONS), I sponsored an amendment which would have cut back sharply expenditures of the highway trust fund, and the extension of the fund would have been for a considerably shorter period of time.

My concerns were fiscal. I do not doubt for 1 minute the need for the highway program to continue. As a result of the pressures generated by the Gibbons-Conable amendment, the subcommittee of the Committee on Public Works and Transportation, and the chairman and the ranking minority member made a concession of the committee that $1 billion would be taken out of the expenditure side annually and that the duration of the fund would be for 1 year less. This constituted a major concession in the direction of fiscal soundness.

I appreciate this cooperation and this response to our fiscal concerns. I do think we have to continue to look ahead and see where we are headed with the trust fund if we are going to do our job as responsible legislators.

The rate of growth in the trust fund revenues has slowed considerably in the last few years, primarily as a result of energy conservation efforts. The increased mileage standards have, in fact, slowed the rate of gasoline consumption; and of course, it is on the basis of that

consumption that the excise tax brings funds into the highway trust fund.

At the same time highway and bridge needs have expanded at an astounding rate due to inflation and due to an unanticipated rapid deterioration of the existing highway system. I do not think any Member of the House can rationally believe these conditions will change. As new construction slows down, restoration and rehabilitation will increase. The need for highway dollars will continue to be greater and greater. H.R. 11733 reflects the reality of this conclusion. The annual revenues of the trust fund remain at approximately $8 billion per year as a result of what the excise taxes will bring in. This bill provides for a 60-percent increase in program spending levels, and even though these spending levels will be reduced—and it amounts almost to $1.5 billion per year; I understand an adjustment has been made also in the money that will go into the mass transit funds as well as the highway funds—still there will be an annual gap of over $2 billion being added to the unfunded liabilities outstanding against the trust fund. This remains the result from passage of this bill despite the concessions made by the subcommittee.

The unfunded liabilities of the highway trust fund will equal an estimated $18 billion at a time when we will next have the opportunity to reconsider highway program levels. A situation of this nature is of grave concern to all of us, I believe, and the Members of the House should have that in mind when they consider this measure.

The financing provisions of the bill provide that future years' revenues be used to finance the authorization levels of the highway programs. Any measure wherein we mortgage future years' revenues to pay for current programs runs counter to the current fiscal view of the American people. I will acknowledge that this has been the condition since the inception of the trust fund, but as we mortgage the future to a greater and greater degree, we make it apparent that when we come to the end of the line and have to extend the trust fund again, we will either be forced into a sharp increase in highway taxes or will have then to cut back considerably on highway expenditures, which may then be even greater as a result of inflation and other factors. I want to repeat, then we will have an unfunded liability when we might next reconsider our Nation's highway program, estimated at about $18 billion.

One of the main reasons put forth in support of the increased authorizations in this bill has been the dire need of an increased bridge building program. That portion of the bill providing for bridge building was increased over 400 percent, and despite promises to reduce authorization levels, the hugely increased bridge replacement program is still at a level twice as high as what the States say they can spend in this area during the first or second year of the program. In addition, no cuts were applied to the $18 billion proposed for discretionary and special funding.

I do want to point out that the subcommittee has also adjusted the provisions of the Byrd amendment which would have required any shortfall in funds to come entirely out of the interstate highway system. The shortfall now will be applied pro rata across the board to the total highway program rather than devastating the interstate program, and is a very important and I think useful change in the legislation known as the Byrd amendment.

I want to emphasize once again, Madam Chairman, the hazards to the American economy which exist in this bill with its substantially increased authorization levels. I believe there is a real danger of the highway trust fund becoming insolvent. There are many whose hearts would be gladdened by the demise of the highway trust fund, and I am not among them. I do urge the Members of this House carefully to consider the long-range ramifications of this bill at this time in our history.

It may be that the bill takes us in the direction that we want to go. However, under the unified budget, I want to point out that the surpluses of the past have worked against Government deficits, and the deficits of the future in this trust fund under the unified budget process work to increase the size of our Government deficit. It may be that the Members of the House will want to continue to operate by mortgaging the future of the trust fund.

I hope if we do, that we will do it with the full knowledge that we are committing the Congresses of the future either to a sharp increase in taxes or to some change in the operation of the trust fund, something which I do not think would be necessarily in the interest of the American people. The trust fund has served us well and we must exercise restraint in our fiscal plans if we are not to contribute to its demise.

● Mrs. SMITH of Nebraska. Madam Chairman, I would like to take this opportunity to speak in support of the legislation now before us—the Surface Transportation Assistance Act—(H.R. 11733) and comment specifically on section 123, which concerns energy impacted rail highway crossings.

This provision is very important to many communities in my district. As you know, the bill provides for a total of $200 million over the next 4 fiscal years to help States eliminate unacceptable delays to highway travel at public rail highway grade crossings brought about by increased coal train traffic.

There is no doubt that this is a serious problem in my district. With the recent, rapid increase in the use of coal from Wyoming coal fields, the increase of train traffic through the district to points east has had a tremendous impact on many communities.

For instance, according to Burlington Railroad officials, the frequency of rail traffic from Alliance, Nebr., in my district, to Lincoln, Nebr., will be 33 coal trains per day by 1983. This is an increase from 2 per day 5 years ago and 14 per day this year. These figures include full trains heading east and empty ones returning.

In addition, the Chicago & Northwestern Railroad recently announced it is planning to upgrade its tracks which run through the northern part of my district. Currently, that particular line carries only three trains per week. But railroad officials predict that number would increase to three trains per day by 1981 and could climb to 12-a-day by 1985.

Clearly, then, the approval of this section of the bill is vitally important. Right now, many towns along rail lines in Nebraska are experiencing problems because of the frequency of the coal trains and their length. Will emergency vehicles be unable to get from one side of a town to the other in time to put out a fire or save someone's life? How many deaths or injuries will occur because of the increased risk to automobiles or school buses crossing these rail lines? These are questions that Nebraska towns are asking and about which they are extremely concerned.

I believe that this section will provide some relief to these areas which have problems not of their own making. In this case, because national energy requirements are causing the accelerated use of coal, it is clearly the responsibility of the Federal Government to provide some assistance. This bill will help the situation considerably and it has my wholehearted support.

I will place several news articles in the RECORD which describe in graphic detail the situation in the Third District of Nebraska with regard to the coal train problem.

In addition, I note that the committee report accompanying this bill singles out two areas—Moorhead, Minn., and Allentown, Pa.—which the committee felt were logically eligible for aid under provisions of the legislation. I am sure, of course, that this reference does not preclude from consideration the many worthy communities in my district which certainly are experiencing problems that could be solved by assistance from this provision.

[From the Omaha World-Herald, Aug. 6, 1978]

COAL TRAINS TRIGGER GRUMBLES IN TOWNS—LINES MOVE TO ALLEVIATE LONG WAITS

(By Robert Dorr)

The train sits at a railroad crossing, and it sits, and it sits. You wait in your car to get across the tracks, getting angrier each minute.

Broken Bow, Neb., physician Dr. M. L. "Mike" Chaloupka had that experience while trying to get two youngsters to the hospital. They had swallowed an unknown number of aspirin tablets.

"I had to wait 20 minutes." Even though the delay didn't turn out to be crucial, "I was madder than hell," he said.

With an increasing number of 100-car coal trains rumbling through the Midlands, residents in railroad communities are wondering if Chaloupka's experience will become commonplace. Will one part of a town be cut off much of the time from the part across the tracks? Will it become more dangerous to live in such a town?

NOT ALL ALLIANCES

Railroad spokesmen said they don't agree that the problem is that serious. Further-

more, steps are being taken to minimize disruption of communities, they said.

Broken Bow is like many Midlands railroad communities in experiencing problems, but few benefits, from the coal boom. It isn't an Alliance, Neb., where hundreds of additional workers are adding millions of dollars annually to the town's economy.

Broken Bow is part of the coal boom only because Burlington Northern tracks cut through the center of town.

At least one person has moved because she doesn't want to live across the tracks from the hospital. Cathleen Dolan, a nurse-anesthetist, did that after several times in an emergency having to drive far out of her way to get around a train.

"I know I can get to the hospital in three minutes now," she said.

