insulated from domestic markets by a release price set well above the price at which the government acquired the reserve.

The existence of such a reserve would stabilize both supplies and prices from year to year.

It would enable us to take advantage of commercial opportunities in years when others suffer crop reverses, and it would ensure an adequate supply to meet our commitments to the developing countries in all foreseeable circumstances.

Secretary Butz's contention is true that we currently have a cushion of grain stocks in the United States. But to imply that we already have a system or a program of reserves is, at best, misleading.

To say, as he did, that we do not stockpile automobiles, shoes or bathing suits is really not relevant. Are producers of these goods affected by the weather? Can a farmer shut down his production like an assembly line?

Beyond facing the reserve issue squarely, we also need to make a greater effort to relate our food aid and technical assistance efforts, designed to avert famine.

The food deficit nations can significantly increase their own production by utilizing today's existing technology. For example, rice yields in Bangladesh are only 53 percent of the world average and 24 percent of the U.S. average.

When we provide food aid, it also is important that the recipient nations not discourage their own producers through cheap food policies. This means using our food, not as an instrument of coercion, but as a tool for development and for peace.

And we must more sharply focus our aid programs on food production, rural credit, family planning, research and education—programs which ultimately tie back to poverty and inadequate food production.

With grain consumption exceeding production in five of the last six years and world population increasing by 70 to 80 million each year, the world food situation is critical.

A promising new initiative to increase world food production—first proposed in 1974 at the World Food Conference in Rome—is the International Fund For Agricultural Development.

The fund will begin operating shortly since pledges of nearly $1 billion—to be spent over the next three years—have been received. These funds are to be furnished by the OPEC countries and the developed countries.

Saudi Arabia and other oil exporting countries are contributing to the Fund, along with Japan and Western Europe. The Congress has acted to fulfill Secretary Kissinger's pledge in his September UN speech that the United States would contribute $200 million to the Fund.

A bipartisan group of twenty-six Senators and Representatives developed the proposal to set aside repayments on past U.S. bilateral foreign aid loans to finance this contribution. Use of these loans for this purpose would ensure that the U.S. contribution was a net addition to the levels of U.S. aid.

For a billion people in India, Bangladesh, and sub-Saharan Africa, the food problem may be, quite literally, a matter of life and death.

As Fred Sanderson pointed out in the May 1975 issue of Science, "the situation of these countries continues to be grim, with hundreds of millions of people living on or below the margins of physical subsistence."

Increasingly, we have to be concerned with the struggle of these people and nations—from the standpoint of our moral leadership in the world and our own self interest.

Father Theodore M. Hesburgh, President of Notre Dame University declared:

"With a vision of a world which is larger than ourselves and our concerns of the moment, we can see that isolated lives of abundance would be mocked by indifference to the needs and desires of the vast majority of the human family."

We have an obligation, in developing a food policy, to look beyond our own producers and consumers. Ultimately, our decisions will have a major impact on the political stability of the food deficit nations.

Our nation is not an island. We do defend on other countries for many raw materials. The oil embargo should remind us of the folly of a "go-it-alone" policy.

Today we face the challenge of food insecurity—whether we like it or not. We live in a dangerous world—like it or not. It is estimated that by 1985, developing countries may face a food deficit of 85 million tons.

We need to respond to that stark reality by shaping a policy which can lead to greater food security—here and abroad.

We have both a great opportunity and a responsibility. I pledge my best effort to this task.

ITALY'S OPENING TOWARD COMMUNISM

Mr. THURMOND. Mr. President, many Senators share with me my deep concern about the political situation in Italy which can bring Communists into the Italian Government this month. I am speaking about the general election that will take place in Italy on June 20 and 21.

The build up of the Communist influence in Italy was a gradual development and it has very little to do with the democratic process as we know it. The Italian Communist Party is a very undemocratically controlled organization based on the Soviet principle of "centralized democracy." The succession of leadership and internal party operation are exactly the same as they are in the Soviet Union, with the line of autocratic party bosses from Palmiro Togliatti to Luigi Longo and the present aggressive leader, Henrico Berlinguer decided in closed "politburo" manner.

The party itself is run in strictly disciplinary fashion. It is again organized on a professional full-time basis as are the party's organizations in the Soviet Union, Poland, East Germany, or any other Communist country. In this respect the Italian Communist Party in no way compares with other political parties in Italy which are loosely organized political organizations typical of all Western democracies. The Italians themselves call the Italian Communist Party a typically non-Italian, strictly disciplinarian system which operates within the Italian democratic society under completely foreign principles. The Italian Communist Party is a foreign party, influenced and controlled from outside. The elaborate system of financial support has been tied to the economic exchange between the Communist countries of Eastern Europe and Italy.

This economic interdependency between the exchange in Italian trade and industrial relationships with the Communist world, and the financial growth of the Italian Communist Party, is another serious totalitarian trick imposed on the body of Italian politics. In order to promote trade with the Soviet Union, Italian industry and commerce must support the local chapters of the Communist Party and the Communist trade unions. On the basis of this arrangement a constant flow of funds has been provided for the organizational work of the Italian Communist Party in particular in Bologna and other areas where the Communist administration is already strong.

To facilitate this channeling of funds for the Communist operations the party organized trade organizations for relationships with Eastern Europe. The income of these agencies is plainly part of the operational fund of the party. No other political party in Italy, or for that matter any place in the Western World, has a steady income from the enterprises and agencies dealing in export-import or industrial investment abroad. This "duty" imposed on the Italian industry when dealing with Eastern Europe is now the primary source of financial strength of the Communist Party of Italy which cannot be compared in any way with the occasional and very irregular assistance given to the democratic parties of Italy by Western Europe or the United States.

Indirect pressure from the trade unions is another source of power of the Communist Party. The Communist-controlled unions are now the strongest unions in Italy. They exercise enormous pressure on the private enterprise sector by the constant threat of strikes and disorders. But the real day-to-day influence is accomplished by the direct impact of local trade union committees which force the business leaders to take actions which comply with the interests of the Communist Party.

This is the way the press in Italy became leftist to about 80 percent: It is not because publishers or editors-in-chief have gone left, but because the local union committees force the editorial policies of the newspapers to support and popularize the Communist Party in the country. The Communist Party is being pictured as a democratic force compatible with the pluralistic society that Italy is today.

The highly organized and centrally controlled trade union movement of Italy very effectively paralyzed the economic life of the country by strikes. Those are political, not economic strikes, but they cost the Italian economy billions of man-hours in recent years. The Communists developed in the country a very high degree of irresponsibility among the workers. Italy has the highest rate of industrial absenteeism in the world and the most frequently occurring strikes for reasons other than wages and worker benefits. The Communist Party deliberately weakened the economy and the ability of the Government to run an efficient government. Their purpose is to force themselves into the Government. These strictly totalitarian methods of the unions are used by the Communist Party to defeat the control of the Government by the democratic parties.

The general misconception is that the Communist Party is using democratic methods to achieve influence and political power in Italy. But, in reality, in all levels of life—education, industry, commerce, politics—the Communists are using totalitarian, dictatorial, centrally controlled methods of operation to destroy the democratic society of Italy, and create conditions under which they will

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be invited to participate in the government.

Such participation of the Communist Party in the Italian Government will obviously jeopardize the effectiveness of NATO operations in the Mediterranean Sea and will make the entire northern flank of NATO defenses an open book to Soviet intelligence. The consequences of this development for the freedom of Western Europe cannot be overestimated.

WHY PIOUS EVASION OF THE BRIBERY ISSUE?

Mr. PROXMIRE. Mr. President, the lead editorial in this morning's New York Times properly describes the first report of the President's Cabinet level task force on bribery as "Pious Evasions."

The report, which is contained in a letter to me from Secretary Richardson, is inadequate in several respects. While rhetorically condemning bribery in the strongest language, the Richardson report fails to recommend that we outlaw bribery. According to Secretary Richardson, we should not outlaw bribery by American companies overseas because it might present enforcement problems.

