these leadtimes can be reached. Therefore, I urge my colleagues to reject the amendment of the Senator from California.●

DEPARTMENT OF STATE AUTHORIZATIONS

The PRESIDING OFFICER. The question now recurs on S. 1342, which the clerk will state by title.

The bill clerk read as follows:

A bill (S. 1342) to authorize appropriations for the fiscal years 1984 and 1985 for the Department of State, the United States Information Agency, and the Board for International Broadcasting, and for other purposes.

The Senate resumed consideration of S. 1342.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ZORINSKY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MATTINGLY). Without objection, it is so ordered.

AMENDMENT NO. 2377

Mr. ZORINSKY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. ZORINSKY) proposes an amendment numbered 2377.

Mr. ZORINSKY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 32, after line 7, insert the following:

SEC. 210. Notwithstanding any other provision of law not more than $20,000 of the funds authorized to be appropriated to the United States Information Agency for fiscal year 1984 or fiscal year 1985 shall be available for domestic representation or entertainment expenses, including official receptions.

Mr. ZORINSKY. Mr. President, I read from the committee's report:

In approving USIA's budget, the committee intends to limit USIA domestic representation allowances to the fiscal year 1983 level of $10,000. The committee sees no justification for a quadrupling in domestic entertainment for high USIA officials at a time of record budget deficits and double digit unemployment.

The State Department appropriations measure, which I understand the Senate may consider next, allows expenditures up to $50,000 for domestic representation. This amendment allows expenditures of no more than $20,000, notwithstanding any other provision of law.

I have talked to the managers of the bill, and they have indicated that they have no objection to this amendment.

Mr. PERCY. Mr. President, I believe that the amendment offered by my distinguished colleague strikes a balance here that is reasonable and fair under the circumstances. It is acceptable on this side. I know of no objection. I understand that it has been approved by the ranking minority member, who is on the floor at the present time and has signaled his approval.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2377) was agreed to.

Mr. ZORINSKY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ZORINSKY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COCHRAN). Without objection, it is so ordered.

AMENDMENT NO. 2378

(Purpose: To prohibit the enforcement, issuance, or implementation of certain rules requiring prepublication review of the writings of former officers and employees of the Government)

Mr. MATHIAS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS), for himself and Mr. EAGLETON, Mr. BENTSEN, Mr. BIDEN, and Mr. BRADLEY, proposes an amendment numbered 2378.

On page 24, between lines 19 and 20, insert the following:

PREPUBLICATION REVIEW OF WRITINGS OF FORMER FEDERAL EMPLOYEES

SEC. 122. The head of a department or agency of the Government may not, before April 15, 1984, enforce, issue, or implement any rule, regulation, directive, policy, decision, or order which (1) would require any officer or employee to submit, after termination of employment with the Government, his or her writings for prepublication review by an officer or employee of the Government, and (2) is different from the rules, regulations, directives, policies, decisions, or orders (relating to prepublication review of such writings) in effect on March 1, 1983.

Mr. MATHIAS. Mr. President, I wish the RECORD to reflect that I offer this amendment on my own behalf and on behalf of the distinguished Senator from Missouri (Mr. EAGLETON), who has taken a great personal interest in this subject. I also ask unanimous consent to add as cosponsor the Senator from Texas (Mr. BENTSEN), the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. BRADLEY), and the Senator from New York (Mr. MOYNIHAN).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, this amendment is a very simple one. It does not attempt to alter, change, repeal, enjoin, or otherwise in any way adversely to affect the relevant provisions of National Security Directive 84. It simply would delay until April 15, 1984, the implementation of a new program of censorship of the writings of private citizens who have previously held important positions in the Government of the United States of America.

We are not, at this stage of the game, trying to change the rules. We just say this is an important subject and a serious subject, and let us take 6 months to look at it. Let us take 6 months to review it.

What the proposal seems to do is to expand the system of prepublication review of the writings of former officials, and I understand the reasons given for doing so. I think we all share a certain sense of frustration in this area. There is President Reagan's justified concern about the leaks of classified information from within the executive branch, and it is shared by, I believe, ever Member of the Senate, certainly by myself. Many of us are disturbed that national secrets seem to have become the common currency of the daily press.

But the administration's response to the problem focuses on National Security Decision Directive 84, and this directive, issued last March, contains a number of provisions aimed at curbing leaks. None of these has been more controversial than the proposal to expand the scope and the coverage of prepublication censorship.

National Security Decision Directive 84 imposes a new duty on all officials with access to the most sensitive secrets: Sensitive compartmented information. In the alphabet soup of Washington bureaucracy, sensitive compartmented information becomes SCI.

Officials who have had access to SCI would be required to make a lifetime promise that, before publishing any writing about a broad range of matters, they will first submit their manuscripts for censorship by the Government. This would be a permanent obligation. Whether they are young men and women, midcareer, or live to old age, a promise binds them. It would apply after the official leaves the Government and returns to private life. The number of officials who would be required to make this pledge is enormous.

We estimate 100,000 in the Department of Defense alone and, of course, many thousands of others in the Departments of State, Justice, Energy, and other agencies. So it is not surprising that the issuance of National Security Decision Directive 84 provoked intense criticism of the proposed censorship system.

The administration seemed to be calling—and I emphasize seemed, because all I am asking for are a few extra months to make sure, we are not asking to change the system in any way at this point—but the administration seemed to be calling for a sweeping program of prior restraint. Prior restraint has been one of the most ominous phrases in our language, a restriction on free speech which could pass muster under the first amendment only if compelled by the most extraordinarily dangerous circumstances.

Constitutional considerations aside, many critics question on policy grounds a system which would allow the officials of one administration to censor the writings of their predecessors.

You can easily understand, I think every Senator can understand, all being political creatures, how this power could be abused, how it could deprive the Nation of an essential policy resource, those frank and forthright opinions of officials in whom the public has come to repose an extraordinary degree of trust. I think of President Hoover as one of the senior statesmen of America who for a generation was a national resource, a source of wisdom, of knowledge, of information. I think Secretary Rusk occupies that position today, and you can think of many other examples, all of whom would be to some degree restricted in their ability to give the public their writings as guidance for the formulation of policy.

Now National Security Decision Directive 84 gave merely a skeletal outline of a planned program. Only on the 25th day of August did the administration release its detailed plans for the implementation of the censorship program. Within 3 weeks the Governmental Affairs Committee held the first and, as far as I know, the only, hearings that had been held in the U.S. Senate on this program. Of course, I must say, and this is one of the bases for this amendment, this occurred only 2 months ago and we really have not had an opportunity to look at the program to see what its problems are and see what merits it has in it. But what the Governmental Affairs Committee learned, I think, was disturbing. We were struck by how little evidence there is that former officials have abused their trust by revealing classified information without authorization.

I put the question to the Department of State, to the Department of Justice, and to the Department of Defense, which together have thousands of employees with SCI clearances. I asked each of those departments how many times in the past 5 years, how often in the past 5 years, former officials have revealed classified information without permission.

This is the problem for which we may sacrifice an important element of the first amendment protection; how serious is the problem for such a serious sacrifice?

Well, the answer was that the Department of Justice said it knew of no incident in which any former Department of Justice official had revealed anything. The Department of State said it knew of no incident in which any former State Department official had revealed anything. The Department of Defense had one confirmed case of a disclosure of classified information and one that had been reported but had never been confirmed.

That is the problem. No incidents in 5 years in the Department of Justice, no incident in 5 years in the Department of State, one in the Department of Defense, and maybe one other.

Mark Twain made the famous statement which has been quoted and proclaimed by a great many other people since his day, "If it ain't broke, don't fix it." And this might be an appropriate point at which to quote Mark Twain.

Mr. PERCY. Mr. President, will the distinguished Senator yield for a question?

Mr. MATHIAS. Yes.

Mr. PERCY. Would it be that we would have a situation where former Secretary of State Dean Rusk, former Secretary of State Cy Vance, former Secretary of State Henry Kissinger in writing their memoirs would have to submit those memoirs to the Department for approval?

Mr. MATHIAS. You stated——

Mr. PERCY. At what level, knowing how our Government operates, would the Federal employee probably be at who would review those and render a judgment on a former Secretary of State as to whether what he said might be contrary to the national security interests, and who defines what the national security interests really are? Is it possible to divorce it from political interest?

Mr. MATHIAS. The chairman has asked the right questions and, frankly, I do not know the answers because we tried to get some of those answers, and I do not believe really that those difficult questions have been thought out thoroughly.

All I am suggesting at this point is that we wait 6 months until we can get those answers. But it is clear that former Secretaries of State, writing their memoirs which are of enormous policy value for generations, would have to submit the manuscripts to some censor somewhere in the Government. You ask how many people would this cover? Well, if it is 100,000 in the Department of Defense alone, you can see that goes from the Secretary of Defense a long way down to the civil service.

I asked the question as to what kind of volume there might arise here, and the administration witness sort of brushed that off by saying "Well, probably less than the applications under the Freedom of Information Act." But I do not think that really is a substantive answer because, as the chairman of the committee has suggested, you touch upon very delicate subjects that will require not a mechanical shuffling of papers but a matter of real judgment if a Secretary of State, writing his memoirs touches upon a subject that may be of embarrassment to the then incumbent administration, and then who is going to make that decision that this is truly a security matter, a security leak, and who is going to say "No, it is really a matter of current political embarrassment"?

So the chairman has touched the critical point.

Let me just say we asked a number of followup questions of the various administrative agencies and of the departments, questions similar to those of the chairman and to this day the committee has not yet received answers to those questions. So that is my concern.

At the hearing on the 13th of September the Committee on Governmental Affairs also took the testimony of a panel of distinguished former officials, including a former counselor to the President, a retired admiral in the Navy and Director of the National Security Agency, and former Director of Central Intelligence, and I think that the administration proposal got what I would call a mixed review.

Each of these witnesses—I think they could be called expert witnesses—made constructive suggestions for plugging the leaks by other methods which relied less on the principle of prior restraint.

Because I thought that these suggestions ought to be considered, and because the details of the censorship plan had been unveiled only a few weeks before, I asked at the hearing that the administration delay full implementation until Congress had had a chance to comment. A few days later, on September 23, Senator EAGLETON and I wrote to the President with a similar request. We have received no positive response.

Mr. President, under these circumstances, Congress must act. We must insure that the free speech rights of our most experienced public servants are not restricted unnecessarily. We must have an opportunity to satisfy ourselves that such a drastic step is warranted. This congressional consideration must precede implementation of the censorship plan. If trusted Government officials are to be called upon to sign sweeping prepublication review agreements, Congress must first have a chance to assess the full implications.

Accordingly, our amendment would require the administration to follow the familiar formula of caution: stop, look, and listen.

The administration should stop implementation of the censorship program. Prepublication review programs which were in place prior to the issu-

ance of NSDD-84 would be uneffected by this amendment. These include the extensive censorship systems of the CIA and other intelligence agencies.

The administration should look at the alternatives which have been suggested in both Senate and House hearings. The evidence produced so far suggests that the administration is trying to solve a genuine problem, but is going after it with a shotgun when a rifle may be needed. Perhaps we can help to sharpen the administration's aim.

The administration should listen to the comments and suggestions of both Houses of Congress. We share the President's concern about leaks. Working together, we may be able to put together a program that will plug leaks without chilling free speech. Further investigation may show that the administration is on the right track. But we will never know if the program is locked into place before Congress has a chance to look at it.

Mr. President, this amendment would freeze the status quo until April 15, 1984. My colleagues may recall that the implementation of another controversial provision of NSDD-84 has also been postponed to the same date. The late Senator Jackson was so concerned about the directive's proposed expansion of polygraph testing that, in one of the last of his legislative initiatives, he led a successful effort to gain Congress the time to take a closer look. I urge my colleagues to acknowledge that the censorship provisions of the directive raise similar disturbing questions. If we can foster more care and less haste in this sensitive policy area, we will have made an important contribution.

Mr. GOLDWATER. Will the Senator yield?

Mr. MATHIAS. I would be happy to yield for a question.

Mr. GOLDWATER. It is a question, but I do not intend to speak long on this anyway.

But as I read the amendment, this would not take effect before April 15, 1984.

Mr. MATHIAS. We are just asking for 6 months to look at it because the agencies simply have not been able to give us the answers to the questions yet.

Mr. GOLDWATER. Well, I believe the Senator just said the thing that is in the minds of all of us who are occupied with the protection of intelligence. You want to find out how serious it is and what we can do about it to stop it without stopping the so-called first amendment or constitutional rights of all Americans who are employed.

Now to me this does not merit a major fight. I will remind the Senator that when the President's proposals first came out they included the polygraph test. And you recall, when this was introduced by Senator Henry Jackson—a proposal that I find great merit in—we were able to compromise and put that off for a further study which we have done.

I would like to ask my friend from Maryland if he does not think, instead of making an absolute prohibition to begin on April 15, if he might suggest that the interested people sit down and discuss this and come up with some workable answers. Now I do not happen to believe that every person who has ever worked for the State Department or even who has worked for the CIA should be precluded. However, I can cite some cases, as the Senator knows, that have resulted in some deaths from the use of classified information by people still operating, I might say, around DuPont Circle in this town.

I wonder if the Senator would not agree that a meeting of interested people might produce a better or equal result to just writing it down in an amendment.

Mr. MATHIAS. Let me say to the Senator from Arizona, the chairman of the Intelligence Committee, that the Senator from Missouri and I have wanted such a meeting. The Senator from Missouri and I wrote on September 23 to the President and at that time we really asked that we get together; that we delay implementation only until we can sit down together and work something out.

At this point, with the concurrence of the Senator from Missouri, I ask unanimous consent to have printed in the RECORD a copy of our letter to the President.

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

COMMITTEE ON
GOVERNMENTAL AFFAIRS,
Washington, D.C., September 23, 1983.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We are writing to request that you delay the implementation of National Security Decision Directive 84 so that Congress can fully assess the implications of its controversial provisions.

Along with five of our colleagues on the Committee on Governmental Affairs, we sought hearings on this Directive because of our concerns about several of its provisions. But above all we are troubled by the broad pre-publication review requirement which the Directive imposes on former Government officials.

The Constitution forbids the government to impose prior restraints on the speech of citizens unless it can show the most urgent necessity for doing so. The implementation of the Directive, as it is presently planned, will create a comprehensive system of prior restraint virtually unprecedented in our nation's history. We are concerned that this program is being implemented with unjustified haste and without any opportunity to consider the views of Congress.