EMERGENCIES A WORRY

Several town officials interviewed by The World-Herald said they are concerned about the chance of a critical delay in a fire or other emergency, but that hasn't happened yet. When a train has been on the tracks, said ambulance driver Ivan Ferguson, the crew has opened a space so his vehicle could get through.

Mainly, the delays simply caused grumbling.

Police Chief Bob Jatczak, who said he received "numerous complaints" from residents about stopped trains, discussed the matter several times with railroad officials and finally ticketed a train for blocking a crossing more than 15 minutes. The fine was only $18, "but it showed we meant business," he said.

Chaloupka once used his car telephone to call a Burlington dispatcher in Omaha after he sat at a crossing half an hour late at night. "The train moved," he said.

Recently, the stopped-train problem has almost disappeared, and Broken Bow officials are unanimous in complimenting the Burlington.

"The difference is amazing," said Mayor Marvin "Bun" Talbot.

The reason for the change is the construction of another track alongside the existing one on the 8-mile stretch from Broken Bow to Berwyn this year. The second track provides a place for one train to wait while another passes from the opposite direction.

Formerly, that had to be done on a siding in Broken Bow. Because the coal trains are a mile long, one train could tie up all the town's crossings at once.

The second track east of Broken Bow is one of many projects underway on the Burlington's main line east from Wyoming's Powder River Basin coal fields. The railroad, biggest hauler of local through Nebraska, is pulling out all the stops to upgrade a line that hadn't previously carried large numbers of trains.

Wayne Arntzen, vice president of the Burlington's Denver region, estimated $80 million is being spent this year in Nebraska.

Among other things, tracks and roadbeds are being replaced to handle heavier trains. Longer sidings and second tracks, as between Broken Bow and Berwyn, are being laid.

MORE DOUBLE TRACKS

On the 657-mile stretch between Gillette, Wyo., and Pacific Junction, Iowa, 55 miles had double sets of tracks before this year. That will increase to 139 miles by the end of this year and 208 miles by the end of 1979, Arntzen said.

"That will minimize the problem of trains sitting in towns," he said. "The trains will pass each other in rural areas."

To carry out its Nebraska construction program, the railroad has hired an extra 481 workers.

Even though the problem of trains stopping in Broken Bow has diminished, some residents wonder if they will be overwhelmed by sheer numbers of coal trains in future years. Adding fuel is talk in Broken Bow that the Burlington has projected coal traffic through the town of 100 trains a day by the mid-1980s.

Several Broken Bow officials referred to that number, but none knew its origin.

"That's nonsense," said Burlington's Arntzen. "The rumor probably was started by coal slurry interests." Proposals for pipelines as a method of transporting coal are opposed by railroads.

33 TRAINS A DAY

Arntzen said the railroad projects that 33 coal trains a day will travel on the Alliance to Lincoln stretch in 1983, an increase from two a day five years ago and 14 a day this year. That includes full trains heading east and empty ones returning.

Some of the coal trains now going through Broken Bow will travel more-southerly routes when a new line through the Powder River Basin is completed in 1980. The Chicago & North Western may get a federal loan guarantee enabling it to upgrade its line through northern Nebraska to handle coal. That also could lessen the load through Broken Bow.

Whatever the number of trains turns out to be, Broken Bow residents know it will be a large increase.

Fire Chief Frank Klapal said he feels there will be a corresponding increase in the chances of a derailment that would cause gasoline storage tanks near the tracks to blow up.

SAFETY A CONCERN

Some officials wonder about the safety of their crossings, especially ones used by school buses. Only one of Broken Bow's four has crossarms. Two have lights and bells, and one has nothing. The town has applied for federal funds for additional crossarms.

Some communities are planning to build viaducts, which can cost $2 million or more each, but Broken Bow isn't one. "I would favor that if we could find the money," said Mayor Talbot.

The Burlington will help a community engineer a grade-separation crossing and seek money from federal and state sources, but will not provide the funds itself, said Arntzen.

The Union Pacific Railroad also provides expertise to communities, but most construction funds must come from other sources, said public relations director Barry Combs. The railroad has helped pay for a viaduct in some cases, he said.

U.P. "POOL"

Burlington officials cite the U.P.'s main doubletrack line through Nebraska as proof that large numbers of trains can be accommodated without major problems. Sixty trains pass through North Platte, Neb., each day on the U.P. line.

While most of the trains on the Burlington's mainline carry coal, a big majority on the U.P. are non-coal. Eight of the 60 trains through North Platte carry coal or are empties heading west. In five years, that number is expected to increase to 11 or 12 a day.

Because the U.P. mainline has carried a high volume of traffic through Nebraska for years, the percentage of crossings having grade separations is higher than on the Burlington.

[From the Omaha World-Herald, Feb. 12, 1978]

REPORT: MIDLANDS FACES BIG IMPACT FROM COAL TRAINS

(By Mary Kay Quinlan)

WASHINGTON.—A projected increase in the number of unit coal trains moving through Nebraska and other Midlands states could have an intolerable impact on hundreds of communities, according to a Department of Transportation task force.

What's more, existing federal programs to improve railroad-highway grade crossings are inadequate to solve "this major problem," the task force on coal transportation said in a recent report.

But precisely which communities will need help most, how much if will cost and what the government should do about it—if anything—are still under study, said Robert Brown, special assistant to task force chairman Chester Davenport, assistant secretary of transportation.

"We know it's a serious problem," Brown said, "but we're a long way from knowing exactly what we're going to do about it."

WHOSE RESPONSIBILITY?

One policy question to be settled, for example, is whether the railroads should be expected to provide the money to solve the problem or whether it's a government responsibility as part of the national energy program, Brown said.

He said the administration expects to decide by the end of the year what position to take on a bill sponsored by Nebraska Sen. Edward Zorinsky to relieve the impact of increased coal traffic by authorizing $900 million for railroad viaducts and highway overpasses.

The coal transportation task force based many of its findings about the social and environmental impacts of increased rail traffic on information from a field trip to Nebraska last summer.

The task force held hearings and toured Burlington Northern Railroad facilities in Alliance and Lincoln, which it called "the coal chute of America."

The task force cited Burlington Northern estimates that by 1980 it will be hauling 390 percent more coal in unit trains—generally consisting of 100 hopper cars carrying 100 tons each—than it did in 1974.

That spells serious problems for small towns situated along both sides of the railroad tracks, the force said.

SEVER TOWN

"With most rail lines at grade, passing trains will temporarily sever towns, disrupting traffic on local streets and delaying essential hosiptal, fire and police services," the report said.

The trains, which frequently are more than a mile long, take three minutes to pass a particular point traveling at 20 miles an hour and 12 minutes traveling at 5 mph, a maximum speed required by some local ordinances, the report said.

If traffic increases to 35 unit trains a day by 1980, as is projected for the Alliance to Lincoln coal route, the total "passby" time for one day would be 1.8 hours at 20 mph and 7.2 hours at 5 mph, the study said.

Since 1973, Nebraska, Kansas, Colorado, Wyoming, Montana, Nevada and Minnesota have received about $25 million in federal aid for railroad crossing improvements, the task force noted.

But that amount is relatively small and the emphasis has been on "low-cost safety improvements" which the task force called "of little or no help in alleviating the hazards and inconveniences" caused by increased unit train traffic.

[From the Scottsbluff (Nebr.) Star-Herald, Nov. 20, 1977]

RAILROAD TRAFFIC PROBLEMS LOOM

Despite what the officials of the Burlington Northern Railroad (BN) say, the thought of 19.71 coal trains of 90–110 cars passing through one of the Scottsbluff crossings in

90 seconds within the next three years is not comforting. And by 1982 the number of these long trains is projected to grow to 23.53 trains daily.

BN officials claim the trains will travel 45 miles per hour in passing a crossing in 90 seconds, and infer this is a safe and sane speed for these giant trains, yet the ability of the five locomotive trains to stop, let alone slow down, in the event of trouble is not impressive. Even at the slower speed of 20–30 miles an hour, whereby a train will pass a crossing in three to four minutes, the increased train traffic will cause problems.