Mr. President, criminal law enforcement is never easy, but we outlaw murder, we outlaw armed robbery. And we outlaw certain activities by American citizens even though they may take place abroad, like antitrust violations, securities fraud, tax evasion, and the like.

Second, the Richardson report recommends that American companies disclose any bribes to foreign officials, but wants the disclosure made to the Department of State or the Department of Commerce, and not to the SEC. These are precisely the two departments that have shown the least interest in combating corporate bribery—that have been the most protective of corrupt allies abroad and corrupt corporations at home. And further, Mr. Richardson recommends that the filings be kept secret up to a year. The Richardson panel seems to want to keep the SEC out of the enforcement process because the SEC is the one agency that has shown some spine.

If the Richardson task force is serious about a disclosure requirement, the disclosures should be made to the SEC. The State Department and the Commerce Department do not have the enforcement machinery to check on the accuracy of the filings and to punish companies that make incomplete or misleading filings. The SEC does. Further, enforcement of a tough disclosure law will not be any easier than enforcement of a direct prohibition. The Richardson panel's idea that the disclosure approach will be easier to enforce than criminalization is true only if they take the company's word in every instance and never check on the accuracy of the disclosures. I hope that is not what Secretary Richardson has in mind.

While the administration's belated recognition of the need for legislation represents some progress, the proposed legislation is, in the words of the Times, a pious evasion. We need both a direct prohibition and a workable disclosure requirement, with the disclosures made to the SEC and to the public. I ask unanimous consent to have the Times editorial printed in the RECORD, together with Secretary Richardson's letter.

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

[From the New York Times, June 16, 1976]

PIOUS EVASIONS

Policing bribery in international commerce is no easy task, but the business community and public have a right to more than has been heard so far from President Ford's task force on payoffs and other questionable payments by United States corporations abroad.

The first report of this Cabinet-level group, headed by Commerce Secretary Elliot Richardson, correctly singles out the requirement for public disclosure as the most effective inhibition against such dubious—if well-established—business practices. Neither the payor nor the recipient of a bribe is normally interested in having the transaction become public knowledge. It need hardly have taken two and a half months of high level study to arrive at this conclusion.

The President and his study group became distressingly vague when moving into questions of how and to whom such disclosure is to be made and, more important, what means the Government would establish to pry the required information out of a reluctant business concern. By leaving disclosure ultimately to the discretion of the firm, the Federal Government would only leave an inviting loophole for those few companies that choose to regard bribery as a necessary fact of their business life.

The Administration's resistance to stronger measures could even be taken by some concerns, and their overseas connections, as a green light to business as usual. In the murky realm of trans-national wheeling and dealing, it takes more than moral exhortations to curb the flow of cash.

Alternative legislation pending in the Senate would declare bribery by American businesses a criminal offense, wherever it occurs. Admittedly difficult to enforce, such a first step might at least give pause, alongside effective disclosure requirements; for any businessman wishing to do so this could be cited as reason enough for refusing questionable payments—whatever may have been past practice and expectations.

The Administration argues that an outright ban on these payments could put American business at a competitive disadvantage with exporters of other nations which have not yet absorbed this country's post-Watergate scruples. To this, Senator Proxmire, sponsor of the Senate bill, retorted: "Most of the foreign bribes revealed thus far involved American companies competing with American companies for the same business."

THE SECRETARY OF COMMERCE,
Washington, D.C., June 11, 1976.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR PROXMIRE: In testifying before your Committee on April 8, 1976 I promised to provide you with comments on your proposed legislation concerning questionable corporate payments abroad. At that time, the Task Force on Questionable Corporate Payments Abroad had just been created (on March 31). In order to allow the Task Force time to perform relevant preliminary analysis of the issues involved—and with the schedule of the Congress also in view—we agreed that these comments should be provided by June 1. On May 19, you graciously agreed to my request that the June 1 date be changed to June 10. This letter provides comments in accord with our agreement.

Your bill, S. 3133, amends the Securities Exchange Act of 1934 and the Securities Act of 1933 to require disclosure of certain foreign payments and to provide for criminal prosecution of payments made to influence actions of foreign governments.

S. 3133 would require each issuer of a security registered with the Securities and Exchange Commission (SEC) to report to the SEC all payments in excess of $1,000 made to: (i) representatives or employees of foreign governments; (ii) any foreign political party or candidate for foreign office; or (iii) any person retained to assist with obtaining or maintaining business with, or influencing legislation or regulations of, a foreign government. S. 3133 requires that such reports be made publicly available and that they contain a statement of amount, purpose and the name of the recipient of each payment.

In addition, S. 3133 would amend the Securities Act of 1933 to allow the SEC to initiate, prosecute or appeal criminal actions against issuers who use the mails or any instrumentality of interstate commerce to pay or agree to pay or give anything of value to a foreign government official, agent or representative of such official or to any foreign political party or candidate, for the purpose of inducing such individual or party to use his or its influence with a foreign government "to obtain or maintain business for or with the issuer or to influence legislation or regulations of that government." Further, S. 3133 would make unlawful any payment made in a manner or for a purpose which is illegal under the laws of the foreign government having jurisdiction over the transaction.

In commenting upon your bill, this letter discusses the following:

(1) The Questionable Payments Problem
(2) Relevant Current Law
(3) The Current Administration Approach to Treatment of the Problem
(4) Alternative Approaches Which Might Supplement the Current Administration Approach
(5) Recommendations with Respect to the Need for Additional Legislation at this Time
(6) Conclusion

(1) The Questionable Payments Problem—

As you know, the Task Force is charged with responsibility for policy development and not with responsibility for investigation. Ongoing investigative responsibilities rest with auditing agencies (e.g., the Defense Contract Auditing Agency), the Internal Revenue Service, the SEC, and the Department of Justice—upon whose work the Task Force has drawn in its attempt better to understand the character and scope of the problem.

It is clear on the basis of information already at hand that the "questionable payments problem" is, in fact, real—i.e., that:

A significant number of America's major corporations, in their dealings with foreign governments, have engaged in practices which violated ethical and in some cases legal standards of both the United States and foreign countries.

To carry out these practices, certain American corporations have falsified records, lied to auditors, and used off-the-books "slush" funds.

In some cases, improper foreign payments have been unlawfully deducted as ordinary and necessary business expenses for U.S. income tax purposes.

In the case of a number of major corporations, employment of improper business practices abroad has coincided with past illegal political contributions in the United States. (Some allege that a major area of abuse involves the possible direct connection between questionable payments abroad and illicit domestic payments.)

"The problem" is, of course, a set of prob-

lems—often interrelated, but distinguishable, as follows:

The problem of "petty corruption." So-called "grease" or "facilitating" payments are, a business requirement in a number of less developed countries—where they are often culturally, if not legally, accepted as a means of remuneration for an underpaid civil service. Further, petty corruption is a "fact of life"—although presumably to a lesser extent—in many developed countries.

The problem of "competitive necessity." It is frequently argued that American firms are required to bribe in order to "out-compete" foreign competition. (While this hypothesis may be valid, no substantial evidence to support this hypothesis has, as yet, been presented to the Task Force. In several cases, payments have been made to intermediaries, but have not been transmitted to the intended governmental decision makers. In a number of questionable payments cases—especially those involving sales of military and commercial aircraft—payments have been made *not* to "out-compete" foreign competitors, but rather to gain an edge over other U.S. manufacturers.)

The problem of extortion. In some instances, improper payments have been extorted from U.S. companies by corrupt officials or agents purporting to speak for such officials.

The problem of adverse effect on foreign relations. The manner of disclosure of allegations regarding past practices, the substance of the allegations revealed, and in some cases the practices themselves, have had adverse impact on the political and social fabric of countries friendly to the United States—and have, thereby, adversely affected U.S. foreign relations.