Although the Directive was issued six months ago, its skeletal provisions have been fleshed out through implementing regulations only within the past four weeks. We believe that the pre-publication review program contemplated by the Directive should be undertaken only after fair consideration of congressional views. Congress has not yet had a chance to express those views. We do not understand the haste to implement the Directive before Congress is heard.

In addition, a program of this magnitude should not be undertaken unless its necessity is clearly demonstrated. The evidence that was presented at the hearing of the Committee on Governmental Affairs on September 13 does not allay our concerns on this score. We learned then that the Administration sought to justify a program of prior restraint that will ultimately affect thousands of former officials on the basis of a record of one or two known unlawful disclosures by former officials over the past five years. On this slim record, we have serious doubts about the need for any expansion of pre-publication review.

Should implementation go forward, we believe this Directive may curtail the constitutionally protected expression of thousands of top-level former government officials—those best able to enhance public debate—and may strike at the heart of the public's right to be informed.

For these reasons, we urge you to delay implementation of the Directive pending further consideration of this important issue by Congress. We intend to request additional hearings in the Governmental Affairs Committee, and understand that similar action is planned in the House of Representatives. We believe that many of our colleagues share our concern that a large-scale program infringing on important First Amendment rights should not be implemented without meaningful consultation with the Congress.

With best wishes,

Sincerely,

CHARLES MCC. MATHIAS, Jr.,
U.S. Senator.

THOMAS F. EAGLETON,
U.S. Senator.

Mr. GOLDWATER. Did the Senator ever receive an answer to that letter?

Mr. MATHIAS. Well, we got one of those White House answers.

Mr. GOLDWATER. Well, I do not know how you define it.

Mr. MATHIAS. Even Senator GOLDWATER has had those White House answers, I guess, although you ought not get them.

Mr. GOLDWATER. Do not get me started.

[Laughter.]

Mr. MATHIAS. Let me just read the operative line. It is only two sentences long:

> Your letter has been brought to the President's direct attention and is now being shared with the appropriate advisers for a thorough study and review.

You know what that means?

Mr. GOLDWATER. Well, not exactly.

Mr. MATHIAS. You have a vague idea.

Mr. GOLDWATER. I have a vague idea.

Mr. MATHIAS. So as a result of the fact that we got that answer, we ended up here on the floor today.

Mr. GOLDWATER. May I ask another question on the same point? Have you ever received an answer that makes a little sense?

Mr. MATHIAS. No.

Mr. GOLDWATER. Well, now, could we pursue this just a bit, because I said I do not think this merits a full floor fight, but I do think it is a subject that should be discussed. I know my committee would be very happy to sit down and, while I cannot say with any degree of certainty, I feel that I could promise that the CIA and the DIA would be willing to sit down and see if we cannot reach some limits to this whole problem. I think there is a problem.

Mr. MATHIAS. And I am not prepared to say there is no problem. I agree. I cannot speak for my cosponsors, but I suspect that if we could have some assurance that the program would not be implemented prior to the time that we had been able to make that kind of a thoughtful study, prior to the time that we got the answers to the questions—legitimate questions, questions such as those the chairman of the Foreign Relations Committee just asked—I would prefer the approach of the Senator from Arizona to just simply, arbitrary 6-month ban. But I would like the Senator from Missouri and the other cosponsors to speak for themselves on that.

Mr. GOLDWATER. I proposed that question without having even consulted with my very able cochairman, the senior Senator from New York, who is on the floor. I have a strong suspicion that he would lean in the direction I have recommended to let us take a look at this whole thing. Because we are not just talking about intelligence matters, we are talking about matters that occur in every agency of Government that somebody might want to keep secret. And, as you know and I know, the most used rubberstamp in this town is that red one that says "Top Secret."

So I would like to ask the Senator if he would give serious consideration to the idea of thrashing this out ourselves without bringing it to a floor fight. As of now, I do not think it is worthy of that kind of attention, although I think it has very, very serious implications. Because once we pass it as an amendment, you know that a date certain does not mean a thing. That is the end of it.

Mr. MATHIAS. Well, I think the chairman of the Intelligence Committee makes a good point and one with which I have sympathy. That is exactly the approach Senator EAGLETON and I took. We sought to have some kind of a general meeting in which these matters could be discussed while we got the information and as long as we were assured that the program would be implemented while we were sitting in the room. So that we had our chairs pulled out from under us. But we just simply have not been able to get any satisfaction.

Meanwhile, of course, the standard nondisclosure agreements have been released by the Justice Department on the 25th of August and they were officially promulgated a few days later. We are only here out of a sense of frustration and lack of anyplace else to go. I think the Senator from Missouri would agree with that.

Mr. EAGLETON. Will the Senator yield for 30 seconds on Senator GOLDWATER's point?

Mr. MATHIAS. Yes.

Mr. EAGLETON. The difficulty with the proposal by the Senator from Arizona is that implementation has already begun. It is not as if we were still in spring training or in the bullpen and not yet on the playing field. We are very much on the playing field, and implementation is in process.

So we need a postponement or a delay in order to avoid having implementation become finalized within a matter of days, a few weeks at most.

Mr. MATHIAS. I think the Senator from Arizona is suggesting that we would have some commitment by the administration not to proceed with implementation while we have this agreement.

Mr. GOLDWATER. Let us get it straight. I cannot commit the administration.

Mr. MATHIAS. No, no.

Mr. GOLDWATER. But I think I can commit certain parts of it.

Mr. MATHIAS. I understand that. I did not mean that you were speaking on behalf of the whole administration. But that if, as a result of this colloquy, there is somebody—we are not supposed to point to the gallery around here—but there might even be someone in the gallery who could whisper in the proper ears and we could get that kind of agreement.

Mr. GOLDWATER. Before I sit down and before the Senator from New York speaks to this subject, I do not think there is any disagreement—I am addressing this to the Senator from Maryland—there is no disagreement in the idea that certain information disclosed by anybody can be harmful to our country but, I think, more importantly than that, the use of name, rank, serial number, phone number, address and so forth, can and actually have worked against the safety of individuals.

That, I think, is what the President was addressing himself to. It is what we in the Intelligence Committee are constantly concerned with, as well as is the sponsor of this amendment. What do we do with the publication of matters which can be dangerous?

I cannot possibly conceive of 100,000 people working for the Pentagon ever sitting down and writing anything except a check once in a while.

That is one of the results, I think, that could come from a discussion, a limitation of what we are talking about.

Mr. MATHIAS. The Senator is precisely right. I think it is unfortunate we have not had that discussion up to this time.

Mr. MOYNIHAN. Will the Senator yield?

Mr. MATHIAS. May I suggest that I yield to the Senator from Missouri who is cosponsor?

Mr. EAGLETON. Would the Senator like to proceed?

Mr. MOYNIHAN. The Senator said he would like to yield to his cosponsor, the Senator from Missouri.

Mr. EAGLETON. I would like to present my statement at this time.

Mr. MOYNIHAN. Please do.

Mr. EAGLETON. Mr. President, I join with Senator MATHIAS in introducing today an amendment to the State Department's authorization bill, which would delay implementation of a provision in the President's National Security Decision Directive 84. That directive, among other things, would require tens of thousands of former Government officials (with top security [SCI] clearance) to submit for prepublication censorship a vast number of their writings on issues of vital public interest. Severe civil and criminal penalties are imposed for failure to submit to this procedure. The obligation to comply with censorship will apply to these individuals for life, presenting an imposition which amounts to a flagrant and indefensible violation of the first amendment.

The depth of my concern over the unconstitutional scope of this directive is exceeded only by the extent of my dismay at the haste with which the administration seeks implementation—and without meaningful congressional consideration. While the directive was issued 6 months ago, only in the past few weeks have its scope and detailed provisions become known through release of implementing regulations. Two weeks later, the Senate Governmental Affairs Committee held one preliminary hearing on this issue, which raised more questions than it answered. For this reason, Senator MATHIAS and I wrote to the President on September 23, urging him to voluntarily delay implementation pending more thorough congressional review. We have received no positive response.

In the face of the administration's apparent rejection of a congressional role in debate over an unprecedented Presidential policy of this nature, I believe Congress is forced to be heard legislatively. This legislative effort is patterned after the efforts of the late Senator Jackson who, only a few months ago, successfully urged delay of another of the directive's controversial provisions relating to polygraph examinations. Congress responded to his leadership by amending the Defense Department authorization bill, providing a temporary moratorium which would allow fuller congressional review of the directive's provision. We believe that a similar halt in implementation of the prepublication review requirement is even more essential.

There are two substantial and fundamental problems that I have with the President's prepublication review

procedure. First, it is most disturbing because it represents an unwarranted and unconstitutional extension of the Snepp principle enunciated by the Supreme Court in *Snepp* v. *United States*, 444 U.S. 507 (1980). It is vital to recognize just how far beyond all reasonable limits the President has extended Snepp.

The Snepp case upheld the prepublication process in the narrow context of the CIA and its unique mission. Frank Snepp, a former CIA agent, breached the secrecy agreement he signed by publishing a book about CIA activities without prior submission for agency review. The Court found a "breach of fiduciary obligation" even though the CIA discovered that the book did not contain any classified information, and the Court invoked a money penalty by establishing a constructive trust of the profits from Snepp's book for the benefit of the Government.

Extending Snepp beyond its facts—confined to intelligence agencies—is not wise policy. Nor is it what the Court contemplated. Yet the administration plunges ahead, broadly applying the censorship procedure to officials with SCI access, regardless of their agency, or whether they are policymakers or intelligence officers. We are told that in the Defense Department alone, over 100,000 employees will be affected. This is a substantial leap from the narrow circumstances leading to the Court's opinion. Nevertheless, one would have assumed that since only officials with access to SCI must submit their manuscripts, the scope of materials subject to deletion by the Government would be limited to SCI.

This is not the case; the expansion of Snepp continues to grow. The directive requires submission of "all materials, including works of fiction * * * which contain or purport to contain * * * any SCI" or are "derived from SCI," (paragraph 5). The directive also permits Government reviewers to delete information that is "classifiable" (paragraph 1), or that is "subject to classification" (paragraph 7). I have no doubt that a former CIA director, for example, would know the precise meaning of these terms, whether or not a classification stamp appeared on the documents used in preparation of a manuscript, but I seriously question whether others, including many in this Chamber, would understand the scope of prohibition contemplated. The prepublication contract—going far beyond Snepp and then far beyond the Government's purported interest in only SCI—becomes a trap for the unwary. The net that the administration has cast with this directive is, I am compelled to conclude, far wider than is proper and necessary and is therefore unconstitutional.

Our society places great weight on the first amendement. The Supreme Court has held that "any system of prior restraints of expression comes to the Court bearing a heavy presumption against its constitutional validity." *New York Times* v. *United States*, 423 U.S. 713, 714 (1971). First amendment protection is at its zenith when restraints on political speech are contemplated, as they are here. The censorship system may well have the effect of prohibiting citizens from criticizing their government, thereby muzzling public debate. One eminent first amendment scholar espouses the following view toward threats to public speech that is most vital to our form of govenment:

> To be afraid of ideas, any idea, is to be unfit for self-government. Any such suppression of ideas about the common good, the First Amendment condemns with its absolute disapproval. The freedom of ideas shall not be abridged.

A. Meiklejohn, "Political Freedom" (1960), at 28. This fundamental connection between free speech and self-government was recognized by the Supreme Court in the Pentagon Papers case, presenting a similar conflict between national security and the first amendment. In one of the six concurring opinions, two Justices maintained that:

> Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open debate and discussion of public issues are vital to our national health. On public issues there should be "uninhibited, robust, and wide-open debate." *New York Times* v. *Sullivan*, 376 U.S. 254, 269-270.
>
> *New York Times* v. *United States*, 403 U.S. 713, 722 (1971).

I have addressed my principal concern that the administration's prepublication review procedure unconstitutionally extends the Snepp case. My second major objection to the prepublication agreement concerns how it is enforced. There is no assurance that each agency's review board will consist of objective personnel, or that screening will be neutral and not political. A review board may consciously or unconsciously take a more restrictive view of material that is critical rather than favorable to the agency. Moreover, the dangers of having, for example, the Secretary of State in one administration have his work reviewed and censored by his immediate successors and obvious.

There is no assurance that the review board will give rapid consideration to reviewable materials. The procedure is supposed to take not more than 30 days. Of course, for newspaper articles, which are invariably time-sensitive, even this delay would be unacceptable. Moveover, the limited but telling experience we have with the CIA procedure, in operation for several years, suggests that contested review can take months and even years.

The administration contends that the agreement is enforced through voluntary compliance. But I believe that the administration intends for the censorship agreement to operate more coercively. The agreement is drafted so that the Government and not the individual will make determinations about which materials qualify for submission. This is because the standard used to make the determination is frighteningly nebulous and only the Government can know what is intented to be screened. Individuals simply will not be able to discern the meaning of the language in the agreement, and may well submit nearly all their writings—even if they are unconvinced that any materials contain offensive information.

This dangerous practical effect of the agreement is virtually certain, especially because an individual's good faith, reasonable conclusion that submission is not required, would not provide a defense to a person facing civil suit by the Government for unlawful disclosure. This has the effect of forcing individuals to suspend their judgment, replacing it with the Government's. Former Attorney General Civiletti, recognizing how the Snepp principle may be expanded and misconstrued in this and other ways, issued guidelines (quickly revoked by President Reagan) which stated that consideration should be given to the degree of willfulness involved in an individual's failure to submit material. This surely would have given this whole process a greater air of voluntariness, and was an attempt to allow, in the words of former White House Counsel Lloyd Cutler, "sufficient play in the joints to accommodate both governmental and first amendment needs." The President's directive allows for no such reasonableness.

The "I know it when I see it," sweepingly broad standard to be applied by Government censors is simply unacceptable. Floyd Abrams, the noted constitutional lawyer, made this point in a recent article in the New York Times:

> Under the new policy, there is no need to submit for prepublication review material consisting "solely of personal views, opinions or judgments" on topics such as "proposed legislation or foreign policy." But the Catch-22 is this: If the opinion even implies "any statement of fact" that falls within the range of review, then the material must be cleared by the government before it is published. Since most opinions worth expressing about American defense or intelligence policies at least imply some proscribed facts, what the new requirement amounts to is a massive intrusion of the government into the right of former officials to speak and of the public to listen.

"The New Effort To Control Information," by Floyd Abrams, the New York Times Magazine, September 25, 1983 at 25. If former officials feel compelled to "err on the side of submission," or to alter their writings in anticipation of censorship, this procedure will chill the exercise of free speech. Such a result will have grave consequences.