The BN officials warn against overreaction by the city, and caution against the much talked-about problem of building overpasses and underpasses. Perhaps BN officials have sound reasoning for such caution, but perhaps they don't realize the particular problem trains create for the movement of traffic in Scottsbluff. Another possibility why the railroad is against overpasses and underpasses is because in many communities the cost of such projects is proposed to be shared by the railroads which would like to avoid such expense.

A big, lumbering coal train going 45 mph carries tons of destructive power for anything that gets in its way, and will be going faster through Scottsbluff than motorized vehicles are allowed to travel the city's streets. A youth trying to get across the tracks on a bike, a pedestrian, such as an older person, walking across and even cars and trucks operators will not be geared to watching out for a train coming at them at 45 mph.

The officials say the trains will be designed for quietness, but 19 to 23 trains whistling at each intersection on the average of one per hour will not be exactly quiet. Nor is it comforting to think that the decision on the train's speed will be strictly up to one man, the particular train's engineer, who will be expected to decide as he approaches the community how safe the tracks and weather conditions are.

The Rail Traffic Study Advisory Committee which is probing the situation should listen and consider what the BN officials tell them, but they shouldn't be guided strictly by what they are told. They should consider that if trains have to slow down for towns, they fall behind schedules, and that costs railroads money.

There are other considerations, such as the present traffic routes available to motorists, new routes which should be constructed, the peak times for traffic, and what precautions should be taken at each city rail crossing for the maximum safety of the residents.

The construction of the 21st Street and the Avenue I bridges across the North Platte River takes on additional importance in helping to alleviate traffic jams at present key rail locations, such as Avenue B and Broadway. The funneling of traffic from Gering to Avenue I and the western areas of Scottsbluff—which largely avoids rail crossings—takes on increased importance.

And an overpass or underpass in the downtown area, perhaps at First Avenue and East Overland, should be fully explored.

The committee must remember that while rail traffic through Scottsbluff is now projected to increase dramatically in the next few years, the motorized traffic also will be increasing. The number of cars and trucks will increase under normal conditions, but as the town grows, with an expected new shopping center, the traffic increase will be a greater problem

Committee members need only to view the traffic problems at 5 p.m. weekdays at Broadway and Overland, and at the North Platte River Bridge to get an idea of what they can expect to be compounded in a few years.●

● Mr. ALEXANDER. Madam Chairman, I rise in strong support of H.R. 11733, the Surface Transportation Assistance Act of 1978. The bill, which I think can be improved fiscally with the adoption of the amendments to be offered by Chairman HOWARD, is a well thought out response to our Nation's surface transportation needs and should be adopted.

This bill accelerates completion of the Interstate System; provides substantial, yet warranted, increases in authorizations for the reconstruction and rehabilitation of primary and secondary highways; makes a massive attack on the backlog of unsafe and obsolete bridges in this country; expands the "off-system" rural roads program; and funds urban mass transit programs, expanding the money earmarked under these programs for rural and small urban areas.

In my State of Arkansas, almost 12,000 miles of interstate and federally aided primary and secondary roads would be eligible for assistance under this bill. The bridge replacement program will make some 8,000 structurally deficient or functionally obsolete Arkansas bridges eligible for funding, including 1,500 such bridges in my district alone.

H.R. 11733 extends the highway trust fund for 5 years to accommodate this 4-year program. There are those of our colleagues who would have us believe that the financing scheme of this bill is unsound and will result in a draining of the highway trust fund. I cannot agree with their arguments and will speak to that issue when the Giaimo amendment to require that program authorizations must approximate revenues in the trust fund is debated next week.

Madam Chairman, the levels of funding requested in this bill are based on documented needs, not wish lists. The Public Works and Transportation Subcommittee on Surface Transportation so ably chaired by my colleague from New Jersey (Mr. HOWARD), has worked for 3 years to arrive at this product. It deserves our support.

Throughout my 10 years of service in the Congress I have been working to bring about the development of a national transportation policy in which rural transportation is a full partner and the needs for rural roads are fully recognized.

To put it bluntly, the treatment rural transportation policy receives will mean the differences between a legacy of disaster and chaos and a legacy of survival and progress.

In the past 5 years, I and other Members of Congress whose people rely so heavily on rural roads, have worked to convince our colleagues and the Department of Transportation that while we were providing money to save the New York City subway system we had also better provide more money to rural highways and roads if the people who intended to ride that subway were to have food to eat.

As chairman of the Family Farms and Rural Development Subcommittee in the 93d Congress, I conducted hearings on the impact that Federal transportation policies were having on rural transportation and our ability to get food from the marketplace.

As a result of our findings, Congress, in the Federal Highway Act of 1974, added $150 million to the funding for primary and secondary highways in rural areas and adopted my proposal for the creation of a program to provide money to county jurisdictions for improving local roads. The "off-system" roads program was funded at $200 million.

I am most gratified that the Public Works Committee accepted my proposal in its deliberations on this bill to increase the "off-system" roads authorization from $200 million to $300 million annually.

Madam Chairman, we have come to realize that food is our Nation's most important product. Food is grown where the land is most productive and there is no strong relationship between these areas and the geographic location of the ultimate consumer.

Thus, agriculture is more dependent on transportation than almost any other part of our economy. It does little good to produce a bumper crop of food and fiber if you can not move it out of the countryside to the city grocery shelves or to international markets.

A constituent wrote me not long ago seconding that proposition:

> We have some of the best truck gardeners in this country that you can find in the state. They raise some of the best produce available anywhere. Most of them cannot get to a highway to get their produce out to market without having to tear up their vehicles on rough roads . . . All they need is a way to get their products out to market.

We can no longer afford to accept the short-sighted conclusions that, because most of the people live in congested areas, most of the transportation dollars and technology ought to be geared to solving their problems and let the countryside needs go hang with a conscience salving pittance. I am pleased with the progress we have made in getting the Nation's nonmetropolitan areas their rightful share of the Federal dollar. There remains additional work to be done, however.

Madam Chairman, this bill is not pork barrel. The spending levels are not extravagant when you consider the vast importance of surface transportation to the commerce of this Nation. The solvency of the highway trust fund will not be jeopardized. The financing mechanism is sound and is consistent with the "pay as you go" approach for highway financing that Congress has followed for the past 20 years.

I urge its adoption.●

Mr. ULLMAN. Madam Chairman, I would ask the gentleman from New York if the gentleman has any further requests for time?

Mr. CONABLE. Madam Chairman, I have no further requests for time.

Mr. ULLMAN. Madam Chairman, I have no further requests for time.

The CHAIRMAN. Does the gentleman from New York yield back the balance of his time?

Mr. CONABLE. Madam Chairman, under the circumstances, I have very little choice.

Mr. ULLMAN. Madam Chairman, I yield back the balance of my time.

The CHAIRMAN. Does the gentleman from New Jersey yield back the balance of his time?

Mr. HOWARD. Madam Chairman, I yield back the balance of my time.

The CHAIRMAN. Is it the assumption of the gentleman from New Jersey that the gentleman from Pennsylvania (Mr. SHUSTER) yields back the balance of his time?

Mr. HOWARD. Madam Chairman, it is the assumption of the gentleman from New Jersey.

The CHAIRMAN. Does the gentleman from New York, to the extent the gentleman can do so, commit the gentleman from Pennsylvania to yield back the balance of his time?

Mr. CONABLE. Madam Chairman, to the extent I am able to do so, I yield back the gentleman's time.

Mr. HOWARD. Madam Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Miss JORDAN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11733) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. HOWARD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

PERMISSION FOR COMMITTEE ON AGRICULTURE TO FILE REPORTS ON H.R. 13845 AND H.R. 12559

Mr. ULLMAN. Mr. Speaker, on behalf of the gentleman from Washington (Mr. FOLEY), the distinguished chairman of the Committee on Agriculture, I ask unanimous consent that the Committee on Agriculture may have until midnight, tonight, September 15, 1978, to file a report on the bill, H.R. 13845, to amend the Perishable Agricultural Commodities Act, and also on the bill H.R. 12559, the Native Latex Commercialization Act of 1978.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

INTRODUCTION OF RESOLUTION CALLING FOR MEETINGS BETWEEN MEMBERS OF CONGRESS AND JAPANESE DIET

The SPEAKER. Under a previous order of the House, the gentleman from New York (Mr. WOLFF) is recognized for 5 minutes.