The problem of adverse impact on multinational corporations. Exposure of the questionable payments problem has exacerbated concerns about multinationals' accountability to the national legal constraints of both home and foreign "host" countries. It has raised the level of concern that such enterprises have the capacity to conduct independent foreign policy including the suborning of host country political and governmental processes. Increased anxiety regarding multinationals' legal and political accountability could lead to national and international "backlash" in the form of laws or regulations which could seriously handicap such enterprises with resulting deterriment to the United States economy, to world commerce and to the pattern of world development.

The problem of eroding confidence in "free" institutions. Revelations of questionable payments—with off-book accounting—may have undermined, to some degree, investor confidence in the adequacy of regulatory mechanisms intended to assure the provision of information necessary for the honest and efficient functioning of capital markets. The payments themselves may have distorted the allocation of resources within a would-be competitive system—or, in some cases, may have distorted representation within a political system. But most fundamentally, the uncovering of these improper past practices has eroded confidence in corporate responsibility and in democratic and capitalist institutions generally.

At this stage, some would argue that the pattern of illegal and questionable behavior already exposed is highly atypical—that most international corporations have conducted themselves as "good citizens." The SEC analysis indicates that at least 95 corporations have disclosed possible questionable or illegal payments. And the SEC would suggest that the actual scope of the problem is not likely to be significantly greater than that which has already been voluntarily revealed—because criminal sanctions attach to the willful filing of a false or incomplete report, i.e., the incentive fully to disclose "voluntarily" has arguably been high.

Others argue that the pattern of voluntary disclosure to the SEC has shown corporations to have been less than wholly forthcoming—that in many instances additional investigation has shown initial disclosures to have been inadequate. Some note further that SEC reporting requirements have not reached those companies whose counsel have, on one ground or another, advised against disclosure.

In short, the extent to which disclosures to date do or do not fully represent the scope of the problem remains in dispute. It is the current view of the Task Force and the President that the overwhelming majority of U.S. corporations do conduct themselves as good citizens—and that they are to some extent now the victims of a public mood which alleges guilt-by-association.

More definitive delineation of the precise dimensions of the questionable payments problem must await further investigation by corporations investigating themselves with the approval of the SEC and the courts (the "Gulf model"), by the IRS whose intensified review of the problem is in its initial stages, by the Federal Trade Commission, and by the Department of Justice.

It is clear, however, that the nature of the problem—and the extent of the problem as revealed to date—are sufficient to justify the remedial measures already under way and serious consideration of possible additional measures.

(2) Relevant Current law—

The discussion which follows in sections (a)–(d) outlines current law and in section (e) analyzes its sufficiency for the task of deterring future improper payments by American firms abroad.

(a) Securities Laws—

The securities laws are designed to protect investors from misrepresentation, deceit, and other fraudulent practices by requiring public disclosure of certain information pertaining to the issuers of securities. Such disclosure is accomplished, first, through the mechanism of a registration statement which is required to be filed with the SEC as a precondition to a public offering of securities pursuant to the Securities Act of 1933, 15 U.S.C. § 77a et seq. (1970), the "1933 Act;" and, second, through the annual and other periodic reports and proxy materials required to be filed by registered companies with the SEC pursuant to the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. (1970), the "1934 Act."

There is no specific requirement that questionable payments to foreign officials be disclosed in registration statements filed pursuant to the 1933 Act or in the annual or periodic reports or proxy materials filed pursuant to the 1934 Act. However, in addition to the specific instructions and requirements incident to each of these filings, the SEC requires the disclosure of all material information concerning registered companies and of all information necessary to prevent other disclosures made from being misleading, *e.g.*, 17 C.F.R. §§ 230.408, 240.12b-20, 240.14(a)-9(a) (1975). Thus, facts concerning questionable payments are required to be disclosed insofar as they are material.

Materiality has been defined by the SEC as limiting the information required "to those matters as to which an average prudent investor ought reasonably to be informed before purchasing the security registered." Rule 405(1), 17 C.F.R. § 230.405(1) (1975). The materiality of any fact is to be assessed, according to the courts, by determining:

". . . whether a reasonable man would attach importance [to it] . . . in determining his choice of action in the transaction in question. [Citation omitted.]" (Emphasis supplied.) This, of course, encompasses any fact ". . . which in reasonable and objective contemplation might affect the value of the corporation's stock or securities . . . [Citation omitted.]" (Emphasis supplied.) Thus, material facts include not only information disclosing the earnings and distributions of a company but also those facts which affect the probable future of the company and those which may affect the desire of investors to buy, sell, or hold the company's securities." *SEC* v. *Texas Gulf Sulphur Co.*, 401 F.2d 833, 849 (2d Cir. 1968). Alternatively stated, the test is whether ". . . a reasonable man might have considered . . . [the information] important in the making of [his] decision." *Affiliated Ute Citizens* v. *United States*, 406 U.S. 128, 153–54 (1972).

The courts have not yet addressed the issue of whether and under what circumstances questionable payments made by a U.S. corporation to foreign officials would be material information which should be disclosed publicly.[1] Thus, the SEC, through its enforcement program and its voluntary disclosure program,[2] has been the sole arbiter as to the materiality of such payments.

The extent of the Commission's activities with respect to both foreign and domestic payments and practices has created a great deal of uncertainty as to how the materiality standard applies to improper foreign payments. The SEC has not issued a release containing disclosure guidelines on this subject to date. However, in a report submitted to your Committee on May 12, 1976, the SEC has given some guidance as to its current position ("Report of the Securities and Exchange Commission on Questionable and Illegal Corporate Payments and Practices).

In this Report, the SEC takes the position that questionable or illegal payments that are significant in amount or that, although not significant in amount, relate to a significant amount of business, are material and required to be disclosed. Other questionable payments may also be material, according to the Report, regardless of their size or the significance of the business to which they relate. Thus, the Report indicates (at page 15) that: ". . . the fact that corporate officials have been willing to make repeated illegal payments without board knowledge and without proper accounting raises questions regarding improper exercise of corporate authority and may also be a circumstance relevant to the 'quality of management' that should be disclosed to the shareholders."

Moreover, even if expressly approved by the board of directors, the Report states (at page 15) that ". . . a questionable or illegal payment could cause repercussions of an unknown nature which might extend far beyond the question of the significance either of the payment itself or the business directly dependent upon it"—and for that reason might have to be disclosed.

(b) Tax Laws—

Section 162(c) of the Internal Revenue

[1] The conviction of a director and chief executive officer of a company for bribing U.S. public officials has been held to be a material fact which should have been disclosed. Cooke v. Teleprompter Corp., 334 F. Supp. 467 (S.D.N.Y. 1971).

[2] In addition to its regular enforcement program, the SEC has established special procedures for registrants seeking guidance as to the proper disclosure of questionable foreign payments. These procedures, frequently referred to as the "voluntary disclosure program," provide a means whereby companies can seek the informal views of the Commission concerning the appropriate disclosure of certain matters. The program is intended to encourage publicly-owned corporations to discover, disclose, and terminate, on a voluntary basis, the making of questionable payments and related improper activities.

Code provides that bribes and kickbacks, including payments to government officials, cannot be deducted in computing taxable income if the payment (wherever made) would be unlawful under U.S. law if made in the United States.

The principal mechanism for the detection of improper deductions is the corporate income tax return and, in the case of foreign subsidiaries and affiliates, certain information returns. Criminal and civil sanctions may be applicable if an improper payment is deducted from earnings.

The Internal Revenue Service (IRS) does not routinely require taxpayers to furnish information as to the payment of bribes or kickbacks. However, in August 1975, the IRS issued guidelines to its field examiners providing techniques and compliance checks to aid in the identification of schemes used by corporations to establish "slush funds" and other methods to circumvent federal tax laws. In April and May of 1976, additional instructions were issued focusing on illegal deductions of questionable payments to foreign officials abroad. The IRS is now engaged in investigating hundreds of the nation's largest companies regarding possible improper deductions of such payments and related tax improprieties.

(c) Antitrust Laws—

The antitrust laws may have an impact on improper payments in a variety of ways. Depending on the factual circumstances, an improper payment could violate Sections 1 or 2 of the Sherman Act, 15 U.S.C. §§ 1, 2 (1970); Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1970) the "FTC Act"; or Section 2(c) of the Clayton Act, the so-called brokerage provision of the Robinson-Patman Act, 15 U.S.C. § 13(c) (1970).