One of America's most cherished values is an open society where people are free to speak their minds and to criticize their government. This open-

ness would not survive if the Government could screen the views of those best able to enhance public debate—the former Government officials. I believe the active participation of these people in our country's political dialog is a precious national resource. We need to hear from people like Robert McNamara, McGeorge Bundy, Henry Kissinger, and Gen. Maxwell Taylor, just as at some future time, we will benefit as a nation from the opinions and writings of Secretaries Shultz and Weinberger, Judge Clark, and Ambassador Kirkpatrick.

The administration can move forward with a substantial prior restraint of the first amendment only if it has satisfied the very heavy burden of proof required by the Supreme Court. Even after the Governmental Affairs Committee hearings, which afforded the administration ample opportunity to state its case, my view remains unchanged: the administration has produced only a scintilla of evidence supporting its position. It justifies this censorship program, that will ultimately affect tens of thousands of former officials, on the basis of a record of one or two known unlawful disclosures by former officials over the past 5 years. There has been no showing that either case caused major damage. This is a slim record indeed, hardly mandating the rigorous and intrusive system of Government suppression of information.

The directive's censorship procedure is unconstitutionally broad, suspiciously vague and logically indefensible. It is therefore not surprising that it has been roundly criticized by the press. Editorials and articles have uniformly regarded the directive's provisions as dangerous and ill-conceived. "Blighted public discourse," [1] one newspaper charged it would bring. "Government veto power over sensitive writings," [2] "stuffing the mouths of any and all public officials who, like Adam and Eve, have tasted of the knowledge of good and evil," [3] and "blueprint for censorship" [4] were phrases others used to interpret the directive's effect. Floyd Abrams referred to the directive as representing "* * * a fearful ideology that focuses intently on the risks of information, but not on its benefits. Nor on the perils of suppression." [5]

Mr. President, a Government policy that consistently generates such alarm merits, at a minimum, our closer scrutiny. Implementation of the President's National Security Decision Directive 84 simply must be halted to permit responsible and thorough examination by Congress. I am not convinced that the President can unilaterally, without regard to Congress, subject former Government officials for life to a system of prior restraint enforced by court injunction, severe financial penalties and possibly criminal sanctions.

I urge my colleagues to support this amendment which would give us time to review the risky course chosen by the President.

Mr. President, I ask unanimous consent that the testimony of George Ball, as delivered before the House of Representatives yesterday, be printed in the RECORD in this point.

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

TESTIMONY OF GEORGE W. BALL

Mr. Chairman: I appear here to urge your committee to express its disapproval of National Security Decision Directive—84, issued on March 11, 1983.

I do not represent any organization or other special interest. I have been asked to testify as an American citizen with eleven years service in the Executive Branch of the Government as Undersecretary—what is now known as Deputy Secretary—of State, and a brief term as United States Permanent Representative to the United Nations. I am glad to be here, as I am deeply disturbed by the potential harm that can be done by that directive as it is now drafted. I am equally concerned at what it seems to imply regarding the desire for secrecy on the part of the present Administration.

The directive requires that persons permitted access to so-called "Sensitive Compartmented Information" (known in the official vernacular as SCI) must sign an agreement to submit all materials, including works of fiction, that they may propose to publish or in any manner propose to "disclose", if those materials contain or purport to contain any "information derived from SCI" or which describe any "activities that produce or relate to SCI" or any classified information from intelligence reports or estimates. The agreement also applies to "any information concerning intelligence activities, sources, or methods"—language which, literally interpreted, would seem to include such information even though it is not itself classified. Prior to obtaining a written authorization to disclose, the individual agrees not to discuss or show the information to anyone not authorized.

The directive contains no time limitation. Anyone signing the required agreement would be bound by it for the rest of his life. He could not publish or discuss information he obtained fifty years previously even though that information may meanwhile have entered the public domain.

If administered as drafted, this directive would required the establishment of a censorship bureaucracy far larger than anything known in our national experience There are, I am told, about 100,000 people in the government with access to SCI and that number will cumulatively increase as new personnel enter the bureacracy and sign the required agreement.

All persons with authorized access to classified information and SCI are now required to sign a nondisclosure agreement as a condition of access. That is, of course, an appropriate requirement; but the new directive goes far beyond that requirement. Its operative assumption is that no official of the United States Government—even a Secretary of State or Defense or the President's National Security Advisor—can be trusted to exercise judgment as to what information is covered by the sweeping language of that censorship requirement and might, if disclosed, be harmful to United States interests. After he leaves office he must instead submit anything he writes that might contain information derived from SCI, or even classified information, to the judgment of some junior bureaucrat meticulously following rigid regulations. Since, as I know from experience, no one who has had high responsibilities in the upper reaches of government for any extended time can possibly remember the source of all the information to which he has been exposed in the course of his duties, he will feel under pressure to err on the side of prudence and submit substantially all his writings or even his speech notes to the censorship apparatus—waiting for weeks as the cumbersome machinery clips and deletes anything that might conceivably fall in the offending classification.

The obvious effect of this directive will be to discourage anyone who has served the government in a sufficiently elevated position to have access to sensitive information from participating actively in the public discussion of American policy, even though he may be uniquely qualified to offer illuminating comments and advice. The onerous mechanics of such censorship and the delay they would impose would render impossible informed comments on evolving events and greatly inhibit the bringing to bear of past experience on the formulation of policy.

Such a prospect is particularly alarming at the present time, for many—even those in top positions of policy—have had little if any prior experience in foreign policy or any knowledge of our history. Indeed, if one examines the record of the last few years, it is appalling to discover how often we have repeated the same mistakes from ignorance of our blunders of the past.

I see no reason why this directive should have been thought necessary. Any abridgement of the freedom of speech—and particularly the practice of pre-publication censorship—runs counter to the genius of our democratic system; indeed our founding fathers strongly affirmed the principle that a democracy can govern wisely only in an atmosphere of informed public discussion. The directive in question can be justified only if its proponents produce compelling evidence that such an abridgement of free discourse is absolutely essential. They have not met that burden of proof; I see no evidence they have even tried to do so.

Obviously we should safeguard sensitive items of information by reasonable means; but to shape a prudent policy we must balance a need for particular safeguards against the corrosive effect of censorship on our larger interests. Our current obsession with the Soviet Union should not lead us to imitate the very Soviet methods and attitudes our leaders most insistently deplore.

Yet we see this tendency not only in our preoccupation with secrecy but in other practices as well. Because the Soviet Union feels free to interfere with governments within its own sphere of influence whenever they show signs of weakening their full allegiance to the Soviet system, we show little scruple in destabilizing governments in our sphere of influence that display evidences of Communist influence.

Those in government are often tempted by the wistful thought that they could more effectively conduct the nation's business if the media were content with official publicity handouts and did not challenge their substance. They would be even happier if those with prior government experience were not looking over their shoulder and subjecting current policy to the test of prior experience—those hard lessons derived from trial and error. Moreover, as we have learned to our sorrow during these past few

[1] New York Times editorial, September 22, 1983.
[2] Newsweek, September 26, 1983 at 38.
[3] Washington Post op-ed article by Lewis W. Lapham, March 26, 1983.
[4] Washington Post editorial, March 21, 1983.
[5] New York Times op-ed article by Floyd Abrams, March 22, 1983.

years. Administrations are often tempted to use the classification procedures to conceal or confuse actions or policies and protect our political leaders from embarassment for their own follies or misdeeds. So we must be sure that, in the name of security, we do not adopt measures that discourage the revelation or discussion of actions and policies that violate the standards we purport to follow as a nation. I hate to think of the injustices that might be done, the follies that might be committed, and the messes that might develop were the Executive Branch to be able to prevent such public exposure and the scrutiny of those best qualified by experience to question policies and actions that violate our avowed standards and principles.

On the basis of the considerations I urge, Mr. Chairman, that your committee express its opposition to the requirement of prepublication censorship contained in the present directive, since the Administration has, to my knowledge, failed to demonstrate that the current nondisclosure agreements are not fully adequate. In addition, I hope this committee will also express its disapproval of the provisions of the directive that subject all individuals having access to classified information to submit to polygraph examinations at the option of the agency for which they work and permit that agency to decide what adverse consequences will result from an employee's refusal to submit to such an examination. Only those with ignorance of or contempt for our laws and traditions could have written such a provision. The courts have consistently held that the refusal to take a polygraph examination should not be admitted in evidence. They have explicitly recognized the fallibility of such examinations and the injustice that would follow if a negative inference were drawn when an American citizen stood on his rights and refused to run the risks of an erroneous judgment resulting from a polygraph examination.

For all these reasons, Mr. Chairman, I hope this committee will strike a blow for freedom of public discussion and the avoidance of official coverups by objecting to this obscurantist directive.

Mr. EAGLETON. Mr. President, I yield the floor.

Mr. MOYNIHAN and Mr. DENTON addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I thank the Chair.

Mr. President, I rise in support of the amendment offered by the distinguished Senator from Maryland (Mr. MATHIAS) and his equally distinguished colleague, the Senator from Missouri (Mr. EAGLETON). I am pleased to cosponsor this measure which will postpone the implementation of what appears to be an unwarranted and overly broad new system of censorship of the writings and speeches of former Government officials. The delay will afford the executive branch, as well as the Congress, as the distinguished Senator, my revered and beloved chairman of the Intelligence Committee, states, an opportunity to consider the wisdom of this action. I should like to recount the history of this matter which clearly demonstrates the need for this amendment.

On March 11, 1983, the President issued a directive intended to prevent unauthorized disclosures of classifed information through leaks to news media. A singular feature of this directive is that it requires prepublication clearances of articles and books written by policymaking Government employees after they leave Government, if they have had access to sensitive compartmented information (SCI)—that is, intelligence information to which access is limited to protect sources and methods. Suffice it to say that there are as many as 200,000 people with SCI clearances, including a large number of executive level officials of the Departments of Defense and State and the White House—people who can and do contribute much to public debate after they leave office. As Mr. Floyd Abrams, a distinguished authority on the first amendment observes:

> Some of the most important speech that occurs in our society would be subjected to governmental scrutiny and that, if the government in power decided that something could not be written or said, to judicial review.

For some time, the Central Intelligence Agency and the National Security Agency have obliged their former employees to seek review prior to public disclosure of any information concerning intelligence activities. This is a reasonable rule given the complete immersion of their personnel in the world of secrecy and their perhaps not altogether keen sense of what is and is not classified, that merges so much in their work, and the fact that they do not work at the levels of policy formation. There has been no objection to this restriction on NSA and CIA personnel.

It is policy formation that is principally recounted by the memoirs of former Government officials, not the carrying out of policy.

Mr. President, although this amendment would not affect the prepublication review program of the NSA, the Director of the Agency wrote to us urging that we reject it. I have inquired of the general counsel of the NSA, has there been a disclosure of classified intelligence by a former non-NSA, employee in published writings? The general counsel believes there has been one and understandably did not feel free to give us the details, and we did not need the details. But one.

Read the front page of the Washington press or the national press on any given day and see if you can count as few as one, given in an unauthorized matter.

That is our problem, Mr. President. Not an open publication, signed, published, acknowledged. The executive branch told the Governmental Affairs Committee a few weeks ago that it found only one or two instances in which former Government employees disclosed classified information in published writings.

What would be a problem is the stifling of free speech with respect to areas of the utmost public need. The memoirs of our Secretaries of State and National Security advisers and such like have typically argued the justification for the policies they set forward. They are policy issues which continue.

The pattern of these memoirs began, if I am not mistaken, with James Madison, who liked writing. President Grant wrote his memoirs because he very much needed the money for his family. President Theodore Roosevelt never wrote his memoirs as President, but he kept writing books because he could not help himself in that regard. That is one matter with respect to which he could not exercise his famous self-control. But since the Second World War, it has been a pattern of American public discourse that former officials and often future officials argue their case when they leave Government, sometimes to justify themselves—well, always to justify themselves—(I speak as one about which no exception could be made)—but also to argue that a policy ought to be continued or, perhaps, in the case where a policy was mistaken, it ought to be changed.

There are policies with respect to continuing relations in the world, and the debate continues about them. What these men and women have to say is relevant to the debate. Their books are published because they are read. They are not always read in the number that the publishers have anticipated, if we can believe the advances that are offered, but they are read. And they do serve a purpose. This new secrecy agreement would, as a practical matter, put them to an end. It is not just stifling free speech, but it is limiting public discourse on matters which we would most wish to see advanced.

Officials at the Defense and State Departments and other nonintelligence agencies, while having access to sensitive information, must and do address vital national security issues without using classified information. They do this every day at congressional hearings, in speeches and press conferences. Moreover, it has not been uncommon for these officials to write books after they leave the Government and to submit, on a voluntary basis, all or portions of the manuscripts for prepublication review by their former employers.

May I say that this sensible practice of some of our former leaders suggests a basis for establishing a system that relies primarily upon voluntary cooperation—one in which compulsory review is strictly limited to cases in which the former Government official knows or is uncertain that his manuscript contains sensitive classified information. It strikes me as curious that the new directive appears to call for a mandatory, and most likely, inefficient censorship bureaucracy. This from a President who staunchly opposes intrusive big Government, and, indeed, advocates private voluntary action, as an alternative to governmen-

tal programs, to meet basic social needs.

Moreover, this call for a censorship bureaucracy would have little impact on the leak problem. At recent hearings the executive branch was able to identify only one instance in the last 5 years of an unauthorized disclosure of classified information in the writings of former nonintelligence agency employees. This is not surprising. Former officials who participated in public debate typically do so in open fashion. In contrast, leaks typically come from current, anonymous Government officials.

With something such in mind, on March 22 I wrote the President enclosing a more or less routine press report of that day citing "senior Reagan administration" officials and such like letting us in on details of "low altitude flights by U.S. spy planes" flying about Central America. I said I assumed there would be a "thorough internal executive branch investigation of this matter" and asked if the Intelligence Committee might be favored with a copy of the findings. On May 5, I wrote a similar letter to the President following additional apparent leaks of classified information—including a National Security Council document on covert action in Central America—in press reports sourced to administration officials. I have yet to hear back on the results.

Mr. MATHIAS. If the Senator will yield on that point, I asked similar questions in our hearing. I said:

Now, if you really want to get to high public officials who are making disclosures of classified information, who are you going to put at the President's elbow during his press conferences when he decides to reveal some national secret?

Mr. MOYNIHAN. As a matter of his judgment of what is in the best interest of the country.

Mr. MATHIAS. That is right. Let me say I did not get an answer.