● Mr. WOLFF. Mr. Speaker, the introduction today of a resolution together with Mr. BURKE of Florida, Mr. GUYER of Ohio, and Mr. MINETA of California, calling for joint and periodic meetings between Members of Congress and Members of the Japanese Diet for the discussion of "common problems" is a positive step on the part of the House of Representatives toward the strengthening of relations between the representatives and in turn the peoples of the United States and Japan.

A similar resolution, Senate Joint Resolution 111, has been introduced by Senator JOHN GLENN and is currently pending on the Senate calendar.

For too long, we as Members of Congress have found ourselves reacting to, rather than anticipating, developments in our bilateral relationship with Japan. I would argue that to the extent that we have failed to anticipate problems we in large part have failed through a lack of awareness and understanding of Japan.

One has only to cite the recent negotiations leading to the Strauss-Ushiba trade agreement of January 13, 1978, and the ongoing negotiations on agricultural issues to illustrate the need for greater mutual understanding.

There are a limited number of nations with whom our relations, by their very nature, are of transcendent importance. Our relationship with Japan is of that character. To illustrate:

Strategically, the United States-Japan Alliance remains the cornerstone of our Asian-Pacific policy, and that relationship is a major factor contributing to regional stability in Northeast Asia.

Commercially, Japan is our largest trading partner: our two-way trade last year exceeded $30 billion. Japan's 1977 GNP of approximately $5.75 million ranked behind only that of the United States and the Soviet Union. Japan today is a pillar of the free world economic order.

Yet, as in any relationship, problems do exist. Ours are related to trade. In 1977 our trade deficit with Japan approached a clearly unacceptable $10 billion. I need not point out that an imbalance of such magnitude ill serves our relationship. And I cannot emphasize too strongly that the need for corrective action is acute, that the time for action is now.

Cultural differences also exist. And, from an historical perspective, all too frequently have they complicated the course of American-Japanese relations. While such differences need not be insurmountable, they do remain. What is required to manage more effectively our relationship is a greater mutual understanding of these very differences.

Given the complex and multifaceted nature of our relationship, it is imperative that parliamentarians of both nations gain through personal contact a greater awareness and a clearer understanding of the political realities which shape legislative activities in our two countries.

Clearly, the institutionalization of contacts between parliamentarians will not in itself prevent problems from arising in our bilateral relationships. But certainly it will assist in their solution.●

SOUTH AFRICAN RIOT POLICE ATTACK CROSSROADS

The SPEAKER. Under a previous order of the House, the gentleman from New York (Mr. DOWNEY) is recognized for 5 minutes.

● Mr. DOWNEY. Mr. Speaker, reports have reached the United States that the South African police are continuing to move against the black community of Crossroads near Cape Town. This peaceful settlement of 20,000 blacks is the target of a government campaign of fear and intimidation aimed at destroying Crossroads and scattering its inhabitants. I fear, and many of the members of the ad hoc monitoring group fear, that the South African Government is determined to wipe-out Crossroads, not by bulldozers but by mass arrests and tear gas. I ask permission to insert into the RECORD an article in today's Washington Post which reports that three blacks, including an infant, were killed in the latest South African moves. This move is reprehensible and should be the subject of the strongest protests by our Government.

[From the Washington Post, Sept. 15, 1978]

SOUTH AFRICAN RIOT POLICE ATTACK SQUATTERS' CAMP

(By Carlyle Murphy)

JOHANNESBURG, SOUTH AFRICA.—Armed riot police shooting tear gas and swinging clubs raided an illegal Cape Town squatters' camp yesterday and witnesses said three blacks were killed, including an infant trampled to death by fleeing women.

Brig. J. F. Rossouw, the police commander in the area, said his men had to open fire and use the tear gas because some of the Crossroads camp's 20,000 residents attacked with stones, bricks and sticks during what he called a "crime-preventive" raid.

The early-morning clash marked one of the most violent racial incidents in South Africa in recent months. It underlined government concern over the thousands of rural blacks moving into the mainly white cities despite laws barring those without specific permits.

Police confirmed only the death of one man. Witnesses, however, said a second also was shot dead during the raid. The baby, they added, fell from an African-style sling on its mother's back and was trampled underfoot by women scattering to escape tear gas.

Hundreds of squatters were arrested and several were admitted to hospitals, according to reports from Cape Town. Police beat several residents and knocked down doors of some of the 3,000 corrugated iron shacks to find people, said the reports attributed to witnesses.

Among those arrested were a Roman Catholic priest, a Methodist minister and five white women who worked among the squatters.

The raid was aimed at checking passes of the black squatters. Under South Africa's system of migration control, all blacks must carry passes allowing them to live and work in cities. These must be presented on demand by police and those without a valid pass are subject to a fine or jail sentence.

According to social workers involved with Crossroads, the police move was designed to intimidate Crossroads squatters into vacating their shacks and returning to tribal homelands, or black reserves, designated for them by the government. The police action is a prelude to demolition of the camp—by bulldozing if necessary—which the government says will be done sometime in the next six to eight weeks.

Colin Eglin, leader of the opposition Progressive Federal Party, criticized the police action.

"It appears the government is applying a policy of continual harassment in an attempt to destroy the spirit of Crossroads before it sends front-end loaders, to destroy homes. My appeal to the government even at this late stage is to stop before it does irreparable harm to South Africa."

[In Washington, the State Department said the United States has "explicitly expressed our concern to the South African government about its plans to demolish Crossroads.

["We deeply regret the South African government's intention to press ahead with destruction of a functioning community of some 20,000 people, which will lead to massive family separation of blacks living in the Cape Town area," a State Department spokesman said in response to a query.]

Like its predecessors—Unibel, demolished in January, and Modderdam, torn down one year ago—Crossroads is an example of the government's preoccupation with stemming and even reversing the flow of poor rural blacks into urban centers.

Most of the 250,000 squatters in the 47 squatter communities around Cape Town are "coloreds," or persons of mixed race. Since the all-white minority government has designated the western part of Cape Province as a preferential area for the 2.5 million coloreds of South Africa, they are allowed to remain until housing is available for them.

But under South Africa's policy of apartheid, or racial separation, black squatters are a different matter.

Government officials say allowing illegal black workers and their families to remain in the Cape Town area works to the disadvantage of coloreds and other blacks legally in Cape Town because the squatters push down wages and squeeze them out of jobs. More importantly perhaps, allowing black squatter communities would be an implicit relaxation of the migratory controls. Authorities fear this would herald an ever-increasing permanent black population in the western Cape.

Frikkie Botha, chief commissioner of black affairs in the western Cape, charged that clergymen and social workers encouraging squatters to defy the government "want to open the gates of Cape Town to all who wish to come here from the black states."

Do they "have in mind another piece of land for the next 20,000?" he asked.

Under the government policy of separate development, South Africa's 18 million blacks are to have citizenship in nine black homelands, which eventually will become independent black states. Carved up into jigsaw shapes and lacking any major industrial or urban area, these states will likely remain economically dependent on the white-controlled economy of South Africa.

At present, blacks in rural areas who want a job in the city are supposed to enter into a one-year contract at the government labor office to their home town. Then, without their families, they are to live in all-male government hostels in segregated black neighborhoods of the white cities.

For those who come to Cape Town without a contract, or without a valid pass, and for those who do not want to live without their families, squatter communities like Crossroads are the natural outlet.

Crossroads began to sprout three years ago on a sandy V-shaped plot of land at the intersection of two roads. Today it has two schools, two clinics, a community center with a wall-to-wall carpet, two churches and its own primitive form of local government. Eighty percent of the heads of households are employed full time, earning an average of $40 a week.

Although the iron shacks placed along twisting dirt passages are less sturdy than those built by the government in approved areas, residents are so proud of what they have built themselves, they say they would refuse a government house if it were made available.

Urban researchers at local universities and even progovernment groups like the South African Foundation point out that demolition of the squatter communities is not the answer to controlling the black influx to cities.

"The 20,000 or so souls who will be homeless will neither depart for some far-off homeland, nor will they vanish into thin air," the foundation's newsletter commented.