As a general rule, an American corporation which pays a bribe to gain favorable legislation abroad, or to facilitate a sale at the expense of a foreign competitor, will not be in violation of the U.S. antitrust laws. On the other hand, payment of a bribe by one U.S. company to assist its sales at the expense of another U.S. company may well be an unfair method of competition within the meaning of Section 5 of the FTC Act. A conspiracy among two or three U.S. companies to bribe a foreign official to keep another U.S. company out of an overseas market would probably violate Section 1 of the Sherman Act; however, it is not clear that an improper payment involving one firm and one government official can constitute a conspiracy for the purposes of this section. Bribes paid by one company for the purpose of monopolizing a foreign market might violate Section 2 of the Sherman Act.

Section 2(c) of the Clayton Act prohibits the payment of commissions or other allowances, except for services actually rendered, in connection with the sale of goods in which either the buyer or seller is engaged in commerce (including commerce with foreign nations). Section 2(c) encompasses commercial bribery and bribes of state government officials to secure business at the expense of U.S. competitors. Although there do not appear to be any Section 2(c) cases involving dealings with foreign governments, the statute might be applicable to the payment of a bribe by a U.S. corporation to a foreign official to assist its business at the expense of its U.S. competitor.

(d) Criminal Statutes and Other Laws—

Present federal law does not prohibit, per se, bribery or similar questionable practices by American companies or persons with respect to foreign officials, companies, or persons in furtherance of commercial gain. However, criminal or civil liability may attach from collateral false reporting practices. Most particularly, false statements filed with federal agencies may constitute a violation of 18 U.S.C. § 1001 (1970) or other specialized false statement statutes. Relevant provisions are summarized below:

(i) The Export-Import Bank of the United States (Eximbank). Certificates prepared by American firms whose goods are purchased with Export-Import Bank loans must declare any commissions, fees, or other costs above and beyond the actual value of the goods sold which constitute any part of the contract price. Several cases of possible fraud have recently been referred to the Criminal Fraud Section of the Department.

(ii) The Agency for International Development (AID). Under the Foreign Assistance Act, 22 U.S.C. § 2399 (1970), AID makes loans of hard currency available to foreign countries for purchase of American commodities for importation. An American exporter who makes a sale under this program must file a supplier's certificate with AID certifying that no kickbacks or commissions were paid. AID officials compare contract prices with current market prices and occasionally discover discrepancies requiring legal action, including referrals to the Department of Justice for possible fraud prosecutions. It has been held that a concealment of improper payments in AID forms constitutes a violation of the federal statute making it unlawful to conceal any matter within the jurisdiction of any United States department or agency, 18 U.S.C. § 1001 (1970). *U.S. v. Olin Mathieson Chemical Corporation*, 368 F.2d 525 (2d Cir. 1966).

(iii) State Department Export Licenses. Registered dealers may sell for export items on the U.S. Munitions List provided an export license is obtained from the State Department (22 C.F.R. § 121-27). The application forms for such licenses require that the cost be listed, but without a breakdown. The International Security Assistance and Arms Export Control Act of 1976 (which was vetoed on May 7, 1976, but then reintroduced in altered form as S. 3439 and H.R. 13680) would add a new provision to the Foreign Military Sales Act, 22 U.S.C. § 2751 et seq. (1970), to require reports to the Secretary of State, pursuant to regulations issued by him, concerning political contributions, gifts, commissions and fees paid by any person in order to secure sales under Section 22 of the Foreign Military Sales Act. No such payment could be reimbursed under any U.S. procurement contract unless it was reasonable, allocable to the contract, and not made to someone who secured the sale in question through improper influence. Similar reporting requirements would be required with respect to commercial sales of defense articles or defense services licensed or approved under Section 38 of the Foreign Military Sales Act. All information reported and records kept would be available to Congress upon request and to any authorized U.S. agency. It should be noted that even at the present time, the Defense Department requires disclosure of all fees and commissions paid in the sale of military equipment pursuant to the Foreign Military Sales (FMS) program. False statements made pursuant to these disclosure requirements would constitute possible violations of 18 U.S.C. § 1001 (1970).

(iv) Securities and Exchange Commission. The failure to report in corporate financial statements filed with the SEC bribes and kickbacks to foreign officials or governments may constitute criminal fraud. However, to fall in that category under present law, the errors or omissions must have a material effect on the financial picture of the company as a whole as presented by the report.

In conjunction with violations in all of the foregoing areas, depending on the facts of a particular case, additional charges may be appropriate for conspiracy, 18 U.S.C. § 371 (1970), mail fraud, 18 U.S.C. § 1341 (1970), or fraud by wire, 18 U.S.C. § 1343 (1970). Furthermore, attempts to circumvent or defeat a regulatory system designed to ensure the integrity of a government program may constitute a conspiracy to defraud the United States.

(e) Analysis—

The following analysis addresses the issue of whether new legislation is required to deal with improper corporate payments or whether the laws and regulations described above are, taken together, sufficient to deter such practices. Another way to state the question is whether the company that would consider the making of an improper payment—or the foreign official that would demand one—will be deterred from doing so by the existing laws and regulations.

The dimensions of the improper payments problem suggest, to some, the singular ineffectiveness of existing laws and regulations. On the other hand, some argue that the past failure of deterrence may be a function of insufficiently vigorous enforcement of existing authorities. My personal assessment is that even the most vigorous enforcement of existing law would not be an adequate solution to the problem, and that the shortcomings of existing law are the result of statutory and jurisdictional limitations rather than of enforcement policy.

It is clear that the provisions outlined above are insufficient to deal adequately with the questionable payment problem. Indeed, the requirements of the SEC are the only ones which, as a practical matter, deserve detailed consideration. For ease of presentation, it may be useful to discuss first the laws and regulations of lesser significance.

With respect to taxation and antitrust, both systems are theoretically applicable to all U.S. corporations doing business abroad but only to the extent that the making of a questionable payment also results in a violation of certain statutory prohibitions.

The tax laws only reach those transactions in which a questionable payment is deducted as a business expense. If a company making an improper payment does not take a deduction, the only source of potential liability arises from the maintenance of "slush funds" to circumvent federal tax laws generally. Although the IRS could require reporting of questionable payments, the information obtained could not be disclosed to the public because of the confidentiality of tax administration. Moreover, the mission of the IRS in the area of questionable payments abroad is to administer and enforce the tax law. All of the procedures and programs which the IRS has adopted, or might adopt in the future, are designed to accomplish that central objective—the enforcement of the tax statutes.

The antitrust laws are generally inapplicable to an improper payment unless it can be shown that there is an anticompetitive effect on U.S. foreign commerce, for example, where a bribe is paid to exclude the product of a U.S. competitor or to monopolize a foreign market. There also exist substantial constraints to the justifiability and enforceability of applications of antitrust laws to foreign transactions. These include traditional legal doctrines regarding sovereign immunity of foreign governments and compulsion by foreign governments and consideration of comity between nations.

The Eximbank, AID, and FMS programs only apply to companies taking advantage of these particular programs. Moreover, none of them at the present time requires public disclosure. They are designed merely to ensure that the Government does not aid in the financing of questionable payments. In the case of the FMS program, pending legislation (as noted above) would provide for disclosure to the Congress but, in any case, it would still be limited to companies making sales of military equipment. Thus, as a practical matter, these programs taken together affect the actions of a limited number of companies doing business abroad and the FMS program, through its disclosure requirement (assum-

ing passage of the new legislation), is the only one which contains a deterrent element.

There are several reasons why the SEC disclosure requirements may be inadequate to deter improper payments. First, they only apply to public companies, i.e., to companies with securities registered under the 1934 Act or to companies making public offerings. Second, they only apply to the extent that the questionable payment is "material." Third, as a general rule, they do not require disclosure of the names of recipients of questionable payments. Fourth, they are not designed to protect adequately the interests that would be served by new legislation. Nonetheless, the utility of the SEC disclosure requirements must be examined in some detail, since the Commission itself believes that current securities laws are adequate to require sufficient disclosure of questionable payments and that any remaining problem can be solved by strengthening the corporate financial reporting system.