Mr. MOYNIHAN. Nor have I. I would like sometime, if I can get prepublication clearance, to publish my correspondence with the administration asking have you looked into the following in the Washington Post or New York Times or Los Angeles Times? We could write a letter a day without fear of excessive correspondence because they do not write back. And we know this.

If the investigative procedures of the President's March 11 directive are followed, I believe the administration will learn that the sources of leaks are more likely to be Presidential advisers, rather than defense, foreign affairs, or intelligence professionals.

Mr. President, I raised the foregoing concerns, first, in a speech before the American Newspaper Publishers Association on April 25 and, again, in remarks on the floor on May 19. It seemed that the effect of the directive could well be to strike at the heart of the ability of the public to be informed about their Government. However, at the time I spoke, the directive's implementing regulations had yet to be written. It was my hope then that my views, as well as those of others, would be taken into account by those responsible for drafting the implementing rules so that they could accomodate first amendment values.

Mr. President, I regret to say that the new standard form secrecy agreement—the adoption of which was announced on August 24—is a significant disappointment. The nature of the former employee's commitment under the agreement is conveyed in language that challenges the U.S. Senate for obscurity. Indeed, I would go further to say that this language appears to have been modeled on some of the worst written sections of the Internal Revenue Code. Paragraph 5 requires that a former official submit for review any information he contemplates publishing concerning intelligence activities—even if the information is unclassified and even if it has been 10, 20, or more years since his departure from Government service. In an apparent effort to limit the scope of the submission requirement the following sentence was included in paragraph 5:

However, I am not required to submit for review any such materials that exclusively contain information lawfully obtained by me at a time when I have no employment, contact or other relationship with the U.S. Government, and which are to be published at such time.

Mr. President, there can scarcely be a doubt that this provision is the work of a committee. And a committee of lawyers at that. Syntactical awkwardness and negative formulation are their hallmark. If the however clause is given a strict literal reading, it means that former Defense Secretary Weinberger would have to clear a manuscript quoting and commentating on William Colby's unclassified memoirs of his CIA experience, Honorable Men, if he (Mr. Weinberger) read the book while he served at the Defense Department; but he would not have to clear the manuscript if he read the book before or after he served as Defense Secretary. It appears as though some neoscholastic spirit has inspired this clause. Surely a system of censorship which turns on when a Cabinet Secretary reads open source material is in the same league with a philosophy which speculates about the number of angels which can fit on the head of a pin. But it is not a practicable system. Nor is it a prudent system.

Now, we are a grownup country. This cries for further inquiry.

To avoid absurd results, I would suggest that the however clause should be interpreted so as to preclude any submission requirement if the former official publishes material which merely cites or draws on information in the public domain—that is, which is obtained or obtainable while he is not employed by the Government. Of course, classified information may be in the public domain as a result of unauthorized disclosure—for example, leaks. Certainly, a former official may speak or write in a manner to avoid express or implied confirmation of such information.

I offer the foregoing interpretation to rehabilitate a seriously flawed effort to place limits on an unreasonable and sweeping submission requirement. However, unless the executive branch modifies the agreement or provides an authoritative interpretation, former officials will have to proceed at their peril in speaking out on crucial issues of public policy. I can think of no more crucial issue than arms control. Let us suppose that 3 years hence, former Defense Secretary Weinberger prepares an op-ed piece containing the following remark:

The proposed START Treaty is not in the Nation's interest, as National Technical Means will not permit adequate verification given deception and camouflage techniques.

Must he submit it to censorship by his successor? I do not believe he should be required to do so. Public debate is enhanced when former policy officials can promptly and freely offer an opinion which draws on their experience, but does not disclose classified information. Surely the hypothetical statement does not compromise any secrets. It is essentially an opinion and the only facts mentioned are well known to the public: That we have satellites that collect information on strategic arms and that deception and camouflage techniques can be practiced.

Nevertheless, the former Secretary could not be certain from a reading of the new nondisclosure agreement that his successor will agree that he is not obliged to submit his proposed statement. He may not want to take the risk that the Justice Department will institute a civil action against him. Indeed, he may be chilled and forbear from speaking out. The new agreement does not clearly preclude this result. And until it is amended or officially interpreted to do so it should not be permitted to go into effect.

Therefore, Mr. President, I strongly support the amendment. I would hope that the executive branch would take appropriate action to remedy its flaws. If it does not, I, for one, would support a legislative approach.

I yield the floor to the principal sponsors of the amendment to see if they do not agree with me that we ought to press this amendment, adopt this amendment, enact it, and then sit down in good faith with the administration and say, "Now, what is the problem you are trying to solve? We want to solve it with you." In the Intelligence Committee, we have just reported out a bill authorized by the distinguished chairman which does, indeed, provide further restrictions on Freedom of Information Act access to documents of the Central Intelligence Agency. We felt that there were certain areas the acts search and review

requirements inhibited the work of the Agency, inhibited cooperation with it by other intelligence services and we did not want a third of the employees of our intelligence community going through files only to demonstrate that there was no meaningful information that could be declassified and released to the public. We did it then. And we could do it here, or so it seems to me, but first we must prevent this new prepublication review requirement from going into effect; for it is a violation of our constitutional values, if not of the Constitution itself. That is my judgment. Mr. President, I yield the floor.

Mr. MATHIAS. Mr. President, let me briefly respond to the Senator from New York. I agree with him that we cannot allow this implementation of National Security Decision Directive 84 to go into effect without at least an opportunity to find out what kind of damage it is going to do.

Now, the Senator from New York has said that he has written books. He has been very modest in his description of them. They are informative, useful, and readable books which is more than can be said for many publicly authored volumes that come out these days. But take the Senator himself. He has been exposed to a level of intelligence information that would bring him within the purview of this provision if it is going to be implemented more broadly than the present narrow limits that cover the Central Intelligence Agency and other intelligence agencies. Even I in my modest way have been exposed to some of these sources of information.

Now, how do you handle a Secretary of State's memoirs? The chairman of the Foreign Relations Committee asked that question. Who is going to censor George Shultz' memoirs? Is it going to be a friendly censor in the next administration or an unfriendly censor in the next administration?

Mr. MOYNIHAN. Would the Senator allow me to make the observation. Or might it be George Shultz censoring his own writing out of a sense, well, he did make that commitment and as an honorable man he will abide by it as little as he might think it a sensible one.

Mr. MATHIAS. That is, of course, a part of the chilling effect of this suggestion. We simply do not know enough about it yet, and that is the whole purpose for being here today. We simply want more time to find out what really is involved.

Mr. DENTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. DENTON. I do not wish to try to gainsay all the opinions offered by either the distinguished Senator from Maryland or the learned Senator from New York, but I must register some disagreement with the amendment being proposed with information and opinion from those who are in position to judge this sort of matter.

I am sure that the two Senators are aware of the letter to the Senator from Maryland from the Director of the National Security Agency. Previous mention has been made by their counsel referring to one case and the fact that very few details were offered about it. I do not wish to sound at all condescending in this remark, but after 34 years in the military I am aware of hundreds of cases in which had the leak been identified great harm would have been avoided. Usually this is a combination of perhaps 2-to-10 pieces of information which in themselves might constitute no threat to the national security.

Mr. MATHIAS. Would the Senator yield for a brief comment? Just so that we have the focus of this amendment previse, we are not talking about leaks.

Mr. DENTON. I realize that.

Mr. MATHIAS. We are not talking about leaks. We are talking about published materials of former officials.

Mr. DENTON. But the same rationale applies with respect to the response you received which lacked details regarding the examples of what had happened in the past. That is why I made the remark. I am aware of what the amendment consists of.

Mr. MATHIAS. The Senator, of course, is entitled to his view of that. But I cannot believe that the officials of the Department of Justice, the Department of State, and the Department of Defense, appearing as witnesses before a congressional committee, would say that there had been only one confirmed case if there had been more.

Mr. DENTON. I did not mention only one case. You said that.

Mr. MATHIAS. The witnesses before the committee said that.

Mr. DENTON. According to this letter, there is a discrepancy, which the letter indicates. The letter from the National Security Agency Director, Lt. Gen. Lincoln D. Faurer, reads:

Dear Senator Mathias: The purpose of this letter is to express my concern about an amendment to the Foreign Relations Authorization Act for 1984 which you recently introduced. The effect of the amendment, as I understand it, would be to preclude the implementation or enforcement of a government prepublication review policy with respect to government employees, at least after they have left government service, except as such policies may have been in effect on March 1, 1983. As you are aware, a general program requiring individuals with access to Sensitive Compartmented Information (SCI) to submit intended disclosures for prepublication review was instituted in March. The purpose of the amendment appears to be to preclude implementation of this program. Since, in my opinion, the prepublication review program applicable to individuals with access to SCI is useful for the protection of National Security Agency information, I am naturally apprehensive over the possible adverse effect of the amendment.

The next paragraph is important:

NSA has had in effect for some years regulations establishing a prepublication review program for NSA personnel; this program would not be affected by the amendment. However, the general extension of a prepublication review program to recipients of NSA information only commenced as a result of the March 1983 directive. If implementation of the directive is halted, many persons who receive our most highly classified signals intelligence information would be excused from obligations now in effect to submit materials for prepublication review. Our experience has been that most unauthorized disclosures of classified signals intelligence are by non-NSA personnel, and, based on this experience, I have considered the general prepublication review program for individuals with SCI access throughout government to be a significant step in protecting sensitive intelligence sources and methods.

He continues in that vein.

I do not wish to presume upon the wisdom or the judgment of the Senators who have been speaking in favor of the amendment. I have asked with good will of the Senator from Maryland and he, in good will, responded, that on behalf of the Justice Department, which is trying to accumulate examples which might be sufficiently convincing, we should postpone until Monday next the consideration of this amendment.

The Senator from Maryland responded that he would concur if I could get an approval from the floor manager of the bill. However, I was unable to do so. The distinguished chairman of the Foreign Relations Committee wishes to finish his bill today—wanted it through, as a matter of fact, as of 1 o'clock today—so we are at some kind of stalemate.

I should like to offer further information in opposition to the amendment.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. DENTON. This will take only a few minutes.

Mr. MATHIAS. It might be useful to make a comment or two on the NSA letter while that subject is up.

Mr. DENTON. May I finish?

Mr. MATHIAS. Yes.

Mr. DENTON. I recognize that the Senator from Maryland has more perspective on the NSA letter.

Mr. MATHIAS. Let me say one thing at this point, because it seems to be a personal concern of the Senator from Alabama. He said that perhaps the Department of Defense, the Department of State, and the Department of Justice were reluctant to disclose publicly their concerns about some disclosures.

Mr. DENTON. No, some details about previous examples.

Mr. MATHIAS. I want the Senator to know that at the hearing, we invited each of those Departments to make a classified submission on anything of that sort they knew about, which would be held in confidence in accordance with the classification law. Not one word of reply was received.

Mr. DENTON. I have heard recently that few regard a Senate hearing room as a confessional. Without any reflec-

tion upon any of us, there have been a number of leaks from staffers and others in this body and in the House of Representatives.

Mr. MATHIAS. The reputation of Senator GOLDWATER's committee has been excellent. They have been the trustees of the highest secrets of this Government.

Mr. DENTON. I do not deny that.

Mr. MATHIAS. I do not think we can accept an implication that there have been Senate leaks.

Mr. DENTON. I believe there have been Senate leaks, not necessarily from that committee, but I believe there have been leaks from both Houses. I might have been the source of one, myself.

My book was submittted to the Department of Defense voluntarily, and they found inadvertent disclosures in it. I voluntarily assented to the deletions of those portions from the book.

I agree with sunshine in Government. I assure my colleagues that opposition on my part to this amendment is not arbitrary. It is one born in the knowledge that men have died because of inadvertent disclosures.

Let me offer one example. I admit that it is a little beside the point, but I believe it will be informative and relative.

Before the raid on Vinh during the Vietnam war, in retaliation for something that had been done to our side, the President of the United States went on the radio and television, mistakenly thinking that he had been informed by the carrier commander that the strike had been launched against Vinh. He thought that the carrier commander, in saying: "The strike has been launched," meant that the planes had hit the target.

So the President went on the air and said to the world: "We have struck Vinh."

We had not struck Vinh. The planes were en route. The antiaircraft batteries were alerted, and we lost some good men that day by an inadvertent remark by the President of the United States. I think this example regarding security requirements should be considered.

But I ask that we not try today to impose a 6-month delay without further consideration of the matters by the whole Senate.

Mr. MOYNIHAN. Mr. President, I say to the gallant Senator from Alabama, who has earned the respect of this Nation as few men in our time, that we are not talking about the inadvertent mistake of a President, and we are not talking about the well- or ill-intentioned disclosure of information by persons in office secretly to the press. We are talking about books and articles published.

Mr. DENTON. That is why I offered the example of my book.

Mr. MOYNIHAN. And we are talking about books and articles published by persons not perhaps with the degree of intense sense of Nation and honor that the gallant Senator from Alabama brings to this Chamber, as he brought to his career, but honorable men and women not intending any harm to their Nation.

NSA and the CIA have to do this because much of what their employees deal with is simply technical; and if adversaries know what we know, then we have lost what we know.

I understand the one case cited by NSA involved a former contract employee. I do not know, but I can imagine that he was involved in some very sensitive activity and may well have given a paper at the American Society of Engineers.

But that is not the leak problem. Our problem is the deliberate disclosure of sensitive information by persons within Government, some of them intending to advance the purposes of administration, some willing to block it. You typically find that there is a policy fight going on. That is a problem of morale and self-regard and standards. That is not what we are dealing with here. We are dealing with the inhibition of free speech which is what the published material is.

Mr. DENTON. Mr. President, will the Senator yield?

Mr. MOYNIHAN. I am happy to yield.

I yield the floor.

The PRESIDING OFFICER (Mr. HECHT). The Senator from Alabama.

Mr. DENTON. Mr. President, I am personally happy to hear the considered and very generous remarks regarding me personally.

I would say that if anything my inadvertent disclosure, which would have gone through and done this Nation some harm, as the Senator says, came from someone who was at least trying to be honorable but made an error. If my book had been published with that information there, it would have done harm to the security interests of the United States.

The review only took a few days. I now wish to offer the statistics regarding prepublication reviews which have taken place so far.

There seems to be an implication of great delays, but the statistics which I offer today are to the contrary. The directive, in fact, requires the review to be conducted within 30 days of submission.

Last year, for example, the CIA conducted 213 such reviews and completed the same within an average of 13 days.

For short writings, the reviews were conducted in a manner of hours.

I have heard suggested that to date the administration has cited only one or two instances in the past 5 years in which former officials of State, Justice, or Defense Departments have revealed classified information without authorization.