It urged the government to "let them stay in their shanties and demolish the worst of them progressively as permanent housing become available."

The residents of Crossroads are displaying an almost guerrilla-like attitude to staying. "We have got no plan" if the demolition goes ahead, said 43-year-old Nomlingqanisela Ntongana. "We are just going to look for another bush to live under. We will move from bush to bush, we come from the bushes so we're used to them."●

NATO FORCES: UNDEREQUIPPED AND UNPREPARED

The SPEAKER. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 15 minutes.

● Mr. ALEXANDER. Mr. Speaker, there is a great deal of confusion in our Nation today about the preparedness of United States and Allied forces to combat a Soviet threat. After a recent trip to Europe, during which I visited some of the U.S. military installations associated with the NATO forces, I feel compelled to share with my colleagues a recent article published on June 4, 1978, in the Washington Post entitled: "Our Underequipped, Unprepared NATO Forces." The thrust of the article by Arthur T. Hadley points out the surprising Soviet lead in technology and tactics and should be required reading for every Member of Congress. The article follows:

[From the Washington Post, June 4, 1978]

OUR UNDEREQUIPPED, UNPREPARED NATO FORCES—THE SURPRISING SOVIET LEAD IN TECHNOLOGY AND TACTICS

(By Arthur T. Hadley)

The conventional wisdom in Washington is that NATO, outnumbered in tanks and planes by Soviet and Warsaw Pact forces, nonetheless can defend western Europe because of its superiority in electronic warfare, computer-guided weapons and better-trained personnel. "We need not match the enemy tank for tank," says Defense Secretary Harold Brown. "We retain a qualitative edge."

As a society, the West is far ahead of the Soviet Union in computers and electronics. But in the application of technology to warfare it is the Russians, not the Americans, who have the most sophisticated weapons and communications systems now deployed in Europe. Many of our most modern systems either are still on the drawing boards, don't work as advertised or are so complex that the troops can neither use nor maintain them and the generals don't understand them.

There are three main areas in which NATO must have a "qualitative edge" to offset the Warsaw Pact's numerical advantages: electronic warfare, tanks and guided antitank weapons, and control of the air. In all three areas, the Soviet forces are qualitatively as well as quantitatively ahead. We have been forced back into the world of John Foster Dulles, where we must rely on nuclear weapons to check a Soviet advance into western Europe. But the Soviets now also have quantities of nuclear weapons. So western Europe and even the American heartland are placed in jeopardy from nuclear war because our conventional forces are inadequate for the new electronic precision warfare.

The key to an understanding of the present military balance in Europe lies in the 1973 Middle East war, when Soviet and American weapons were last used against each other in combat. I went to Europe this spring for a month of intensive reporting to see how NATO and the U.S. Army and Air Force were absorbing the lessons of that war. I expected to find new precision-guided weapons being used to hit distant targets, new methods of controlling and massing forces, new systems and tactics for surveying the battlefield so that commanders could locate the enemy and select targets accurately. I found none this in fact, I found that the newer weapons and tactics were on the enemy side.

I made few "official visits" to any headquarters. By and large, I traveled along an old-boy network, which has dangers as well as advantages. These were people I had known since they were young majors or captains when I covered the Pentagon during the Korean War, or instructors or cadets at West Point when I lectured there, or officers whom I had met and come to respect in Vietnam. I have taken great care in this article both to protect their identities and to check everything I was told.

OUR VULNERABLE FIST TEAMS

The first area in which NATO has fallen behind is electronic warfare. Electronic warfare (EW for short) includes a variety of weapons and weapons systems. There is radio and radar jamming so that the enemy can't communicate with his units or locate your tanks and planes. There is eavesdropping on enemy radio communications and finding targets by various means. EW also includes our ability to get our own radio messages and other forms of data transmission through so we can control our outnumbered units more efficiently than the Russians control theirs.

In this field of electronic warfare, the experience of the 1973 Yom Kippur war points to a surprising and unpublicized edge for the Russians. Within the first half hour of their attack, the Egyptian forces had stripped the Israelis of virtually all their radar and air-ground communication and most of their long-range ground communication. The Israeli radars and radios either were destroyed by Soviet-made beam-riding missiles or jammed by both ground-based and airborne equipment. After that, the Israeli pilots could not be guided to targets from the ground, or hear the cries of ground commanders for help.

Yet, in spite of the fact that one of the major lessons of the Yom Kippur war is that ground-based radars and ground-to-air com-

munication will not be present, NATO continues to maneuver and plan as if there was no threat from beam-riding missiles or Soviet jammers. Front-line Army and Air Force commanders know this planning is foolish, and it makes them both apprehensive and angry.

The basic unit of U.S. combat communications is the Fire Support Team, or FIST team—six or seven men with special radios deployed at army company level all along the front lines to direct artillery fire, missiles and aircraft at attacking enemy tanks and artillery. Because the radios they use for air-ground communication operate on a unique set of frequencies, the Russians will have an easy time locating them.

"Do you really expect many FIST teams to be alive after the first day?" I ask one officer, walking through his brigade area late at night.

This is a complicated question, he replies. Since our published doctrine calls for the FIST teams to be at the front lines with each infantry and tank company, the Soviets know that by locating our FIST teams they know just where our front is. Indeed, he adds, with our poor communications, the Russians will probably have a better idea of where our front is than we will. (He was not the only commander to say this.) So it is to the Russians' advantage to keep the FIST teams alive and merely jam their radios so they can't communicate. On the other hand, the teams' artillery radios are good enough so that some artillery communications may get through. So it may be to the Russians' advantage to kill FIST teams. He doesn't know which they will do.

At another base in Germany, drinking coffee with a group of Air Force colonels and captains, all of whom have flown over North Vietnam, I ask one, "Colonel, do you expect to be talking to the FIST team after the first half hour?"

"Hadley, I don't expect to be able to talk to my wing man after the first 10 minutes." The other pilots rock back and forth on their chair legs or nod in agreement. They look slightly nervous in talking to a stranger about what they only hash over in secret.

WORDS VS. DATA BURSTS

Because the Defense Department has kept quiet about the Soviet lead in jamming equipment and beam-riding missiles, the public is unaware of other areas of Soviet excellence.

For instance, the United States has maintained that the electronic warfare equipment on the Mig-25 flown to Japan by a defecting Soviet pilot in September 1976 was markedly inferior to our own. In fact, its electronic equipment performed better. While its radar uses tubes, not modern transistors, it puts out more power to penetrate enemy jamming than does the radar carried by our fighters. The "black box" used to separate friend from foe was so sophisticated that it stumped our code-breakers, and only after months of work did the Japanese crack its secrets.

Our fighters are still guided to their targets by words over radios: "Two bogies, at 3 o'clock, speed 400 knots, 12 miles." Even the old Soviet equipment used by the Egyptians in 1973 prevented such transmissions. The "inferior" Mig doesn't rely on words from the ground; its information on where to go and what to attack comes in a data burst, brief enough (less than a second) and powerful enough to burn through jamming. The data is displayed on the pilot's windshield; an arrow for the direction to fly, a symbol for the target and numbers for the target's direction and speed. The pilot's acknowledgement of the message also is data-coded.

I ask two senior defense officials whether what I had learned about the Mig from sources in Europe were true. Both will only talk for background. Both squirm in their chairs, lace and unlace their fingers, look at the ceiling. Finally one asks me to keep quiet in the "national interest." The other insists that voice transmission is an advantage since it provides command flexibility and is the American way—even if the voice won't reach the aircraft.

FINDING THE TARGET

Another area in which NATO, with its access to the West's advanced communications industry, should be decisively ahead of the Russians in electronic target location. In fact, we are decisively behind—by "five years," as two generals, one at NATO headquarters, the other at a forward air base, put it.

The Russians have two mobile radio direction-finding units in each division and are about to go to four. These vital pieces of equipment locate the radios being used by enemy headquarters, artillery batteries, or FIST teams, so that fire can be dumped on them. We have none.

The Russians have several mobile radio and radar jamming units with directional antennas in each division. More primitive models of these tied up the Israelis in 1973. We have none.