First, with respect to the coverage of the SEC program, there are at present approximately 9,000 corporations, not all of which do business abroad, which regularly file documents with the Commission. On the other hand, there are some 30,000 U.S. exporters and an additional number of U.S. firms doing business abroad which do not export from the United States. Indeed, some of the more important U.S. firms doing business abroad are private companies which are not subject to the SEC disclosure requirements.

Second, the Commission's authority to require disclosure is limited in that a questionable payment must be reported only if it is "material." On page 15 of its Report, the SEC sets forth the view that any payment, regardless of amount, may be "material" because it can lead to "repercussions of an unknown nature" or reflect on the quality or integrity of management. This very broad concept of materiality is at substantial variance with other recent discussions of materiality by the SEC. For instance, in facing the issue whether a company is required to report unlawful discrimination in employment, the SEC stated—in a release issued less than one year ago—that:

"The Commission's experience over the years in proposing and framing disclosure requirements has not led it to question the basic decision of the Congress that insofar as investing is concerned the primary interest of investors is economic. After all, the principal, if not the only reason, why people invest their money in securities is to obtain a return. A variety of other motives are probably present in the investment decisions of numerous investors; but the only common thread is the hope for a satisfactory return, and it is to this that a disclosure scheme intended to be useful to all must be primarily addressed." Freeman, "The Legality of the SEC's Management Fraud Program," 31 Bus. Law. 1295, 1301 (March 1976).

In the same release the Commission stated that "there is no distinguishing feature which would justify the singling out of equal employment from among the myriad of other social matters in which investors may be interested." The release then listed 100 so-called social matters in which investors may be interested (including "activities which would be illegal in the U.S. but which are conducted abroad") but which, presumably, are not material per se. As stated not long ago by then Chairman Ray Garrett:

". . . as you can see, if you require disclosure of all violations of law against bribery or political contributions on the ground that illegal payments are material per se, we may be hard pressed to explain that other illegal corporate acts are not equally material for the same reason." Securities Act Release No. 5627, October 14, 1975, p. 37.

The Commission's current position with respect to questionable payments, however, seems to suggest the emergence of a new theory, namely, that with respect to illegal conduct the illegality itself is of consequence—regardless of the nature of the offense and of its effect upon the value of the stockholder's investment. Indeed, with respect to questionable payments, it does not even appear to matter to the SEC whether they are actually illegal, that is, whether subject to indictment by prosecuting authorities in the United States or abroad. The Commission's enforcement policy in this area, however laudable, may be based on tenuous legal grounds. At the very least, given the extent of the Commission's enforcement activity, there is a good possibility that the matter will be presented to the courts.

The remarks of former SEC Chairman Garrett underscore the fact that the Commission's policy is a function of its composition at any particular time. New Commissioners may be disposed to take different interpretations. Thus, even assuming the legality or propriety of the views espoused by the present Commission, it is uncertain whether this will continue to be SEC policy. There may be virtue in a legislative scheme which does not depend for its viability on the continued zeal or militancy of its administrators.

Third, the SEC does not require disclosure of the names of the recipients of questionable payments, and it is hard to see how it could do so, at least in most cases, even under the most expansive interpretation of the materiality doctrine. The SEC Report states that while, in some cases, disclosure of the identity of the recipient might be important to an investor's understanding of the transaction, more frequently his identity may have little or no significance to the investor (at page 60).

More generally, the SEC system of disclosure is simply not adequate to the task at hand.

The questionable payments problem has sensitive and broad-ranging public policy and foreign relations implications. Moreover, it may be asked whether the SAC, in its expansive definition of materiality, has not raised serious questions as to the purpose and scope of the securities laws and the statutory role of the Commission. In remarks delivered in December 1975, then Commissioner Sommer urged the Commission to go slowly in expanding the area in which SEC disclosure becomes a substitute for the enforcement of other substantive laws. In particular, he pointed out that:

". . . Materiality is a concept that will bear virtually any burden; it can justify almost any disclosure; it can be expanded all but limitlessly. But we must constantly bear in mind that overloading it, unduly burdening it, excessively expanding it may result in significant changes in the role of the Commission, the role of other enforcement agencies, and our ability to carry out our statutory duties." SEC News Digest, December 12, 1975.

Whatever definition is given "materiality" by the SEC or the courts, SEC disclosure is designed to protect the interests of the prudent investor. It is, arguably, not an appropriate mechanism to deal with the full array of national concerns caused by the problem of questionable payments.

(3) The Current Administration Approach to Treatment of the Problem—

The current Administration approach is comprised of the following:

(a) Vigorous enforcement of current law (as summarized in (2) above).

Investigative enforcement activities are being conducted by audit agencies, the IRS, the Federal Trade Commission, the Department of Justice, and the SEC. The SEC has provided you with a Report based on the findings of its "voluntary program." As noted, the investigative activities of all these agencies are ongoing—and the product of their investigations will continue to emerge in accord with fair and orderly legal process.

It is reasonable to conclude that the exposures to date have increased the attentiveness of responsible enforcement agencies in general—and that they have increased the deterrent effect of current law thereby. A particularly noteworthy example is provided by the IRS's guidelines of May 10, 1976—requiring affidavits concerning "slush funds" and concerning bribes, kickbacks or other payments, regardless of form, made directly or indirectly to obtain favorable treatment in securing business or special concessions; or made for the use or benefit of, or for the purpose of opposing, any government, political party, candidate or committee.

(b) Pursuit of international agreements.—

We anticipate endorsement of a code of conduct for multinational corporations at the coming Organization for Economic Cooperation and Development (OECD) Ministerial Conference later this month. The Code will include as agreed declaratory policy the following language:

"Enterprises should:

(i) not render and they should not be solicited or expected to render—any bribe or other improper benefits, direct or indirect, to any public servant or holder of public office;

(ii) unless legally permissible, not make contributions to candidates for public office or to political organizations;

(iii) asbstain from any improper involvement in local political activities."

Ambassador Dent has asked the General Agreement on Tariffs and Trade to take up the questionable payments issue, as called for in Senate Resolution 265. The resolution proposes negotiation in the Multilateral Trade Negotiations of an international agreement to curb "bribery, indirect payments, kickbacks, unethical political contributions and other such similar disreuptable activites." The U.S. has ndicated that negotiation of such an agreement is a matter of top priority.

Most significantly, the U.S. proposal for negotiation in the United Nations of a treaty on corrupt practices was made on March 5 at the second session of the UN Commission on Transnational Enterprise in Lima. The proposal is for an agreement to be based on the following principles:

(i) It would apply to international trade and investment transactions with governments, i.e., government procurement and other governmental actions affecting international trade and investment as may be agreed;

(ii) It would apply equally to those who offer to make improper payments and to those who request or accept them;

(iii) Importing governments would agree to establish clear guidelines concerning the use of agents in connection with government procurement and other covered transactions, and establish appropriate criminal penalties for defined corrupt practices by enterprises and officials in their territory;

(iv) All governments would cooperate and exchange information to help eradicate corrupt practices;

(v) Uniform provisions would be agreed upon for disclosure by enterprises, agents and officials of political contributions, gifts and payments made in connection with covered transactions.

The proposal was forwarded to the UN Economic and Social Council (ECOSOC) with a recommendation that ECOSOC give the issue priority consideration.

The U.S. objective is to have ECOSOC, at its July 12–August 6 meeting in Geneva, pass a resolution on corrupt practices which will create a group of experts charged with writing the text of a proposed international treaty on corrupt practices and reporting that text back to ECOSOC in the summer of 1977. The U.S. goal would then be to forward an agreed text to the UN General Assembly for action in the fall of 1977.