The fact is that since 1977 some 929 items have been submitted to the CIA for prepublication review, of which 241 contained classified information that was protected by the directive and was accordingly deleted.

I believe that all 241 of those examples were written by men who were at least as honorable as I and indeed perhaps as honorable as the Senator from New York.

In addition, many Government employees who did not necessarily have access to sensitive compartmented information, voluntarily submit writings for prepublication review.

In conclusion, at this point let me just say that I firmly believe that classified information must be protected from even an inadvertent disclosure from those within our Government who have lawful access. I believe it can be overdone. I believe that the NSA Director is not a politician nor a man who is interested in promoting or defending the administration politically. I believe he is speaking in the national interest as he sees it when he objects to a 6 months unilateral congressional delay in that which the executive branch has found in the national interest regarding unauthorized disclosure.

I plan to vote against this amendment and encourage my colleagues to do the same. I believe we must delay until Monday and hear the whole case from those who are trying to protect our security but have not yet gathered their material together.

But I feel we will be acting unwisely if we adopt this amendment with the little information we have at this point.

Mr. President, I oppose this amendment to the Department of State Authorization Act, S. 1342, proposed by the senior Senator from Maryland, Mr. MATHIAS.

This amendment attempts to delay the implementation of National Security Directive No. 84, entitled "Safeguarding National Security Information," which was signed by the President on March 11, 1983. Of particular concern, apparently, to the Senator from Maryland, is paragraph 1b, which requires all persons with authorized access to sensitive compartmented information (SCI) to sign a nondisclosure agreement which "includes a provision for prepublication review to assure deletion of SCI and other classified information."

The Senator from Maryland contends that such nondisclosure agreements requiring prepublication review violates the former employees' first amendment rights to free speech.

In fact, the Supreme Court has recently upheld the constitutionality of prepublication review for CIA employees in the case of *Snepp* v. *United States*, 444 U.S. 507 (1980).

The protection of the national security information is a primary and fundamental constitutional responsibility of the President that derives from his responsibilities as Chief Executive, Commander in Chief, and the princi-

pal instrument of U.S. foreign policy. Agreements to preserve the secrecy of classified information are an appropriate method for the President to discharge these constitutional responsibilities.

The Senator from Maryland also contends that the implementation of this directive would affect tens of thousands of officials in the State, Justice and Defense Departments. Indeed, this directive will apply to approximately 130,000 employees, most in the Department of Defense, who have access to sensitive compartmented information (SCI). SCI is a category of classified information that is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources and methods. The power to require the signing of such an agreement as a condition of access to SCI is supported by the statutory authority of the director of Central Intelligence to protect intelligence sources and methods, 50 U.S.C. Sec. 403(d)(3), as well as the more fundamental constitutional responsibilities of the President regarding national security.

The sponsors of the amendment also contend that employees covered by this agreement will have to submit for review a "broad range of their writings of public issues" in perpetuity.

In fact, such employees are only required to submit writings which include information relating to specified intelligence matters.

The Senator from Maryland alleges that this program of prepublication review will allow the administration in power to censor views of those former top-level people with whom they may disagree.

In fact, as I noted before, only classified information can be deleted. Judicial review is provided, and the Government must be able to demonstrate in court that all deleted material is properly classified pursuant to Executive Order 12356.

There is also a suggestion from the sponsors of this amendment, that prepublication review will keep authors from publishing their views in a timely manner.

In fact, the directive requires the review to be conducted within 30 days of submission. Last year, for example, the CIA conducted 213 such reviews and completed the same within an average of 13 days. For short writings, the reviews were conducted in a matter of hours.

The Senator from Maryland also suggests that to date, the administration has cited only one, or possibly two, instances in the past 5 years in which former officials of the State, Justice, or Defense Department have revealed classified information without authorization.

In fact, since 1977, some 929 items have been submitted to the CIA for prepublication review, of which 241 contained classified information that was protected by the directive and was accordingly deleted. In addition, many government employers who do not necessarily have access to sensitive compartmented information, voluntarily submit writings for prepublication review. Indeed in 1976 before the publication of my book dealing with my experiences as a POW in North Vietnam, I voluntarily submitted the same for clearance and deletions were made.

Mr. President, in conclusion, let me just say that I firmly believe that classified information must be protected from even an inadvertent disclosure by those within our government who have lawful access. The President must be allowed to take the necessary step to fulfill his constitutional duty to safeguard the national security by safeguarding classified information. Any infringement of the President's ability to control the continuing unauthorized disclosures would only encourage additional unauthorized disclosures and thereby threaten our national security.

Therefore, I plan to vote against this amendment and would encourage my colleagues to do the same.

I thank the Chair.

Mr. MATHIAS. Mr. President, let me say to the Senator from Alabama that is is not the desire of the sponsors of this amendment to delay on any arbitrary and fixed basis.

As we said before the Senator entered the Chamber, the Senator from Missouri and I wrote to the President on September 23 and suggested that we try to find some meeting of the mind, some chance to at least get the questions answered that have not yet been answered, and in all fairness to delay implementation until we have the answers. That might take 6 weeks or 6 months—I do not know—or some time in between.

But it would be at least a more flexible way to do it, and that is, in essence, what was proposed by the chairman of the Intelligence Committee, Senator GOLDWATER.

Speaking only for myself, it would be agreeable to me as long as we had a commitment that implementation would be suspended during these discussions. I think it would be the preferable, the more civilized way to proceed.

I am disappointed that we had so little cooperation in trying to move down that road. But that is the case.

Let me just address myself for one moment to the National Security Agency letter.

Mr. DENTON. Mr. President, if the Senator will yield, may I ask a question?

Mr. MATHIAS. Yes.

Mr. DENTON. Mr. President, if we could not receive the permission of the floor manager of the bill to delay until Monday, could this not be offered as a freestanding bill next week?

Mr. MATHIAS. That would take unanimous consent. I do not know whether or not such a unanimous consent is available or not. But it is something that could be explored. Again, I wish to offer the ultimate cooperation of which I am capable to the Senator from Alabama.

As the Senator from Arizona said, this is not something that we should go to the mat on.

Mr. DENTON. The Senator is correct, and the Senator offered some excellent examples.

Even in my short time here, I have been aware of delay from the executive branch in answering questions. I realize they, as we, are somewhat overworked with our staffs in answering questions, and so on.

I believe we could reach a reasonable approach among all parites. The Senator from Maryland has spurred the administration on and has been the catalyst. I think he is going to get the answers he wishes. I only ask for a few days to allow the administration to present their case.

Mr. MATHIAS. Mr. President, the Senator from Alabama has mentioned the National Security Agency. Let me say to him that I agree with him fully in his estimate of that Agency. I think it is one of the most extraordinary agenices of the U.S. Government. It has been my pleasure to know the successive Directors of the Agency. Without exception, they have been extraordinary men drawn from the uniformed services and have provided the highest kind of leadership in a very difficult and demanding field.

In fairness, I think we should put the Director's letter of October 20 in the RECORD, and I ask unanimous consent to have printed in the RECORD that letter.

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

NATIONAL SECURITY AGENCY,
CENTRAL SECURITY SERVICE,
Fort Meade, Md., October 20, 1983.

Hon. CHARLES MCC. MATHIAS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: The purpose of this letter is to express my concern about an amendment to the Foreign Relations Authorization Act for 1984 which you recently introduced. The effect of the amendment, as I understand it, would be to preclude the implementation or enforcement of a government prepublication review policy with respect to government employees, at least after they have left government service, except as such policies may have been in effect on March 1, 1983. As you are aware, a general program requiring individuals with access to Sensitive Compartmented Information (SCI) to submit intended disclosures for prepublication review was instituted in March. The purpose of the amendment appears to be to preclude implementation of this program. Since, in my opinion, the prepublication review program applicable to individuals with access to SCI is useful for the protection of National Security Agency information, I am naturally apprehensive over the possible adverse effect of the amendment.

NSA has had in effect for some years regulations establishing a prepublication review program for NSA personnel; this pro-

gram would not be affected by the amendment. However, the general extension of a prepublication review program to recipients of NSA information only commenced as a result of the March 1983 directive. If implementation of the directive is halted, many persons who receive our most highly classified signals intelligence information would be excused from obligations now in effect to submit materials for prepublication review. Our experience has been that most unauthorized disclosures of classified signals intelligence are by non-NSA personnel, and, based on this experience, I have considered the general prepublication review program for individuals with SCI access throughout government to be a significant step in protecting sensitive intelligence sources and methods. Accordingly, while, as stated, NSA personnel would not be affected by the amendment, the protection of NSA information could be, and as I believe signals intelligence to be of vital importance to the United States, I trust you can understand my concern that the Congress might enact the amendment.

Sincerely,

LINCOLN D. FAURER,
Lieutenant General, USAF,
Director, NSA/Chief, CSS.

Mr. MATHIAS. Mr. President, when the letter is perused, it will be clear, as the Director says, that NSA is not affected by this amendment. I should add at this point that neither is the Central Intelligence Agency affected by this amendment. Each of those agencies has its own programs and those programs would not be interfered with in any way by what we are talking about today, the 6 months' delay.

I do think that the Director has perhaps gone as far as he could go in stating the extent to which the directive has already been implemented. After all, the standard forms were not promulgated until late August. So I suspect that if any of what he called signal intelligence consumers have in fact undertaken any obligations that were not applicable prior to the issuance of the directive, those obligations have not changed very much.

I do not follow what he is trying to tell us when he says that this amendment would excuse many consumers from obligations now in effect because I do not see it that way.

But whatever he means by that, I would turn to the point that all we are seeking here is a delay. The only intelligence consumers directly affected are those who happen to leave Government service between now and April 15, which probably is not going to be a very large body of men and women. It is going to be a fairly small group.

Mr. DENTON. May I hazard a question and suggest what he might mean?

Mr. MATHIAS. Yes.

Mr. DENTON. I admit it may not be direct. By Executive order apparently the appropriate agencies have been getting prepublication review from those to whom they give highly classified intelligence information. The effect of the Senator's amendment, by its explicit exclusion of anyone except the CIA and NSA, might be the hazard to which he refers.

Mr. MATHIAS. That is a possible interpretation, but I think the most important thing that the Director says is the thing that reinforces what the Senator from New York has also said. I refer to that line in the letter in which he says that our experience has been that most unauthorized disclosures of classified signal intelligence are by non-NSA personnel.

And I think leaks come from anywhere and it is leaks that are the problem. Leaks, of course, are usually anonymous. No one knows who makes a leak unless it is the President or the Secretary of Defense or someone leaking deliberately, but the great volume of leaks are anonymous. When they appear, no one knows who the source was, and we have a great flurry. We stir around, members of the press are asked to produce their notes, they refuse, and ultimately we seldom find out who is the leaker. But in the cases we are talking about—the cases described by the Senator from Missouri and the Senator from New York—we are talking about people who publish, who sign their writings, who put their pictures on the back jacket of their books in the hope that their handsome faces will help sales, and who are subject to the criminal law. These are not people who will get off scot-free if they disclose classified information. The U.S. attorney can rap on their door the day after they have had the publisher's party and haul them into court.

So let me say to the Senator from Alabama it may well be, and I would not stand here and deny, that we should tighten up the criminal law in this respect. That is a subject for another discussion.

Mr. MOYNIHAN. It is a subject we can discuss, if I may say, in the conferences that we are proposing.

Mr. MATHIAS. That is right. It is a subject that can be part of the overall general discussion. But those are the ways in which I think you deal with the problem of the distinguished former officials of Government who write a book. You are not dealing with the clandestine anonymous leaker who does so much damage, and I think that simply giving us time to talk about this is in the national interest. I do not in any way want to rebuke the statements of the current Director of the National Security Agency, but let me say that one of the witnesses in our committee was Admiral Gayler, a former Director of the National Security Agency himself. I do not want to characterize his testimony, because it is a matter of public record and can be read. But I think it is fair to state that he had some serious reservations about National Security Decision Directive 84.

Mr. DENTON. Mr. President, I ask the gentleman questioning the NSA letter here, if it is not to be understood that NSA found good reason to implement the March 1983 directive which caused the prepublication review program to extend to recipients of NSA information. The letter says if that review is halted it is going to cause great problems. He is talking about books just as you are, prepublication review of books. So he is not talking about leaks which come from other sources, but leaks which appear in books, and I think the result of this amendment would by exclusion remove that directive which the administration found necessary to implement.

I respect the motives and the expertise of the Senator from New York with this tremendous experience in this field, and the Senator from Maryland for his integrity and his concern over the national security, but I request them to consider from the point of view of prudence that we learn a bit more about what the NSA letter means before we take this step of delaying for 6 months the extension which these security-responsible people have found desirable.

Mr. MATHIAS. I can only repeat that I am willing to talk as long as the Senator wants as long as we can get an agreement not to implement the program.

● Mr. DURENBERGER. Mr. President, the amendment before us is necessary because of a Presidential directive that carries the risk of severe abuses.

My concern is a provision in that directive that would subject all holders of a sensitive compartmented information clearance to a lifetime requirement of prepublication review for all their writings—both fiction and nonfiction, from books to letters to the editor—that deal with possibly classified information or intelligence activities. Such a massive prepublication review requirement seems sure to result in serious time delays in publication, and it could all too easily be used in a political manner.

The first amendment concerns that this provision of the Presidential directive raises were summed up admirably by Richard P. Kleeman, senior vice president of the Association of American Publishers, in testimony to two House committees:

> The Directive threatens to have an especially deleterious impact on the writings of former government officials. New Administrations will be empowered to pass upon the writings of those whom they replaced. The latitude afforded under the Directive will inevitably invite both delay in publishing and politically motivated excisions which will have the effect of harassing those who would criticize their political successors. Whether what will be lost is timely debate of foregone publishing opportunities, the loss under the First Amendment will be incalculable.

It is true, of course, that CIA personnel are already required to submit their writings for prepublication review. Intelligence personnel tend to learn many more details about highly sensitive intelligence sources and methods than do the personnel of

policy agencies, so a prepublication review system is more defensible for the CIA. My understanding is that our intelligence agencies see no problems with the amendment before us, as their procedures were established before March 1, 1983, which is the cutoff date under this amendment.

It is much harder to justify a prepublication review system for the vast numbers of nonintelligence personnel with access to sensitive compartmented information. I have heard complaints about the publications of exintelligence personnel, but I have not heard the same national security concern regarding the writings of former policy officials or military personnel. Given the real question of whether this system is needed and the real concern that prepublication review could exert a chilling effect on important policy debates, I think Congress should take a careful look at this issue before allowing imposition of this system.