The Russians have mobile listening stations and have trained their crews in how to distinguish between targets like tank battalions and intelligence sources like brigade headquarters. Our equipment is mostly static and many of its operators understand Vietnamese, not Russian. "I have no one in this headquarters who can tell a tank battalion headquarters from an artillery battery," says a division intelligence officer.

In a maneuver in Texas last summer, the 1st Cavalry Division was loaned special electronic equipment so that it could fight like a Soviet division. Its opponent, the 2nd Armored Division, relied on its regular electronic warfare equipment. The 2nd Armored was wiped out. The journal Military Intelligence drew these conclusions: "The [American] divisional EW equipment was judged, to a large extent, unsuitable for combat. The antennas and vehicles are the wrong type. the system is manpower-intensive, and there is no tactical DF [direction finding]."

When asked about such problems, even on background, senior officials at NATO headquarters and the Pentagon do what I have come to call the "rain dance." They compare the weapon the Russians now have in use in Europe to some American weapon still in the design stage, and the American weapon always beats the Soviet weapon hollow. The trouble is that the American weapons' actual production date is three to five years away, and by then the Soviets may be fielding something better. And many weapons systems when put in the field don't work as well as claimed.

INFRARED AND COMMUNICATIONS

Even when the tools of electronic warfare are available, they are so new and their operations often so complex and expensive to practice that people from privates to generals rarely understand how to employ them.

A division commander lets me interview the four captains who make up his "All Source Intelligence Center." He is proud of the center, which he and his staff perfected to pull together information from radar, scouts, prisoner interrogation, electronic eavesdropping, secret agent reports from higher headquarters, photographic and sensor intelligence, etc. Yet "All Source" is something of an exaggeration, for the center receives no space satellite information, which is so secret that it is kept from front-line troops.

The captains show me some infrared photos, taken for them by the Air Force on recent maneuvers using a new system called FLIR (for Forward Looking Infra Red) which can pick out parts of a landscape that give out more radiation than others. (A well-known advertisement uses infrared photography to show the difference between a well-insulated house and a poorly insulated one.) The Air Force-Army cooperation is impressive, but it takes 8 hours from the time the request is made until the information comes into the intelligence center. And the information comes in the form of coordinates and data printouts, so that senior commanders, inexperienced with FLIR, cannot judge its reliability.

The day after the data arrive, the pictures themselves come in. That is what the captains have declassified to show me. It all looks something like snow on an old black-and-white TV set. But right in the middle of one photo is this big, luminous square.

"What's that?" asks the colonel, who is monitoring our meeting.

"That's what we've been trying to explain to you, sir. That's your headquarters, hidden inside that farm house. Remember, we told you all those generators in that building would make it stand out."

"No. They must have found some other way, then took the picture."

The captains and I exchange glances. Later one of them shows me all the infrared strips. Sure enough, in one of them there is this little pinpoint of light, crying, "notice me, notice me," to some specialist. When it was blown up that bright dot revealed the barn and the division headquarters.

Later I ask one of the specialists if he can tell the difference between a tank and a truck. "Oh, yes, and between a tank with its hatches open or closed. Sometimes I can spot the commander's tank and tell if the tanks have been recently refueled."

"People ask you for this information much?"

"No."

And how would he transmit this information to where it is needed if he were asked? The transmission of information about where we and the enemy are is meant to be one of our strengths—a "combat multiplier," to use the jargon of the trade. But the multiplier is working in favor of the Soviets, who, unlike us, use jam-proof data bursts and often maneuver in a jammed environment.

NATO has as its number one scientific priority a highly classified project to develop secure voice communication for commanders. All the scientists I talked to regard this project as a waste of time and money. Voice communication is expensive, difficult to make secure, relatively easy to jam and takes up a large portion of the radio spectrum. It also relies on language, and there are many languages in NATO. Data is universal, it is transmitted in short bursts that cut through jamming, is so quick that it can't be located by direction finding, so has no voice signature to tell the enemy who is talking to whom.

Yet the senior U.S. commanders both in NATO and the Joint Chiefs have insisted on voice. They claim they want to get the "feel" of their subordinates.

THE CAMOUFLAGED SENSORS

Our problems in electronic warfare extend to the smallest things. Sensors, for instance. Sensors are small tubes, about 3 inches in diameter and a foot long, that are

inserted in the ground behind enemy lines by hand or from the air to measure movement, vibrations, sounds and changes in the electromagnetic field, and broadcast this information automatically so that intelligence officers can gain insight into troop movements they cannot see.

Owing to a painful bit of recent history, the air-dropped sensors are disguised as small palm shoots. Neither the Army nor the Air Force has found the money to change this camouflage. Yet surely a Soviet lieutenant attacking through the pines and snows of Germany will at least blink when his eye lights on a group of baby palm trees along his route.

Next, the sensors broadcast over the same frequencies as German taxis and other private radios. This means no one gets a chance to practice with them. Yet emplacing sensors correctly and interpreting their data is a complex and demanding process. Do we really believe we can do these things right without constant practice?

THE TANK GAP

In tanks, NATO is outnumbered, 3 to 1. Here again, the Warsaw Pact forces also have a qualitative edge. Here again, the American forces in NATO are not well enough trained to use effectively the weapons they do have.

In no other area is the rain dance—the technique of comparing drawing-board U.S. weapons to actively used Soviet weapons—as prevalent. The entire military and civilian high command of the Defense Department compares the Soviet T72 tank, which is now in the field, to the U.S. XM1 main battle tank, which will not arrive in NATO until 1982 at the earliest, and whose gun will not have the killing power of the Soviet tank's.

Even the tanks we do have are so complicated that today's volunteer Army does not use them very well. On a recent three-day maneuver, the 3rd Armored Division had mechanical failures on 150 major systems on its tanks, almost one-third of its total. The problem, as a German staff officer put it, is that "today's weapons are too complex for today's soldiers."

The tank now costs three times as much in constant dollars as the World War II fighter plane, it has more complex weapons systems and is harder to maintain. Yet that fighter was commanded by a lieutenant with two years of college or the equivalent; today's tank is commanded by a sergeant who may well not be a high school graduate.

Or, to look at the problem another way, a tank and a helicopter cost about the same and are equally complex. Yet the helicopter is flown by two warrant officers and maintained by a crew headed by a senior sergeant. But the tank is still commanded by a sergeant and maintained by privates.

Turnover is another part of the problem. A high school dropout comes into the Army, matures and develops into a leader and a great tank commander. After three years, or maybe five, he gets a high school diploma and says to the Army, "Thank you for what you have done for me. I'm getting out now, going to college, to make something of myself." Although both the Army and Air Force put heavy pressure on junior officers to talk their men out of leaving the service, the incentives for the ablest to use the GI Bill to go to college are greater than the rewards for staying in.

The results are predictable. In a recent NATO tank crew competition, the best American crews finished last in gunnery behind such minor powers as the Dutch and the Belgians. The Germans point out, and honest American commanders admit, that the level of tank-driving skill in the U.S. Army is so low that the tanks don't know how to maneuver individually and can only charge in massed formations. On the tank-firing qualification range—in the battalion I watched, at least half the tanks had major defects—the crew gets a passing score if they identify a pop-up target and shoot at it in 40 seconds. Actually they are allowed about a minute. In the real world you get 10 seconds.

All over NATO, commanders fudge their figures a bit in an effort to make the mating of today's personnel and modern weapons look better than it is. You can't help but recall those Hamlet Evaluation statistics out of Vietnam. For example, a division commander told me proudly, and his battalion commanders confirmed, that his men scored 95 percent hits with the hand-held antiaircraft missile, the infrared-guided Redeye. I found that the reason for the good score was that the target had been slowed down to 60 miles an hour. At speeds closer to that of an attacking aircraft, most soldiers missed the target.

"THAT DRAGON KICKS A BIT"

Another paramount lesson of the Yom Kippur war is the importance of precision-guided infantry antitank weapons, like the Soviet Saggers with which the Egyptian infantry destroyed charging Israeli tanks. The primary U.S. infantry weapon in this field is the wire-guided Dragon. The infantryman has to keep his Dragon sight on the target and the missile will automatically correct its course to make a bull's-eye. I never found a single soldier in NATO who had fired a Dragon, though commanders were always assuring me that most of their men had qualified.