(c) Further policy development and coordination—

On March 21, 1976 the President established the Cabinet Task Force on Questionable Corporate Payments Abroad—which, as you know, I chair. Members of the Task Force include: The Secretary of State; The Secretary of the Treasury; The Secretary of Defense; The Attorney General; The Special Representative for Trade Negotiations; The Director, Office of Management and Budget; The Assistant to the President for Economic Affairs; The Assistant to the President for National Security Affairs; and The Executive Director, Council on International Economic Policy.

In establishing the Task Force, the President said:

"Although the Federal Government is currently taking a number of international and domestic steps in an attempt to deal with this problem, I believe that a coordinated program to review these efforts and to explore additional avenues should be undertaken in the interest of ethical conduct in the international marketplace and the continued vitality of our free enterprise system."

The President directed the Task Force to coordinate further policy development concerning the questionable payments problem and to provide the President with interim status reports and a final report before the end of the calendar year.

The full Cabinet Task Force has met four times—most recently, yesterday, with the President. Staff groups have prepared interim analyses of: current knowledge as to the character of the problem; pending legislative initiatives; possible alternative legislative initiatives; pending international initiatives; and possible supplementary international initiatives. We have consulted with a wide range of business representatives, legal experts, concerned U.S. citizens and foreign officials—and, I should note, it is clear that there is a wide range of differing opinions within and among these groups.

The comments which follow reflect the thinking of the Task Force as developed to date—except in those instances where I note my personal views or the specific decisions of the President.

(4) Alternative Approaches Which Might Supplement the Current Administration Approach—

There are three broad categories in relation to which possible supplementary initiatives may be conceived: (a) further administrative initiatives within current law; (b) further international initiatives; and (c) further U.S. legislative initiatives. These categories, of course, are not mutually exclusive—although alternative approaches within each category may be.

Within the first category, I include the stepped-up enforcemnt activities to which I have referred. In addition, the Task Force is now examining the need for changes in Executive Branch administrative operating procedures and guidelines.

But the basic premise from which I know you start is that current law is not sufficient—a premise with which, as noted and qualified in (2) above, we would concur.

In our view, the ultimate legal basis for adequately addressing the questionable payments problem must be an international treaty along the lines proposed by the United States at the second session of the UN Commission on Transnational Enterprises in Lima. A treaty is required to make the "criminalization" of foreign bribery fully enforceable—for, in the absence of foreign cooperation, it would be extremely difficult, and in many cases impossible, for U.S. law enforcement officials and potential defendants to be assured of access to relevant evidence. A treaty is also required to treat the actions of foreign as well as domestic parties to a questionable transaction. And a treaty is required to assure that all nations, and the competing firms of differing nations, are treated on the same basis.

However, a realistic assessment of prospects for international action would have to suggest that it is probable the desired international agreement may—in spite of our best efforts—take a considerable amount of time to achieve. International prospects are, in any case, highly uncertain.

In order to advance the prospects of favorable international action with respect to the U.S. proposal, the State Department has coordinated a special series of direct representations to foreign governments.

I am pleased to report that, in addition, the President has decided to accelerate progress toward an international agreement by direct efforts with our major trading partners. The U.S. Government—the President in particular—is serious about taking every reasonable step to achieve a responsible international agreement as quickly as possible.

It is with respect to U.S. legislation, then, that the question remains as to what else can and should be done.

The President and the Task Force have, as I have already noted, decided that current law is not sufficient to deal fully with the questionable payments problem. However, before outlining the legislative approach that we have decided upon, it is useful to review the considerations which underpin our choice of measures.

There are two principal competing general legislative approaches—a disclosure approach or a criminal approach. While it is possible to design legislation—as indeed is the case with S. 3133—which requires disclosure of foreign payments and makes certain payments criminal under U.S. law, the Task Force has unanimously rejected this approach. The disclosure-plus-criminalization scheme would, by its very ambition, be ineffective. The existence of criminal penalties for certain questionable payments would deter their disclosure and thus the positive value of the disclosure provisions would be reduced. In our opinion the two approaches cannot be compatibly joined.

The Task Force has given considerable scrutiny to the option of "criminalizing" under U.S. law improper payments made to foreign officials by U.S. corporations. Such legislation would represent the most forceful possible rhetorical assertion by the President and the Congress of our abhorrence of such conduct. It would place business executives on clear and unequivocal notice that such practices should stop. It would make it easier for some corporations to resist pressures to make questionable payments.

The Task Force has concluded, however, that the criminalization approach would represent little more than a policy assertion, for the enforcement of such a law would be very difficult if not impossible. Successful prosecution of offenses would typically depend upon witnesses and information beyond the reach of U.S. judicial process. Other nations, rather than assisting in such prosecutions, might resist cooperation because of considerations of national preference or sovereignty. Other nations might be especially offended if we sought to apply criminal sanctions to foreign-incorporated and/or foreign-managed subsidiaries of American corporations. The Task Force has concluded that unless reasonably enforceable criminal sanctions were devised, the criminal approach would represent poor public policy.

The Task Force did give serious consideration to one criminalization scheme, whereby the standards of U.S. law against official bribery would be applied to improper payments made abroad, provided the country in which such payments were made had entered a mutual enforcement assistance agreement with the United States and had enacted its own criminal prohibitions against official bribery. (A review by the Task Force reveals that practically every country in the world has a law against official bribery.) While such an approach to criminalization could be enforceable and would eliminate potential affronts to other nations' sovereignty, it would, however, apply only to payments made in countries willing to enter enforcement agreements with the U.S.—whose number might not be large. In addition, as is the case with domestic bribery standard, it would entail the drawing of very difficult distinctions between criminal payments on the one hand and proper fees or political contributions on the other.

The Task Force has similarly analyzed the desirability of new legislation to require more systematic and informative reporting and disclosure than is provided by current law. The Task Force recognized that additional disclosure requirements could expand the paperwork burden of American businesses (depending upon the specific drafting) and that they might, in some cases, result in foreign relations problems—to the extent the systematic reporting and disclosure failed to deter questionable payments and their publication proved embarrassing to friendly governments.

At the same time the Task Force perceived several very positive attributes of systematic disclosure. First, it deemed such disclosure necessary to supplement current SEC disclosure, which as noted already covers only issuers of securities making "material" payments, and does not normally include the name of the payee. Such disclosure would provide protection for U.S. businessmen from extortion and other improper pressures, since would-be extorters would have to be willing to risk the pressures which would result from disclosure of their actions to the U.S. public and to their own governments. It would avoid the difficult problems of defining and proving "bribery." It would offer a means to give public reassurance of the essential accountability of multinational corporations.

(5) Recommendations for Additional Legislation—

Based upon analyses of the sufficiency of current law and of optional legislative approaches summarized above, the President has decided to recommend that the Congress enact legislation providing for full and systematic reporting and disclosure of payments made by American businesses with the intent of influencing, directly or indirectly, the conduct of foreign governmental officials. At the same time, the President has decided to oppose, as essentially unenforceable, legislation which would seek broad criminal proscription of improper payments made in foreign jurisdictions.

The President has directed the Task Force to draft this disclosure legislation for submission to Congress as soon as possible—in order to allow Congressional action on the proposal in this session of Congress. The Task Force has not yet had an opportunity to develop, nor has the President had an opportunity to review, detailed specifications for such legislation. However, it is possible at this time to state in conceptual terms the basic outlines of the disclosure legislation which I would recommend:

All American business entities, whether or not they have securities registered with the SEC, would be required to report all payments in excess of some floor amount, made directly or indirectly to any person employed by or representing a foreign government or to any foreign political party or candidate for foreign political office in connection with obtaining or maintaining business with, or influencing the conduct of, a foreign government.

Such reports would include, at a minimum, the amount or value of the payment; its purpose; and the name of the recipient.

These reports would be required to be made to some Executive Branch department, such as the Department of Commerce or State and not the SEC.

The State Department, at its discretion would convey the contents of such reports

to the affected foreign government. The reports would become available for public inspection after an appropriate interval, such as one year, to protect proprietary concerns and to allow opportunity for constructive diplomatic intervention prior to public controversy regarding a given payment.