I urge all my colleagues to join me in supporting the Mathias amendment and to ponder the concerns that have been raised regarding this Presidential directive. Mr. President, I ask unanimous consent that the editorial "Censorship and National Security" from the Minneapolis Star & Tribune be included in today's RECORD.

The editorial follows:

[From the Minneapolis Star & Tribune, Apr. 18, 1983]

CENSORSHIP AND NATIONAL SECURITY

President Reagan's new executive order on the handling of national security information creates a dangerous system of censorship. It threatens democratic control of government by restricting public debate about important national issues. It is an attempt to squash civil liberties under the guise of protecting the nation.

Among other things, last month's directive requires high-level government employees with access to classified material to promise to submit for prior government approval anything they write based on their government experience. That requirement applies not only while employees remain in government service, but for the rest of their lives. It applies not only to manuscripts that discuss sensitive government activities, but also to innocuous fiction and satire. The penalties for failing to comply—whether or not a manuscript contains classified information—include confiscation of all profits from publication.

The secrecy order covers senior officials in federal agencies, in the military and in the foreign service, as well as top White House officials and members of the National Security Council staff. Under the new system, none of them will be able to publish a book, make a speech or send a letter to the editor without government permission. Government censorship panels will make the final decision about what can be said or published. The writer can fight that decision in court, an expensive and time-consuming endeavor.

Until now, such a clearance system has been used only within the CIA, where safeguarding sensitive intelligence data might justify it. But the new order extends censorship into all areas of government. If this program had been in effect in the past, scores of former public officials would now feel its chill. The memoirs of Henry Kissinger, Richard Nixon, Zbigniew Brzezinski and Jimmy Carter would be subject to censorship by their successors. Speech texts and articles by Melvin Laird, Eugene Rostow, Alexander Haig and Edmund Muskie would have to be cleared before they could be released. Journalists, political candidates, college professors and lobbyists who once held government office would be allowed to public only government-approved ideas about government affairs.

The censorship scheme is ridiculous and perilous. Experience with the CIA's review panels has shown that government censors are just as likely to suppress embarrassing facts and undesirable commentary as legitimate secrets. And that is the real trouble with Reagan's order. It could be used to prevent one-time government officials from criticizing current government policy. It could keep the nation's most knowledgeable analysts of public policy from debating questions of war and peace.

To prevent the harm inevitable from such censorship, the federal government should devise legislation that protects real secrets, along with the right of all citizens to speak freely. Since the president won't do so, Congress should.●

● Mr. HUDDLESTON. Mr. President, the amendment offered by Senator MATHIAS and Senator EAGLETON to suspend until April 15, 1984, the prepublication review requirements of the recent Presidential directive on national security information is an important action to prevent establishment of an unjustified system of censorship in this country.

As a member of the Select Committee on Intelligence, I have worked for several years to improve the practices and procedures for protecting the security of sensitive national-security information, consistent with the public's right to know as much as possible about their Government. Congress has a duty to insure that effective security and counterintelligence measures are taken to protect vital secrets. At the same time, we must safeguard against the overzealous pursuit of secrecy for its own sake, as a means of silencing dissent or covering up mistakes.

In the CIA and other components of the intelligence community, Federal employees are expected to assume the special obligation of submitting for classification review any writings on intelligence matters they may seek to publish after leaving the Government. This is necessary because of the exceptional nature of intelligence work, including the day-to-day exposure to details of intelligence sources and methods.

The Presidential directive last March, however, would extend this prepublication review system throughout the executive branch to officials whose access to classified intelligence reports is much more limited. These Government employees are primarily responsible for the development and implementation of military, economic, law enforcement, foreign policy, and other decisions. When they leave Government we expect them to write and speak out on the policy issues that confront our Nation. Sharing their experience and viewpoints with the American people is absolutely essential for the public to make informed judgments.

Extending to these officials the system developed for the CIA and other intelligence agencies poses, therefore, a grave threat to the process of free and open debate in our democratic society. Prepublication censorship inevitably chills the freedom of expression. Any censorship system involves subjective judgments, and in this case the judgments of one administration will govern the writings of the officials of previous administrations.

Before the Presidential directive is implemented, the Congress must have an opportunity to assess fully the alleged benefits and the anticipated risks of wider censorship of the writings of former officials. Thus, I am pleased that Senators MATHIAS and EAGLETON, along with others, have proposed legislative action to suspend the prepublication review provisions of the Presidential directive to allow further consideration of this issue by the Congress.●

Mr. LEVIN. Mr. President, I would like to take this opportunity to express my support for the amendment of Senators MATHIAS and EAGLETON to S. 1342. This amendment would delay for 6 months the implementation of any new Federal employee security measures as provided by Presidential National Security Directive 84.

On March 11, 1983, the President issued a national security directive calling for the implementation of certain security measures, which according to the administration are designed to "strengthen our efforts to safeguard national security information from unlawful disclosure." One of the measures called for by the directive is the use of a prepublication review agreement. Under the directive's plan, tens of thousands of Federal employees will be required to submit for prepublication censorship, a wide range of their works, including works of fiction, that they intend to disclose to the public.

The agreement itself is very broad and vague. It very loosely defines the type of information that will be censored and sets few limits on the nature of materials that must be submitted for reveiw. Specifically, paragraph 5 of the agreement states in pertinent part:

* * * I hereby agree to submit for security review by the Department or Agency last granting me either a security clearance or an SCI access approval all materials, including works of fiction, that I contemplate disclosing to any person not authorized to have such information or that I have prepared for public disclosure, which contain or purport to contain:

(a) any SCI, any description of activities that produce or relate to SCI, or any information derived from SCI;

(b) any classified information from intelligence reports or estimates; or

(c) any information concerning intelligence activities, sources or methods.

Provision 5(c) in particular, provides the Government with enormous latitude to limit the first amendment rights of tens of thousands of individuals, and censor information that is in no way classified. This provision gives the Government the authority to censor wholly fictional works and thus the ability to police the creativity of citizens of this country. Furthermore, the agreement is forever binding on the individual, and he or she must submit their work for Government censorship long after leaving Government office.

This unprecedented move by the administration is unjustified. Although this new arrangement along with the other measures of the directive will significantly alter the present Federal employee security program, by the administration's own admission, in the past 5 years, under the present system, there have been only one or possibly two unlawful disclosures which were in any way damaging to our national security.

Never before has our Government attempted to so severely restrict the flow of information between Government employees and the people they serve. Nevertheless, the administration is seeking to hurriedly implement this new program. However, time is needed to investigate whether there is a need for this type of program and determine what the full impact of this new censorship will be. Furthermore, additional time will give the administration an opportunity to correct the defect in the directive.

Censorship of Government information is a very serious matter that should be dealt with in a reasonable and cautious manner. There is no pressing need to alter the present nature of our Federal employee security program at this time, but there is a pressing need to thoroughly investigate this matter before a vast new program of the prepublication censorship is begun.

For this reason, I support the measure of Senators MATHIAS and EAGLETON to delay implementation of Presidential National Security Directive 84.

● Mr. BINGAMAN. Mr. President, as a cosponsor of the amendment offered by Senators EAGLETON and MATHIAS, I urge my colleagues to support its adoption. The amendment will delay the implementation of one particular section of the National Security Decision Directive (NSDD) 84 which was issued by President Reagan in March 1983. The amendment will temporarily prohibit until April 15, 1983, the enforcement, issuance, or implementation of that portion of the Presidential directive requiring prepublication review of the writings of former officers and employees of the Government. Although I am sensitive to the need to prevent leaking of classified information, I am concerned with the means called for in the President's directive. The entire directive and the prepublication review section, in particular, raise serious questions, in my opinion.

National security leaks have occurred in this and previous administrations. It has been asserted that such leaks have often come from high level officials within each administration. In this administration, the focus has been on the adequacy of current regulations. President Reagan on March 11, 1983, issued a Presidential directive on "Safeguarding National Security Information." The directive is intended to strengthen efforts to protect national security information from unlawful disclosure. The directive is based on the recommendations of an interdepartmental group chaired by the Attorney General of the United States.

As stated in existing Presidential Executive Order 12356, only that information whose disclosure would harm the national security interests of the United States may be classified. The current regulations do not adequately address unlawful disclosure. In order to strengthen security efforts the President has directed executive branch agencies to take additional steps to protect against unlawful disclosures of classified information. The major provisions of the new directive would require Federal agencies which handle classified information to adopt internal procedures to safeguard against unlawful disclosure of such information by: First, requiring persons with access to classified information to sign nondisclosure agreements, as a condition of access, which would stipulate that their writings, during their Government service and after, would be subject to prepublication review by the Government; second; requiring that "appropriate policies shall be adopted to govern contracts between media representatives and agency personnel"; and third, requiring employees "to submit to polygraph tests, when appropriate"; and stating that refusal to do so would permit agencies to determine "appropriate adverse consequences."

These extraordinary measures have caused much concern in the Congress and among the general public. Several days of hearings have been held by the House of Representatives and the Senate. The inherent unreliability of polygraph examinations has been pointed out. The expanded reliance on polygraph envisioned by the directive has been questioned. Dr. John F. Beary, the Assistant Secretary for Health Affairs in the Pentagon, which would be the largest user of the polygraph technique, has charged that the polygraph "misclassifies innocent people as liars." In a memo to Defense Secretary Caspar W. Weinberger, Dr. Beary said that polygraph tests can be misleading in determining whether people are telling the truth. This and other concerns led Senator Jackson to offer an amendment in the Armed Services Committee which temporarily bars the lie-detector provision of the directive. This amendment was added to the Defense Authorization Act and prohibits the Department of Defense from taking adverse action against military or civilian employees based solely on lie-detector tests or refusal to submit to them. The bar is effective until April 15, 1984.

On September 13, 1983, the Senate Governmental Affairs Committee, of which I am a member, also held an oversight hearing on the directive. At this hearing we received extensive testimony which reaffirmed concern over the use of polygraphs as well as the prepublication review provision of the directive.

I am extremely concerned with the direct or indirect implications of the requirement in the directive calling for prepublication review of the writings of both current and former Government employees. This extraordinary measure, in my opinion, not only would be time consuming, it would be open to possible misuse if used to suppress unpopular or disfavored political ideas, and it raises serious first amendment constitutional questions. This provision applies to books and memoirs, speeches, book reviews, scholarly papers, and even fiction, including novels and short stories. It also covers virtually all employees in an agency from the Secretary down to career civil servants. I am very concerned with the possible misuse of such prepublication review as a form of censorship and suppression of freedom of speech. Furthermore, I believe the requirement is misdirected and will be practically impossible to effectively enforce.

These concerns were also expressed by Lloyd Cutler, former counsel to President Carter and a prominent attorney. In testimony before the Governmental Affairs Committee, Mr. Cutler, stated that:

> The directive goes much too far and, as regulation in this area of speech should, does not strike a reasonable and satisfactory balance between the Government's need for review and a present or former official's, especially a policy official's right to speak out on matters of public interest.

These and other sentiments were echoed in an article which appeared in the New York Times Magazine on September 25, 1983, entitled, "The New Effort to Control Information." In this article Floyd Abrams, a noted constitutional scholar makes a very strong case against the broad prepublication review requirement called for in the President's directive. Mr. Abrams attacks the requirement as unparalleled peacetime censorship, "at odds with the concept that widespread dissemination of information from diverse sources furthers the public interest—hostile to the basic tenent of the first amendment"; and as a whole, a blatant act by the Reagan administration, which seems "obsessed with the risk of information, of its potential for leading the public to the 'wrong' conclu-

sions," to permit the Government itself to decide what information about its conduct is 'meaningful.'" Without objection, I ask that a copy of this article be made a part of the RECORD following my remarks.

Leaking sensitive information can be dangerous and should be prevented if at all possible. I welcome the President's attention and interest. I believe Congress also has a responsibility for safeguarding sensitive and classified information and it is appropriate to review the new Presidential directive. In the scope of such a review certain questions which have been raised regarding the directive should be fully considered.

The new directive calls for what has been described as extraordinary measures which could impact very seriously on the working conditions in the Federal Government, the legitimate flow of information from the Government to the public, and whether Congress has sufficient access to Government decisionmakers to engage in meaningful oversight. I also question its overall effectiveness.

While I support taking stronger action against those who intentionally leak classified information to harm the Nation, I believe we also have a responsibility to insure that the measures intended to be taken to prevent such disclosure do not violate constitutional rights and civil liberties. Violators of existing statutes should be prosecuted to the fullest extent. Where necessary such statutory protections should be improved.

The expanded use of and reliance on lie-detector tests is highly questionable. Serious objections have long been raised about reliability of polygraph examinations, both in general and in the context of national security investigations. The use of prepublication review by the Government of a former employee's writing is far reaching, would be extremely time consuming, and could easily be misused to stifle disfavored views.

I believe it is appropriate for Congress to further review these concerns in the context of a public hearing to discuss the background and reasons for the new Presidential directive, the intended results, and the concerns raised. While hearings have already been held in the Governmental Affairs Committee, I think it would be appropriate for additional hearings to be held by the Armed Services Committee on the impact of the polygraph requirement upon the Department of Defense. The conference report on the Department of Defense Authorization Act for 1984 calls upon the Committee on Armed Services and Committee on Governmental Intelligence to hold hearings prior to April 15, 1984, on the use of polygraph examinations in the Department of Defense. Additional hearings should also be held by the Governmental Affairs Committee on the prepublication review requirement.

In order to allow for further congressional and public scrutiny, I urge my colleagues to support this amendment, which temporarily blocks the implementation of the prepublication review section of the President's directive consistent with action already taken regarding the expanded use of polygraph examinations.

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

[From the New York Times Magazine, Sept. 25, 1983]

THE NEW EFFORT TO CONTROL INFORMATION

(By Floyd Abrams)

A month ago today, the Reagan administration publicly released a contract that has no precedent in our nation's history. To be signed by all Government officials with access to high-level classified information, it will require these officials, for the rest of their lives, to submit for governmental review newspaper articles or books they write for the general reading public.

The contract will affect thousands of senior officials in the Departments of State and Defense, members of the National Security Council staff, senior White House officials and senior military and Foreign Service officers. Its purpose is to prevent unauthorized disclosure of classified information, but its effects are likely to go far beyond that. It will give those in power a new and powerful weapon to delay or even suppress criticism by those most knowledgeable to voice it. The new requirement, warns the American Society of Newspaper Editors, is "peacetime censorship of a scope unparalleled in this country since the adoption of the Bill of Rights in 1791."