Furthermore, the Dragon has grave problems. It is too heavy to fire standing up, and if it is fired the best way, lying down, its blast burns off the firer's buttocks. Its sight is so delicate that it must be sent to the rear for recalibration every seven days, and there is no device on the weapon to tell the soldier whether the sight needs adjustment.

I watch a test Dragon firing, in which an excellent electronic simulator is used for training. Even with the simulator, everyone has trouble hitting the target. I ask the sergeant training the recruits whether he has ever fired a Dragon. The sergeant, an old-timer, says he hasn't, but he once saw one fired. He was at a special Dragon school and the top man in his class, a Marine captain, got to fire the school's one Dragon. "Did he hit the target?" I ask. "No," says the sergeant in his soft Kentucky twang, the poor fellow didn't. The recruits cluster around listening, leaving their simulator tubes. "He was a big man, sir, real big. But that Dragon kicks a bit. Oh, sir, you should have seen what it done to his neck."

Slightly bigger than the Dragon is the TOW (for tube-launched, optically tracked, wire-guided) antitank missile, which is fired from the M113 infantry carrier or the Cobra helicopter. You can hit a target with a TOW missile, and I found quite a few people who had fired one or even two rounds (supposedly every TOW gunner gets to fire one round every other year.) But the man who fires it is my candidate for the bravest man in the world. He sits *on top* of the M113, behind a tripod that pops up through the roof. He has to hold his breath as he fires, because the mount is so delicate that his breathing throws the missile off target. The Soviets fire their TOWs from *inside* their infantry vehicles.

The TOW fired from the Cobra helicopter is one of the most sophisticated antitank weapons actually deployed in NATO. A gunner in the nose of the helicopter works a small joystick about the size of an index finger to keep the crosshairs in a 14-power telescopic sight lined up on the target, while the pilot in the rear seat maneuvers the helicopter. It is an accurate and easy-to-handle weapon. Whether the TOW-Cobra system can survive under the massed artillery fire the Soviets employ is a question NATO commanders are loath to face. But then, they have so little else that works.

PRACTICE COSTS MONEY

The pilots flying these Cobras average 110 flying hours a year. According to Air Force fighter pilots and some of their commanders, the men flying NATO's complex speed-of-sound fighter planes like the F4s and F15s average only 1155 hours a year. In at least one squadron, cross-wind landings have been forbidden because pilots are not getting enough flying time. The Pentagon's computers insist that the average front-line pilot is flying 170 hours a year, but, as in Vietnam, I would rather trust the evidence from those on the spot.

Even if the figure is 170 hours, consider that both the federal government and the insurance companies believe that I, who fly a far simpler and slower aircraft here in the United States, need at least 200 hours a year in order not to be a danger to myself.

The low flying time for fighter pilots comes about because the fuel is so expensive and the planes so precious. And since the weapons are also expensive, no one gets to fire them often enough to develop confidence. And the little fixes necessary to mate weapons, men and machines don't get made.

For example, one of the vital precision-guided weapons on which the defense of NATO rests is the air-to-ground killer called the Maverick, a fighter-carried missile with a TV camera in its nose. Once the pilot has locked the missile onto the target, the missile follows its own TV picture on down. This is the weapon credited by the Israelis with helping turn the tide of battle once their ground troops had dealt with the Egyptian anticraft defenses. But the Israelis found that the missiles, which cost $30,000 apiece, were being wasted by knocking out the same tanks again and again, because the TV pictures seen by the pilots could not distinguish between dead and live tanks.

Now a passive infrared device has been added to the Maverick's TV camera to identify live tanks. But it took the 1973 war to lead to this vital fix. The missiles were so expensive that the Air Force had not practiced enough with them to discover the problem. Today, our pilots get to fire one every other year on a range in the Iranian desert.

All through NATO, the expense, complexity and lethality of weapons combine to leave weapons unperfected and men untrained in their use. Since intensive jamming would knock out European radios, aircraft radars and TV broadcasts, no one maneuvers in a jammed environment. The Army crews that fire the Chaparral antiaircraft missile get to fire one missile every other year from a base in Crete. And how does a tanker learn to maneuver in a town, when the best maneuver is to blast out part of a building wall and snuggle into the rubble?

The answer to such problems is to make massive use of simulators. That's what U.S. commercial airlines do. And both the British and Germans make more use of simulators than we do. But the Defense Department and Congress have been slow in asking and voting funds for simulators. They tend to ask: "You want weapons or simulators, general?" And the general replies, "Weapons."

WHO WOULD CONTROL THE AIR?

What about the final area of NATO'S presumed "qualitative edge"; control of the air? Even if our pilots lack flying time and can't talk to the ground, are not both they and their planes far superior to the Russians?

Again, the lessons of the Arab-Israeli war paint a dark picture. The Israelis found they couldn't get through the barrage of missiles

and antiaircraft fire protecting the Egyptian and Syrian forces until their tanks and artillery had knocked out the Soviet antiaircraft missiles and gun radars.

The West Germans, who have been much quicker to adopt the lessons of the Yom Kippur war than we have, are particularly concerned about our unquestioned belief that we are superior in this area. "The Soviets are decisively ahead in the air," said one of the highest officials of the German Defense Ministry.

When Soviet armored divisions attack, they advance under something our pilots call "the bubble." That's a protective covering of SAM6 antiaircraft missiles for high-altitude work and ZU23 self-propelled, four-barrelled antiaircraft guns with their own radar, by far the best antiaircraft guns in the world. There are 140 such weapons in a Soviet armored division. The way our aircraft are supposed to penetrate this "bubble" to get at the tanks is to stay below 200 feet, while the Army fires at the radars and jams them to make a corridor through which the aircraft can fly to hit the enemy tanks and then get back out. But in the real world, the Army doesn't have the jamming equipment and the locators to find the enemy radar. The Army and the Air Force have not practiced the split-second timing necessary in this maneuver.

There are special Air Force squadrons called Wild Weasels that have F4 jets with onboard jamming equipment and computers to throw off enemy guns and missiles. But the Wild Weasels lack effective beam-riding missiles to take out the radars. When questioned about this problem, high defense officials do the rain dance again: "HARM takes care of that." But HARM (for High Speed Anti-Radiation Missile) will not be ready until the early 1980s at best.

Another way to keep our planes alive is to have them stay away from the front lines, and lob their weapons in from low altitudes outside the bubble. The weapons would be laser-guided to their targets by the FIST teams. But the planes don't have the beam-riding bombs and the FIST teams don't have the laser designators.

Many NATO fighter pilots also complain that the Air Force is building the wrong type of fighters. They don't believe that one man can operate all the equipment necessary to stay alive at 200 feet while flying 400 knots in a hostile environment. They contend that the F15 has the space and power to have been a two-pilot aircraft, but that the old fighter types at the top of the service kept it a single-pilot plane. This is a serious charge, vigorously denied by most senior Air Force generals, who insist that the F15 is so fully automated that it is easier to fly than a World War II fighter.

TELLING FRIENDS FROM FOE

The final area of air control in which NATO falls apart is called IFF (for Identification Friend or Foe). In modern battle all those planes, ours and the enemy's, are going to be mixed together in the air, attacking targets on the ground, often moving at supersonic speeds or within 200 feet of the surface. Helicopters of both sides will be everywhere. Until now, shooting at your own people didn't matter so much because most shots missed. But modern weapons hit the target. Identification is now the ball game.

But in their last two NATO maneuvers, the German air force discovered that its own troops had shot it out of the air after two days. The British Royal Air Force is so short of funds that it has no hope of putting effective IFF equipment on its planes, as a result, the Germans, Americans and even the French have had to quietly insist that if there is a real war the RAF had better stay out of it lest it be shot out of the skies by its allies. Finally, the U.S. medium-range anti-aircraft missile system, the Chaparral, requires a man with field glasses to stand in front of the launcher, after the radar picks out a target, he tries to find it in his glasses and tell if it's friend or foe. That's the way it was done in 1944.

On IFF the Defense Department does the rain dance again and talks about JTIDS (for Joint Tactical Information Distribution System). The concept is brilliant, simple and workable: a network of some 600 radars is linked by computers that shift their frequencies roughly 10 times a second. Each time a radio comes on it fires off a burst of data that says roughly: "Here I am, I am doing this, I will need that." The data bursts are almost impossible to jam, the codes virtually unbreakable.