Civil and/or criminal penalties would be set for negligent or willful failure to report. (Deliberate misrepresentation on such reports would be covered by current criminal law, 18 U.S.C. § 1001) (1970.)

The requirement for such reports would apply to all American business entities and through them to controlled foreign subsidiaries. Penalties for failure to report would apply only to U.S. parent corporations and their officers.

It is readily apparent that the approach outlined above in conceptual terms is, in a number of respects, similar to the disclosure portion of S. 3133. Our approach does differ, however, in at least one important respect. As already noted, reporting would not be made to the SEC. The SEC's jurisdiction, limited to "issuers" of registered securities, is inadequate to the problem. Further, the Task Force believes that the SEC would be an inappropriate agency for this reporting, which is directed at important national and foreign policy concerns and not simply to investor confidence.

The further extent to which the Administration's disclosure approach may differ from that embodied in S. 3133 remains to be determined through detailed drafting and the process of resolving points which remain at issue within the Task Force.

In addition to deciding to recommend the proposed new disclosure legislation, the President has decided to endorse the legislative approach to improve private sector internal reporting and accountability first proposed to your Committee by Chairman Hills in his Report of May 12 and recommended by the Task Force. That approach would:

Prohibit falsification of corporate accounting records;

Prohibit the making of false and misleading statements by corporate officials or agents to persons conducting audits of the company's books and records and financial operations;

Require corporate management to establish and maintain its own system of internal accounting controls designed to provide reasonable assurances that corporate transactions are executed in accordance with management's general or specific authorization, and that such transactions are properly reflected on the corporation's books.

For reasons suggested above, I firmly believe that enactment of the disclosure and accountability legislative proposals, as recommended by the President, will provide the best approach to remedying the inadequacies of current law—and to restoring confidence thereby. Should you or your colleagues wish, I would be happy to provide further elaboration of reasons for this belief—by whatever means may be most convenient to the Committee.

(6) Conclusion—

Let me conclude with several summary points drawn from the above discussion:

(a) The questionable payments problem is serious—as is the need for additional initiatives to address it. The improper actions of a few have not only disturbed foreign relations, but have caused a further erosion of confidence in American business and American institutions. Remedial actions taken to date have been insufficient to restore confidence.

(b) Although current investigative and enforcement activities are considerable, current law is not fully adequate to deter improper payments.

(c) The "disclosure" approach and the "criminalization" approach to additional legislation are not compatible with each other. For reasons stated, the Administration believes the disclosure approach to be a more effective and manageable means to deterrence.

(d) Although the preferred long-term approach to solution must be an enforceable international treaty (as proposed by the U.S. in Lima), the prospects for prompt adoption of such a treaty would, in the ordinary course, have to be viewed realistically as unlikely. There is a need for the U.S. to accelerate efforts to achieve its proposed international agreement.

(e) Accordingly, the President has reached the following decisions which are fully consistent with my own views:

(i) The President has decided to initiate special efforts to accelerate progress toward achievement of an international agreement—along the lines proposed by the United States in Lima.

(ii) The President has decided to endorse legislation to assure the integrity of corporate reporting systems and the accountability of corporate officials—legislation first proposed to your Committee by Chairman Hills in his Report of May 12.

(iii) The President has decided to propose additional legislation requiring reporting and disclosure of certain payments by U.S.-controlled corporations made with the intent of influencing, directly or indirectly, the conduct of foreign government officials.

We know you share with us a conviction that what is fundamentally at stake is not merely the impropriety of certain financial transactions. What is at stake ultimately is confidence in, and respect for, American business, American institutions, American principles—indeed, the very democratic political values and free competitive economic systems which we view as the essence of our most proud heritage and our most promising future. With this in view, we look forward to working with you and your colleagues toward enactment of legislation which will best serve the fundamental public interests which require a responsible solution to the questionable payments problem.

Sincerely,

ELLIOT L. RICHARDSON.

THIRTY-FIFTH ANNIVERSARY OF THE DEPORTATION OF 100,000 BALTIC PEOPLES TO SIBERIA

Mr. BEALL. Mr. President, June 14 and 15, 1976, marked the 35th anniversary of the deportation of approximately 100,000 people from Latvia, Lithuania, and Estonia to Siberia and other remote regions of the Soviet Union. This mass deportation reflected the brutality of the Soviet occupation of the Baltic States.

I have sought to draw attention to these atrocities in speeches on the floor of the Senate marking Captive Nations Week and the independence days of the Baltic States. On May 4, 1976, I offered an amendment to the "détente resolution"—Senate Resolution 406—which reaffirmed the U.S. nonrecognition policy toward the illegal seizure and annexation of the Baltic nations by the Soviet Union. In addition, I have worked on a number of individual cases involving efforts to reunite Maryland families with their relatives who are seeking to leave Soviet occupied Estonia, Latvia, and Lithuania.

Mr. President, the deportation of Baltic peoples to Siberia began sortly after Soviet forces occupied the three nations. Ms. Ruta V. Sylpis, the secretary of the Joint Baltic American Committee has been active in the Baltic Prisoners of Conscience Project. They have "adopted" Olgert Osenieks, a Latvian high school student who was arrested in October of 1940. In June 1941, he was deported to Siberia and his family does not know what happened to him. In 1967, his mother received unofficial word that her son might still be alive. To this day she was unable to confirm the rumor.

Gunars Meierovics, chairman and Edward Sumanas, public relations director of the Joint Baltic American Committee have compiled additional data on the 1941 deportations and I ask unanimous consent, Mr. President, that this summary entitled "35th Anniversary of the Deportation of Baltic Peoples to Siberia" be printed in the RECORD.

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

35TH ANNIVERSARY OF THE DEPORTATION OF BALTIC PEOPLES TO SIBERIA

This year, about one million Americans of Baltic descent are commemorating the 35th anniversary of the mass deportations of Lithuanians, Latvians, and Estonians to Siberia which took place on June 14–15, 1941. During these first arrests, 100,000 persons were deported to various places in Asian Siberia. This was done to subdue the Baltic States, which had been illegally occupied by the Soviet Union against the will of the people.

The Soviet government began planning for mass extermination of the Baltic people soon after the conclusion of the Hitler-Stalin pact of 1939. The clear evidence of this is found in N.K.V.D. Order number 001223 regarding the "deportation of anti-Soviet elements from Lithuania, Latvia, and Estonia." According to data collected by the Lithuanian Red Cross, 34,260 persons were deported from Lithuania, 35,102 from Latvia, and 33,500 from Estonia.

Statistics on age groups and professions have also been provided from a list of 20,974 persons. There are 1,626 infants; 2,165 children from the ages of 4 to 10; 2,587 persons from the ages of 10 to 18; 3,986 from the ages of 18 to 30 years; 7,778 persons from the ages of 30 to 50; 1,681 from 50 to 70 years; 427 over 70 years of age; and the remainder of undetermined age.

The largest groups were elementary and secondary school students: 6,378. There were 3,389 farmers, 1,865 housewives, 1,591 government employees, 1,098 teachers, 879 workers, 622 servicemen, and 416 university students.

All of these people were loaded into freight cars with fifty to sixty persons in each car. The windows of the cars were boarded over, husbands separated from wives, and children separated from parents. They all were locked in the cars lacking air, food, and water.

The long journey from the Baltic states to Siberia killed many weak and sick. Some dead children were thrown out of the cars by guards and left by the railroad, disregarding the enormous grief of their mothers.

In the following years, many other deportations took place. Baltic deportees were transported to northern Russia, western and eastern Siberia, and Kazakhstan. They were used for slave labor and many of them perished in the mines and forests, or they were annihilated by the cold, the starvation, and diseases because they lacked proper clothing, food, and medical attention.

Some managed to survive. A few even reached the United States, and readily testified to the inhuman conditions of life and to the cruelty of their imprisonment. Even Alexander Solzhenitsyn in his book "Gulag Archipelago" witnessed how Baltic deportees were tortured and forced to live under inhuman conditions.