The subject of hearings earlier this month of a subcommittee of the Senate Governmental Affairs Committee, this latest attempt at information control by the Reagan Administration is part of a far more sweeping policy. It is one unique in recent history—clear, coherent and, unlike that of some recent Administrations, not a bit schizophrenic. More important, it seems at odds with the concept that widespread dissemination of information from diverse sources furthers the public interest. In fact, it appears to be hostile to the basic tenet of the First Amendment that a democracy requires an informed citizenry to argue and shape policy.

In the two and a half years it has been in power, the Reagan Administration has:

Consistently sought to limit the scope of the Freedom of Information Act (F.O.I.A.).

Barred the entry into the country of foreign speakers, including Hortensia Allende, widow of Chilean President Salvador Allende, because of concern about what they might say.

Inhibited the flow of films into and even out of our borders; neither Canada's Academy Award-winning "If You Love This Planet" nor the acclaimed ABC documentary about toxic waste, "The Killing Ground," escaped Administration disapproval.

Rewritten the classification system to assure that more rather than less information will be classified.

Subjected governmental officials to an unprecedented system of lifetime censorship.

Flooded universities with a torrent of threats relating to their right to publish and discuss unclassified information—usually of a scientific or technological nature—on campus.

So far, these efforts to control information have been noticed by those most directly affected, but by few others. The Administration's policies, says the American Civil Liberties Union, have been "quiet, almost stealthy, difficult to see and therefore hard to resist." There is also the feeling among many Americans that the actions of this Administration are less-than-threatening since they are fueled by the deeply felt conservative ideology of Ronald Reagan and not from the anger or meanness of spirit that, many feel, characterized the Nixon Presidency. Furthermore, wrote The Time's columnist Anthony Lewis, these actions "have had little attention from the press, perhaps because the press is not their principal target."

However little noticed its actions have been, this is an Administration that seems obsessed with the risks of information, fearful of both its unpredictability and its potential for leading the public to the "wrong" conclusions. Its actions are rooted in a view of the Soviet Union, in the President's words, as an "evil empire"—a view undoubtedly bolstered by the destruction by the Russians of a South Korean commercial jet on Sept. 1. It is a view that not only focuses on security but also equates security with secrecy, and treats information as if it were a potentially disabling contagious disease that must be controlled, quarantined and ultimately cured.

The administration's distrust of the Freedom of Information Act was evident from its first days in power. Passed in 1966, the act—which has come to symbolize openness in government—permits citizens to request documents detailing Government activities. It resulted in news articles revealing, among other instances of governmental wrongdoing, the My Lai massacre, the F.B.I.'s harassment of domestic political groups, and the C.I.A.'s surveillance of American college campuses. It also made possible such diverse books as "Perjury: The Hiss-Chambers Case," by Allen Weinstein; "The Fourth Man," by Andrew Boyle (which in turn led to the identification of Anthony Blunt as a one-time Soviet spy), and "Sideshow: Kissinger, Nixon and the Destruction of Cambodia," by William Shawcross. Mr. Shawcross, a British writer, has called the act "a tribute to the self-confidence of American society."

Contending that the F.O.I.A. had weakened law-enforcement and intelligence agencies and become burdensome to implement, the Administration made enactment of major amendments limiting the scope of the act a matter of high priority. One proposal, not adopted by Congress, sought a total exemption of the C.I.A. from the provisions of the act, even though the agency had won every case in which it sought not to disclose properly classified information.

Unable to obtain Congressional approval of its major amendments, the Administration resorted to a different tactic. Under the F.O.I.A., classified information is denied the public unless it can be shown in court that the material, according to the prevailing guidelines, was improperly classified in the first place. By changing the classification guidelines—something the President may do without Congressional approval—the Administration avoided the risk that the courts would order the release of such documents.

Early this year, the Administration took additional steps—again, ones not requiring Congressional approval. The Department of Justice reversed the policy formerly in effect of being "generous" in waiving the payment of processing fees to public-interst organizations seeking information under the act. Sternly phrased legalistic criteria were substituted, barring the waiver of fees

unless the Government first decided that, among other things, the information released "meaningfully contributes to the public development or understanding of the subject." The effect of the new guidelines was to permit the Government itself to decide what information about its conduct—or misconduct—was "meaningful."

The Administration also moved into other areas of information control. Under the McCarran-Walter Act, adopted over President Harry S. Truman's veto in 1952, foreigners may be denied visas to visit the United States if a consular officer or the Attorney General "has reason to believe" the prospective visitor seeks "to engage in activities which would be prejudicial to the public interest." Given such sweeping statutory authority, an Administration, if it chooses to, can give its ideological dictates free rein.

Invoking this act, the Reagan Administration barred a wide range of foreign speakers. Mrs. Allende was denied entrance to the country to speak. So were the Rev. Ian Paisley and Owen Carron, spokesmen for, respectively, the radical Protestant and Roman Catholic groups in Northern Ireland. Julio Garcia Espinosa, Deputy Cultural Minister of Cuba, was barred from attending a film festival in Los Angeles because his attendance, according to a State Department spokesman, "could be prejudicial to U.S. public interests."

Last year, the Justice and State Department prevented groups of foreigners from attending a United Nations disarmament session. When protests were made to Kenneth L. Adelman, then deputy United Nations delegate, about the denial of visas to hundreds of Japanese who wished to attend the session, his response was: "We have absolutely no legal obligation to let Tommy Bulgaria or anyone else from Soviet-front groups" enter the country.

Motion pictures have not escaped Administration scrutiny. Since its adoption in 1938, the Foreign Agents Registration Act has required any film that is produced under the auspices of a foreign country and that is political propaganda to be so labeled unless the film is "not serving predominantly a foreign interest."

In the single most expansive, and best known, interpretation of the statute by any Administration, the Department of Justice last year sought to require three films produced by the National Film Board of Canada to be labeled as political propaganda. One of the films, "If You Love This Planet," subsequently won an Academy Award. The Department of Justice later summarized the film's "political propaganda" message this way: "Unless we shake off our indifference and work to prevent nuclear war, we stand a slim chance of surviving the 20th century."

Why a film with such a message was considered political propaganda has yet to be satisfactorily explained. Why it was considered to be serving "predominantly a foreign interest" also remains unexplained. On May 23, 1983, Judge Raul A. Ramirez of the United States District Court for the Eastern District of California entered a preliminary injunction restraining the Justice Department from requiring registration of the three films.

"The court," concluded Judge Ramirez, "is having great difficulty in ascertaining how any legitimate Federal interest is espoused or advanced by the classification of documents and/or films such as those before the court as propaganda. It makes no common sense whatsoever when we are dealing in a realm where the entire purpose is the dissemination of free ideas throughout the citizenry of the United States, so that citizens can bounce ideas off of each other to ascertain the truth."

American-made documentary films destined for foreign audiences have not escaped scrutiny either. Under an agreement adopted by a United Nations conference in 1948, film makers pay no American export or foreign-import duties if the United States Information Agency (U.S.I.A.) certifies that they are primarily intended to "instruct or inform" rather than to propagandize.

It is the U.S.I.A. that decides on which side of the line—"information" or "propaganda"—a film falls. It, in turn, relies on the Government agency with expertise in the area to advise it. Under this Administration, as revealed in the July-August issue of American Film magazine, the result has been that the acclaimed 1979, ABC documentary about toxic waste, "The Killing Ground," was denied a certificate. The Environmental Protection Agency (E.P.A.) concluded last year that the film was "mainly of historical interest" since the United States "has made great progress in managing hazardous wastes." "The Killing Ground" had won two Emmys, first prize at the Monte Carlo Film Festival and been nominated for an Academy Award. But to its E.P.A. reviewers, "the tone of 'The Killing Ground' would mislead a foreign audience into believing that the American public needed arousing to the dangers of hazardous wastes [when] this is no longer the case."

So intently has the Administration focused on the perils of disclosure of information that it has sometimes failed to distinguish between information previously made public and that which has been kept secret. When the unaccompanied luggage of William Worthy Jr., an American journalist, and his two colleagues arrived from Teheran at Boston's Logan International Airport in December 1981, it included 11 volumes of American Embassy documents said to have been seized by Iranians during the takeover of the embassy, reproduced by them and sold freely on the streets of Teheran. The document had been secret. By the time the three Americans obtained a copy, they could hardly have been so to any intelligence agency in the world.

Nevertheless, the volumes were impounded by the F.B.I. and Customs officials at the airport. A year later, after the journalists had sued the Government, the two agencies agreed to an out-of-court settlement of $16,000.

Of all the policy changes of the Reagan Administration from that of its predecessors, the ones that may have the most lasting impact are the decisions to classify more information and to subject Government officials to lifetime prepublication review.

This occurred in three stages, the first taking place eight months after the inauguration of the new President. One of Attorney General William French Smith's first major acts in 1981 was to revoke Justice Department guidelines issued just a year before concerning the United States Supreme Court decision in Snepp v. United States. In 1980, the Justices had upheld, by a 6-3 vote, a C.I.A. requirement that its employees agree to lifetime prepublication review by the agency of their writings to insure that no classified material was revealed. The Supreme Court concluded that someone subject to such an agreement who failed to submit his writings, even of unclassified information, breached the agreement. Frank Snepp 3d, a former C.I.A. analyst of North Vietnamese political affairs, was obliged to turn over to the Government all of his earnings from his book "Decent Interval."

The Supreme Court ruling contained broad language that could be interpreted to permit the same prepublication review procedure to be applied, as well, to the tens of thouands of non-C.I.A. employees who also have access to classified information. The Government had not sought that degree of power in the Snepp case. Nor is it clear that the Court intended that result.

Aware that in hands insensitive to First Amendment rights the Snepp opinion might be overextended, Attorney General Benjamin R. Civiletti issued a set of guidelines. They called for the Government to consider several alternative actions before rushing to Court to obtain injunctions against publication of unintentional and possibly meaningless disclosures of information. Among the factors to be weighed was whether the information already had been made widely available to the public and whether it had been properly classified in the first place.

In revoking the Civiletti guidelines, Attorney General Smith explained that his department sought to avoid "any confusion as to whether the United States will evenhandedly and strenuously pursue any violations of confidentiality obligations." However, no example was offered of any harm actually or even potentially caused by the Civiletti guidelines.

The second step taken by the Administration related to the classification system itself. The system had long been criticized for its absurd overinclusiveness. Between 1945 and 1963 alone, more than 500 million pages of documents has been classified. By 1973, 160 million pages of classified World War II documents still had not even been reviewed to determine if they should be made public. President Richard M. Nixon once observed that even the White House menu was classified.

A 1978 Executive Order signed by President Jimmy Carter attempted to limit the amount of information unnecessarily kept from the public. Government officials were ordered to consider the public's right to know in classifying information and were told to use the lowest level of clearance when in doubt. Clarification of information was permitted only on the basis of "identifiable" potential damage to national security.

By an Executive Order signed on April 2, 1982, President Reagan reversed each of the critical components of the reforms adopted four years earlier. Government officials were no longer required even to consider the public's right to know when they classified information. When in doubt, Government officials were to classify material at the highest, not lowest, level of secrecy. The requirement that potential harm to national security be "identifiable" was abandoned.

The third step was taken on March 11, 1983. That day, a Presidential directive was issued, requiring a wide range of additional present and former Government officials to obtain clearance from the Government before publishing materal that might be classified. The Justice Department document detailing the directive cited the Snepp decision as the basis for the requirement.

The new presidential order and the Aug. 25 "agreement" released by the Administration that implements it establish a category of information described as "sensitive compartmented information" (S.C.I.)—classified information that is "subject to special access and handling requirements."

Richard K. Willard, Deputy Assistant Attorney General, has defended the Presidential directive by saying that the "prepublication review program provides a reasonable method of preventing disclosures by those employees who have had access to the most sensitive kind of classified information."

However, according to the Justice Department document explaining the directive, prepublication review will be required of all books (fiction or nonfiction), newspaper columns, magazine articles, letters to the editor, pamphlets and scholarly papers by officials with access to S.C.I. materials, so long as what is written describes activities that relate to S.C.I., classified information from intelligence reports, or "any information"—classified or not—"concerning intelligence activities, sources or methods."

Under the new policy, there is no need to submit for prepublication review material consisting "solely of personal views, opinions or judgments" on topics such as "proposed legislation or foreign policy." But the Catch-22 is this: If the opinion even implies "any statement of fact" that falls within the range of review, then the material must be cleared by the Government before it is published. Since most opinions worth expressing about American defense or intelligence policies at least imply some proscribed facts, what the new requirement amounts to is a massive intrusion of the Government into the right of former officials to speak and of the public to listen.

Responding to the initial announcement in March, the Society of Professional Journalists, Sigma Delta Chi, called the directive an "ill-conceived proposal" that is "as troubling as it is sweeping. . . . Taken with previous actions by the Administration to stem the flow of Government information to the people, the cumulative effect is a major retreat from this country's commitment to open government."

So breathtaking is the scope of the Presidential directive that if it had been in effect before this summer, many articles published in this magazine could not have been printed without prior governmental clearance. An article last year by Gen. David C. Jones, former chairman of the Joint Chiefs of Staff under Presidents Carter and Reagan, criticizing the current defense establishment, would have had to be cleared by the very establishment General Jones was denouncing. This year, two articles—one by Earl C. Ravenal, a Defense Department official under President Johnson, urging withdrawal of American forces around the world, and the other by Leslie H. Gelb, the national-security correspondent for The New York Times who had served in the Johnson Administration, on arms control—criticized policy decisions made by those who would be reviewing them.

The effect of the directive is this: Those people most knowledgeable about subjects of overriding national concern will be least able to comment without the approval of those they wish to criticize.

Changes in law to assure that far more information will be kept from the public are only one aspect of the Reagan Administration's new era of secrecy. Another, far less known, has pitted the Administration against much of the country's university community.

From its first days, the Administration has been concerned that the fruits of American technology have been flowing too freely abroad. "Publication or certain information," complained Adm. Bobby R. Inman, then deputy director of the C.I.A., "could affect the national security in a harmful way." Deputy Secretary of Defense Frank C. Carlucci similarly warned that the Soviet Union was engaged in an "orchestrated effort" designed to gather the "technical information required to enhance its military posture."

The problem that has been vexing the Administration has not been one of classified information. To avoid governmental interference in the open exchange of views at universities, many leading universities have refused to engage in any classified research. The problem has been with material that is not classified at all.