But JTIDS is already over three years late. It is so far behind schedule because the Navy is holding out for a more complicated model that also tell where its submarines are, and no one in the Defense Department has the courage to take on the Navy and its friends in Congress.

THE VITAL "TAIL"

Yet suppose all the weapons work. After two days the Russians, East Germans and Czechs have been fought to a virtual standstill in the most deadly conventional warfare in history. What happens on the third day?

The Yom Kippur war proved that in the electronic precision-guided munitions age the losses are horrendous, approaching those of nuclear warfare. NATO war plans call for each American division to fire 5,000 tons of ammunition on the first day, and 3,000 tons a day thereafter. At these rates of fire, artillery gun tubes will last less than a week. But there are not enough trucks or drivers to bring such masses of supplies forward. Nor does NATO have the mechanics to do the repairs. With agony on his face, one officer responsible for this problem tells me he will be 500 rounds short for every gun in his division by the third day.

The fault lies in Washington. No one in the Defense Department will ask Congress for funds or trucks, fork lifts or mechanics. Why? Because those are noncombat troops or "tail." And Congress and President Carter want the military to cut the noncombat "tail" in favor of combat "teeth." But as the teeth get more deadly, you must increase the tail, as both the Israelis and West Germans have done since 1973.

If the lessons of the Yom Kippur war are correct and we lose tanks the way the Israelis did, 300 new tanks are going to have to be brought forward in the first two days for each 360-tank armored division. As a result of the 1973 war, the Germans have vastly increased their forward stocks of new tanks. We have not. Nor do we have the tank carriers and crews to move the new tanks forward. Congress has turned down Defense Department requests for mobile steam cleaners to get the mud off and the charred flesh out of damaged tanks so they can be rebuilt. The Israelis and West Germans now have these. Nor do we have the spray to mask the smell of burned flesh which the Israelis developed so mechanics can work inside damaged tanks.

NATO plans call for M60 tanks, stored in climate-controlled warehouses, to be issued to troops that will be flown in from the States. In recent maneuvers, these tanks worked better than those in daily use. But they are stored on the wrong side of the Rhine, the west bank. Will the bridges they must cross still be intact? And the tanks have no radios; the radios are stored in a warehouse miles away, and they don't fit the tanks without a special bracket that takes two days to make.

Another general tells me about the night sights for his division's machine guns, sights which are so delicate and valuable that they have been kept in those warehouses since their arrival five years ago. He has just checked and found out that the sights don't fit his division's machine guns. He can build several thousand $65 brackets to fit the sights, but he has been told that his division will get new machine guns two years from now. What should he do?

Over and over one finds examples like this. There is a bitter private jest heard throughout NATO that U.S. plans to fight a war in Europe are based on flying imaginary troops in nonexistent planes to airbases that are destroyed at the command of headquarters no longer in action.

The jest has tragic overtones, because neither the qualitative deficiencies nor the wide gaps in training need occur. The West does have the better technological base. The electronic revolution is more advanced in NATO. But we cannot apply the knowledge and power we have to problems we claim do not exist.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CORMAN (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. JONES of North Carolina (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. RODINO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. HOWARD) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 5 minutes, today.
Mr. BINGHAM, for 5 minutes, today.
Mr. WOLFF, for 5 minutes, today.
Mr. DOWNEY, for 5 minutes, today.
Mr. ALEXANDER, for 15 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. EDWARDS of Oklahoma), and to include extraneous material:)

Mr. LENT.
Mr. GOODLING.
Mr. CRANE.
Mr. GILMAN.
Mr. MCCLORY in two instances.
Mr. STEERS.
Mr. FINDLEY.
Mr. DORNAN.

(The following Members (at the request of Mr. HOWARD), and to include extraneous material:)

Mr. NOLAN.
Mr. GONZALEZ in three instances.
Mr. ANDERSON of California in three instances.
Mr. DRINAN.
Mr. NOWAK.
Mr. MCDONALD in three instances.
Mr. GINN.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 3337. An act to terminate, in the year 1979, further construction of the Cross-Florida Barge Canal project, to adjust the boundary of the Ocala National Forest, Fla., and for other purposes; to the Committee on Agriculture and the Committee on Public Works and Transportation.

ADJOURNMENT

Mr. HOWARD. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 10 minutes p.m.), under its previous order, the House adjourned until Monday, September 18, 1978, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

4987. Under clause 2 of rule XXIV, a letter from the Secretary of Commerce, transmitting the annual report of the National Marine Fisheries Service for calendar year 1977, pursuant to section 9(a) of the Fish and Wildlife Act of 1956, as amended to the Committee on Merchant Marine and Fisheries.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. FOLEY: Committee on Agriculture. H.R. 12559. A bill to establish a research and development effort resulting in the commercialization of native latex rubber; with amendment (Rept. No. 95–1512, Pt. II). Referred to the Committee of the Whole House on the State of the Union.

Mr. PRICE: Committee on Armed Services. S. 3373. An act to amend title 10, United States Code, to authorize the Secretary of Defense to provide transportation to the Girl Scouts of the United States of America in connection with International World Friendship Events or Troops on Foreign Soil meetings, and for other purposes (Rept. No. 95–1572). Referred to the Committee of the Whole House on the State of the Union.

Mr. PRICE: Committee on Armed Services. H.R. 14042. A bill to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes (Rept. No. 95–1573). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introducd and severally referred as follows:

By Mr. BRODHEAD:

H.R. 14094. A bill to amend title II of the Social Security Act to make the monthly retirement test available in limited circumstances in the case of certain beneficiaries, to amend the technical requirements for entitlement to medicare, and for other purposes; to the Committee on Ways and Means.

By Mr. MICHEL:

H.R. 14095. A bill to reorganize and clarify the responsibilities of Federal agencies, Congress, and the States with respect to management of nuclear waste, and for other purposes; jointly, to the Committees on Armed Services, Interior and Insular Affairs, Interstate and Foreign Commerce, and Science and Technology.

By Mr. WOLFF (for himself, Mr. BURKE of Florida, and Mr. GUYER):

H.J. Res. 1138. Joint resolution to authorize participation by the United States in parliamentary conferences with Japan; to the Committee on International Relations.

By Mr. BROWN of California:

H. Res. 1351. Resolution directing that the Committee on Ways and Means conduct a review of the McCarthy plan for national property tax relief; to the Committee on Ways and Means.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

478. By the SPEAKER: Memorial of the Legislature of the State of California, relative to the Presidio of San Francisco and Letterman Army Hospital; to the Committee on Armed Services.

479. Also, memorial of the Legislature of the State of California, relative to the de Anza Trail; to the Committee on Interior and Insular Affairs.

480. Also, memorial of the Legislature of the State of California, relative to genocide in Cambodia; to the Committee on International Relations.

481. Also, memorial of the Legislature of the State of California, relative to liability and compensation for oil pollution; jointly, to the Committees on Merchant Marine and Fisheries, and Public Works and Transportation.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. VAN DEERLIN introduced a bill (H.R. 14096) for the relief of Vladimir S. Gurevich, which was referred to the Committee on the Judiciary.

SENATE—*Friday, September 15, 1978*

(Legislative day of Wednesday, August 16, 1978)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. DENNIS DECONCINI, a Senator from the State of Arizona.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

Come upon us, O Living Lord, as we open our hearts to Thee, and tarry with us until eventide and our work is done. Be with us in the crowd and in solitude, in our silence and in our speaking, in the freshness of this morning hour, and in the weariness of later hours. Guard us from petty irritations and unwarranted impatience.

Shew me Thy ways, O Lord; teach me Thy paths.

Lead me in Thy truth, and teach me: for Thou art the God of my salvation; on Thee do I wait all the day.—Psalms 25: 4, 5.

Let the words of my mouth, and the meditation of my heart, be acceptable in Thy sight, O Lord, my Strength, and my Redeemer.—Psalms 19: 14.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 15, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DENNIS DECONCINI, a Senator from the State of Arizona, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. DECONCINI thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I have no request for time, so I reserve my time momentarily.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from Alaska.