Four young Lithuanian girls, who were deported to Siberia, have secretly written a prayerbook, which through underground

channels, has been smuggled to the western world. It was published in English, and titled: "Mary Save Us."

These young girls wrote: "The day has closed its eyes. Fatigue closes my eyes. My feelings have dried up, my strength has left me . . . with icy lips, with tear-filled eyes, tormented by despair, we fly to your straw-covered crib, O Holy Babe. . . . We are drained of our strength, our feelings have faded away, our hearts are benumbed thoughts we cannot control. . . . Jesus help those who die in foreign lands without consolation of the Church or their dear ones, without the comfort and aid of their friends."

The Soviet Union also deported people from the Baltic Sea in following years. A Lithuanian woman, Barbara Armonas, was departed in May of 1948, but after many years of slavery she managed to emigrate to the USA. She describes her deportation from Lithuania in her book: "Leave your tears in Moscow".

"About four o'clock in the morning of May 22nd (1948), I heard a knock on my door. . . I opened the door and froze with fear. . . There was a whole detachment of soldiers, about thirty altogether, all with heavy weapons. In the yard, a machine gun had been set up. The officer pushed me aside, went into the house, and demanded my passport. . . He took a letter from his pocket and read in a monotonous voice that the state had decided to deport me from Lithuania to other Soviet states. . . I had only a half hour to prepare myself for the deportation journey. Awakened by the noise, my son started to cry. . . I was told that I could take no suitcases, but must pack everything into a potato sack. . .

"When the half hour was up, my son, myself, and our belongings were put into a buggy and escorted under heavy guard to the neighboring village. . . Some twenty-five families had been collected. . . Each family sat on their sacks in a group. No one talked.

"Some two hundred families had been collected and put into trucks, each guarded by four Russian soldiers with guns. These trucks were nearly all American Lend-Lease equipment . . . At first, I thought all Lithuanians were being deported. . . . The village of Anksztuolial was left completely empty. . .

At the railroad station, we were put into cattle cars, about forty to sixty people to a car. The train stood in the station at Panevezys for two full days. We were given no food. . . Our transport consisted of sixty cars, so it can be estimated that it contained about 2,400 persons. . . The feelings of humans beings herded into cattle cars are impossible to describe. No one knew where we were going or what could be expected. . . In one car, a woman with two small children whose husband was in prison went mad, jumped from the moving train, and was killed. . . The biggest problem in our car was an 83 year-old paralyzed lady. . .

After about fifteen days, we stopped in a station about 160 miles from Irkutsk, the largest city in Siberia. . . We were ordered to get out. . . We stood there for about four hours in a cold rain mixed with snow. The children cried all the time. . . ."

The deportees were placed in barracks with broken doors and windows in company with many thieves, and Mrs. Armonas writes: "It was clear to everyone that we had been sent here to die."

On starvation rations, they were forced to cut trees in the forests five miles away from the barracks. The work norms were very high, and they had only primitive tools. The regimen for prisoners was severe. Mrs. Armonas writes: "I was always hungry. We were not allowed to wear shoes in our rooms. We could not sit on the beds."

Fortunately for Mrs. Armonas, Khrushchev's amnesty released her from the slave labor camps, but there are still tens of thousands of Baltic deportees in Siberia, and tens of thousands buried there in unmarked graves.

The Communists murdered or deported about 850,000 people from Lithuania, the total exceeding ten percent of the population, and these figures are also the same for Latvia and Estonia.

INDIA'S NUCLEAR EXPLOSION AND THE EXPORT REORGANIZATION ACT

Mr. RIBICOFF. Mr. President, on Friday, June 11, I disclosed that the Government of India now possesses a significant quantity of U.S.-supplied heavy water that is not covered by the safeguards of the International Atomic Energy Agency—IAEA. That means that India, which has not ratified the Nuclear Non-Proliferation Treaty—NPT—is free to use this heavy water to produce material for its nuclear-explosion programs. In fact, there now are strong and disturbing indications that India did use it to produce the plutonium for its nuclear explosion in 1974 and is still using it for its nuclear explosion program.

Had the existence of this material, and its likely use in producing India's version of an atomic bomb, been known publicly at that time, there would have been strong moral and political pressure on the United States to join with Canada in rebuking India for the misuse of peaceful nuclear assistance.

Canada immediately cut India off from further nuclear assistance because India had used an unsafeguarded Canadian-supplied research reactor to produce the material for the nuclear explosion. India also had used U.S.-supplied heavy water to run the Canadian reactor—the essential ingredient that makes the reactor work and that converts natural uranium, a nonexplosive material, into plutonium, the stuff that atom bombs are made of. This particular reactor, known as the CIRUS, produces 19 pounds of plutonium a year, enough for at least one bomb of the size that the United States dropped on Nagasaki.

But the United States had not made public its export of 21 tons of heavy water to India for use in the CIRUS reactor, either at the time of the export in 1956, or after the explosion of 1974. Two days after the explosion of May 18, 1974, a spokesman for the Atomic Energy Commission said there was "no reason to believe" that U.S.-supplied material was involved. A month later, during a press conference on June 17, Secretary of State Kissinger said:

> The India nuclear explosion occurred with material that was diverted not from an American reactor under American safeguards but from a Canadian reactor that did not have appropriate safeguards.

What the Secretary did not say was that the United States had exported the heavy water needed to run the reactor, and that if the safeguards on the reactor were "not appropriate," neither were the safeguards on the heavy water.

Both exports—the reactor by Canada and the heavy water by the United States—had been made subject to written understandings that the nuclear assistance would be used only for peaceful purposes. The United States and Canada each had asserted to India prior to India's explosion that an explosion did not constitute a peaceful use. India did not acknowledge these assertions and went ahead with its peaceful nuclear explosion anyway. Canada, in agreement with the United States that there is no technical difference between a peaceful nuclear explosion and an atomic bomb, imposed a nuclear embargo on India. The United States did not join in the embargo. Why?

The answer to that question, Mr. President, is not yet clear, but it must be clarified if we are to know whether U.S. nuclear nonproliferation policy is sufficient to prevent the spread of nuclear weapons. The answer is being sought by the Senate Committee on Government Operations, of which I am chairman, as part of its continuing inquiry into Federal interagency management of the U.S. nuclear export program. The principal agencies involved in nuclear exports and the Nuclear Regulatory Commission—NRC—the Energy Research and Development Administration—ERDA—the State Department and the Commerce Department.

On May 13, the committee reported S. 1439, the Export Reorganization Act of 1976, to upgrade Federal interagency controls over nuclear exports and nonproliferation policymaking. The bill was referred for 60 days to the Joint Committee on Atomic Energy and the Senate Foreign Relations Committee.

I wish to stress, Mr. President, that several principal provisions of the bill apply directly to the problems raised by the Indian nuclear program. For example:

First, section 6(c)(2), offered by Senator GLENN, a principal cosponsor of the bill, would require that government-to-government nuclear transfers, such as the heavy water export to India, be licensed by the NRC. At present, these transfers—including peaceful exports of weapons-grade uranium and plutonium to other governments—are made by ERDA without any public scrutiny.

Second. Section 5(b) would require that when heavy water is to be exported commercially—by an American company rather than by the U.S. Government—this license, too, would be issued by the NRC. At present, the authority under the Atomic Energy Act to license the export of nuclear components is being exercised by the Commerce Department rather than by the NRC.

Third. Section 4(a) would make the State Department the lead agency for negotiating all nuclear agreements and subsequent arrangements with other nations, with the close cooperation and technical assistance of ERDA. At present, these agreements and arrangements are negotiated by ERDA, as they were by its predecessor agency, the AEC, including the agreement to export heavy water to India.

Fourth. Section 7 would require the Arms Control and Disarmament Agency (ACDA) to prepare Nuclear Proliferation Assessment Statements on all proposed nuclear agreements and on all significant proposed exports and other significant arrangements made pursuant to those agreements. ACDA's technical as-