Only a month after President Reagan took office, the president of Stanford University, Donald Kennedy, forwarded a letter to Secretary of State Alexander M. Haig Jr., Secretary of Defense Casper W. Weinberger and Secretary of Commerce Malcolm Baldrige. Written by Dr. Kennedy and the presidents of California Institute of Technology, Massachusetts Institute of Technology, Cornell University and the University of California, the letter expressed concern about Administration interpretation of two statutes.

The university presidents observed that the International Traffic in Arms Regulations and the Export Administration Regulations, which had "not until now been applied to traditional university activities," seemed about to be interpreted so as to inhibit or bar the exchange of unclassified information, the publication of such material, as well as its use in classroom lectures when foreign students were present.

"Restricting the free flow of information among scientists and engineers," the university presidents urged, "would alter fundamentally the system that produced the scientific and technological lead that the Government is not trying to protect and leave us with nothing to protect in the very near future."

The Administration's response was made more than four months later in letters from James L. Buckley, Under Secretary of State for Security Assistance, Science and Technology, and Bohdan Denysyk, Deputy Assistant Secretary for Export Administration of the Department of Commerce. Both tried to assuage the concerns of the university presidents. Neither could fully succeed in doing so. Both letters assured the university presidents that no "new" construction of law was being imposed by the Administration, but the letters were so qualified that it remained unclear just what unclassified technical data were deemed by the Administration to be too sensitive to be taught. Meaningful clarification has yet to be received.

What has been received by universities is a series of letters forwarded from the State and Commerce Departments suggesting that ordinary teaching of unclassified materials may be considered an "export" within the meaning of laws barring the exporting of secret technology. If so, the universities might be subject to civil or even criminal sanctions.

In 1981, for example, in a letter similar to that sent to universities around the nation, the then State Department exchanges officer, Keith Powell 2d, asked the University of Minnesota to restrict the academic activities of Qi Yulu, a Chinese exchange student, including denying him access, in the area of computer-software technology, "to unpublished or classified Government-funded work." Federal law-enforcement officials also visited the university to emphasize the need for the restrictions.

In a blistering response, the University of Minnesota's president, C. Peter Magrath, pointed out to Mr. Powell that since the university refused to accept classified Government research, scholars from China would not have access to any such material. "We have all kinds of unpublished Government-funded research all over the campus." Dr. Magrath went on, "your proposal would restrict him from access to all of it."

Mr. Powell has asked that the Government be informed prior to any visits of Qi Yulu to any industiral or research facilities. "I can only interpret this," wrote Dr. Magrath, "to give us the choice of confining him to the student union or contacting you several times a day about his campus itinerary. . . . Both in principle and in practice, the restrictions proposed in your letter are inappropriate for an American research university." The proposed restrictions, Dr. Magrath concluded, "can only have a chilling effect upon the academic enterprise. . . ."

Some foreign scholars have not been able to come to this country because of Administration demands that limits be placed on their academic work while they were here. Cornell Univerisity, for example could not invite a Hungarian scientist specializing in electronic circuitry to its campus after the Commerce Department stipulated that the scientist could only receive information in classroom situations (seminars of private discussions being forbidden) and that he could not be given prepublication copies of research papers. Similarly, when Stanford University was advised that a Russian scholar in robotics—who had been invited to this country by the National Academy of Sciences—could not have general access to univerity facilities (all of which were of unclassified research), the visit was canceled.

The Government's activities have not been limited to threatening university administrators with sanctions. A year ago, the Defense Department prevented the publication of about 100 unclassified scientific papers at an international symposium on optical engineering in San Diego. Only hours before the long-planned convention was to begin, the department sent a telegram warning that any presentation of "strategic" information might be a violation of law.

As reported in Science News magazine, the Government's censorship action appeared "to be unprecedented in [its] timing, in the large number of papers removed and in the scope of the papers' content." Defense Department officials felt their actions reflected "a greater sensitivity and a tightening up on what can be released in an international forum, particularly one that involves the Soviets."

But to the scientific community, the Administration's action was indefensible. In a letter to Secretary of Defense Weinberger, Victor S. Stone, president of the American Association of University Professors, expressed "profound concern" at the Defense Department move. "To restrain the dissemination of unclassified scientific knowledge," the letter said, "is to restrict academic freedom, which is of fundamental importance to our entire society."

The Department of Energy (D.O.E.) earlier this year weighed in with its own proposal that continued public dissemination of certain already published "unclassified but sensitive information" about nuclear facilities be prohibitied. There can be no quarrel with its purpose—to frustrate the efforts of terrorist organizations to produce nuclear weapons or sabotage nuclear facilities. But the proposed rules are so vague (permitting the D.O.E. to withhold almost any information about nuclear facilities) and so unlikely to work (once information is public it is all but impossible to make it "secret" again) that an extraordinary diverse array of groups—from state officials, universities and public-interest organizations to libraries, Indian tribes and unions—have questioned them, either in testimony given in Washington this summer or in letters to the D.O.E.

The Oil, Chemical and Atomic Workers International Union pointed out that the D.O.E. proposal would prevent "the public, workers and the families of workers from protecting themselves against unnecessary exposure and the effects of exposure to ion-

izing radiation." Similar objections relating to health and safety were voiced by environmental groups and on behalf of Indian tribes, whose reservations are near D.O.E. nuclear installations.

Perhaps the most telling response was that of Hugh E. DeWitt, a nuclear scientist at the Lawrence Livermore National Laboratory. The very notion of "Unclassified Controlled Nuclear Information," Dr. DeWitt wrote, would "fit neatly into the mad world described by George Orwell in his book '1984.'" The new category of information "simply gives Government officials another very broad method to hide their own mistakes and keep information from the American people."

Undoubtedly, some information should be kept secret. The design of weapons, the intricacies of codes, confidences exchanged with foreign leaders and other governmental information that is vital to the security of this nation are and should remain classified. To that extent, the Reagan Administration's concern about the disclosure of information is not in itself objectionable.

Nor is the Reagan Administration alone in taking actions that restrict freedom of information. The McCarran-Walter Act, for instance, was misued by other Administrations to bar speakers with disagreeable views from entering the country. In 1980, the Carter Administration blocked the entry into the United States of the prominent Italian playwright and actor Dario Fo because, as one State Department official phrased it, Mr. Fo "never had a good word to say" about the United States. (This year, the Reagan Administration, too, denied Mr. Fo an entry visa.)

The Intelligence Identities Protection Act, a law signed by President Reagan banning disclosure of the names of individuals invoved in some way with the C.I.A., even if they had committed criminal acts under the laws of this country, had been drafted by the Carter Administration. Characterized by the University of Chicago law professor Philip B. Kurland as "the clearest violation of the First Amendment attempted by Congress in this era," it remains a stain on the constitutional records of both Administrations.

Nonetheless, the information policies of this Administration are radical and new. The across-the-board rejection of the values of information is unprecedented. So is the ease with which those values have been overcome.

That all this has occurred to little public notice and only slight public concern stems in part from the personal affability of the President and the lack of malevolence of his aides. If anything, they are more likable and less cynical than is the Washington norm.

The Administration has been fortunate that each aspect of its policies has usually been considered separately. University administrators have understandably focused on threats to universities; labor unions have naturally concentrated on threats to the health of their members; the press has too often limited its focus on its right to report the news. One of the few exceptions has been the American Civil Liberties Union, which has challenged the actions of the Administration both in the courts and in Congress.

Those actions raise almost endless legislative and constitutional issues. It is clear, for example, that the President may lawfully change the classification system. But Congress, if it chooses, may frustrate the Administration's efforts to narrow the scope of the Freedom of Information Act. Legislation proposed by Senator David Durenberger, Republican of Minnesota, and six other Senators would do so by providing that even properly classified information will be unavailable to the public under F.O.I.A. only when the disclosure of the information "could reasonably be expected to cause identifiable harm to national security" and when "the need to protect the information outweighs the public interest in disclosure."

In other areas, Congress may, and probably should, amend the McCarran-Walter Act to delete the sweepingly discretionary language that has permitted the State Department to deny American audiences the chance to hear and judge for themselves those foreign speakers the Administration deems objectionable. When President Truman vetoed the bill in 1952, he warned that "seldom has a bill exhibited the distrust evidence here for citizens and aliens alike." History has proved him right.

Congress may, and probably should, also amend the Foreign Agents Registration Act to delete the requirement of labeling foreign films as "political propaganda." Representative Robert W. Kastenmeier, Democrat of Wisconsin, has proposed such legislation.

Still other decisions are within the control of the courts in their role as protectors of constitutional rights. Some aspects of the Reagan Administration's information policy seem highly unlikely to pass First Amendment muster. It is one thing to say that C.I.A. agents such as Frank Snepp must abide by a contract of silence imposed upon them in the absence of prior governmental clearance. It is quite another to say that the First Amendment could conceivably tolerate the sweeping new restrictions on freedom of expression of thousands of former Government officials not involved with the C.I.A.

Similarly, it seems most unlikely that disclosing unclassified material previously made public can, consistent with First Amendment principles, be made illegal. When those efforts are directed at universities that have historically received the special First Amendment protection of academic freedom to assure the free exchange of ideas, the chances that any prosecution could succeed seem all the less likely.

There remains the question of motive. Why has this Administration gone so far, so fast? Why has it adopted new Government-wide policies limiting the dissemination of information without any showing that harm had been caused by policies previously in effect?

One answer may be easily rejected. It is not because harmful leaks of information have increased in recent years. Deputy Assistant Attorney General Willard, testifying before the House Subcommittee on Civil Rights this spring, observed that "we have never suggested that it's a problem that has increased greatly in severity in recent years. It's always been a problem." The same day that Mr. Willard testified, Steven Garfinkel, the director of the Government's Information Security Oversight Office (I.S.O.O.)—which is responsible for the security of all executive-branch agencies involved with classified materials—acknowledged that in the past three years only about "half a dozen" leaks had even been reported to his agency.

What, then, has prompted the Administration's exuberant efforts in this area? In part, it is because the Administration seems not to give much more than rhetorical credit to the concept that the public has a serious and continuing interest in being informed.

There is also a matter of tone. Many of the changes in the classification system are the product of anger by the intelligence community at the Carter Administration. I.S.O.O. has explained that one reason the classification system was rewritten was because the rules previously in effect sounded too "apologetic." Changes in language between that of the Carter Administration ("Information may not be considered for classification unless it concerns . . .") and that of the Reagan Administration ("Information shall be considered for classification if it contains . . .") were justified as the substitution of "positive" words for "negative" ones.

Beyond this, there lies something far deeper. The Administration is not only generally conservative; its policy is rooted in the concern that Soviet armed might vastly outstrips that of this country and immediately imperils us. With such a world view, claims of national security seem invariably to outweigh any competing interests.

In one sense, there is a kind of logic to the Aministration's position. Assistant Attorney General Jonathan C. Rose, defending that position, has said that "freedom of information is not cost free; it is not an absolute good." Nor can we be sure what the costs will be. We cannot know what Mrs. Allende might have said had she been admitted to the country or what Qi Yulu may have learned on the University of Minnesota campus. We can hardly be sure that all unclassified information is harmless information. But if we are to restrict the spread of information because we cannot guarantee its harmless effects, we will have much restricting to do in the future.

We will also pay a high price for doing so. The "system that produced the scientific and technological lead that the Government is now hoping to protect" has been a basically open one. By threatening the openness of the process by which ideas are freely exchanged, the Administration threatens national security itself.

It also threatens the nature of American society. If the Russian attack on the Korean jet reinforces the Administration's view about Soviet behavior, it also accentuates the differences between the two countries. It is in the nature of Soviet society to suppress information and to punish those who reveal it. It is in the nature of our society to reveal information and to punish those the information indicates should be punished. The Reagan Administration's moves toward a less open society are contrary to our most deeply felt traditions.

There are, as well, longer-range risks in the creation of a new and pervasive apparatus of government secrecy. In relatively placid times, the apparatus may seem merely bothersome to those it touches. In less stable times, it can too easily be used to suppress information essential to the self-government of the country.

In the end, our society is based upon the judgment that the free exchange of information, except in those rare situations where openness will clearly lead to harm, is in the public interest. "Sunlight," Justice Louis D. Brandeis wrote, "is said to be the best of disinfectants; electric light the most efficient policeman."●

The PRESIDING OFFICER. Is there further debate?

Mr. MOYNIHAN. I move the amendment, Mr. President.

Mr. PERCY. I feel we are ready for a vote on this amendment now. There has been no call for a rollcall so I suggest we have a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. DENTON. I ask for a rollcall vote.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. DENTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PERCY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, I ask unanimous consent to temporarily set aside the Mathias amendment so we may take up one or more Dole amendments then to be immediately followed by the Mathias amendment.

Mr. SYMMS. Mr. President, reserving the right to object, and it is not my intention to object, are the yeas and nays ordered on the Mathias amendment yet?

The PRESIDING OFFICER. They are not.

Mr. SYMMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PERCY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it in so ordered.

Mr. PERCY. Mr. President, I withdraw my request that we set aside the Mathias amendment. I do not believe there are any further speeches to be given on that subject and we are ready for a voice vote on that amendment.

The PRESIDING OFFICER. The question is on the amendment.

Mr. DENTON. Mr. President, I object. I, in good faith, yielded with the understanding that the amendment was being set aside, which had been articulated by the floor managers.

Mr. SYMMS. Mr. President, I ask for the yeas and nays on the Mathias amendment.

The PRESIDING OFFICER, Does the Senator from Alabama yield for that purpose?

Mr. DENTON. Yes.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate?

Mr. MOYNIHAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PERCY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, in order to accommodate a number of our colleagues that did not know there was a rollcall vote coming up at this time, I ask unanimous consent to temporarily set aside the Mathias amendment and vote on the Mathias amendment and take up one or more amendments to be offered by the distinguished Senator from Kansas.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. Mr. President, the Senator from Kansas has at least maybe two or three amendments. I am not certain in which order they will be offered, because it gets into this new Endowment for Democracy program, this newest travel agency that we are setting up where the Government pays all the travel expenses and gets no results from the endowment ifself.

AMENDMENT NO. 2379

(Purpose: To deny compensation and travel expenses to any member of the Board who is an officer or employee of the United States)

Mr. DOLE. Mr. President, I will first send to the desk the amendment that would try to limit travel. I do not know of any objection to this amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an amendment numbered 2379 to amendment No. 2344.

On page 5, between lines 7 and 8, insert the following:

(d)(1) Notwithstanding subsection (c), no member of the Board, officer or staff member of the Endowment, other than an elected member of Congress, shall be entitled to receive compensation or shall be allowed travel expenses for travel made in connection with the Endownment while such person is serving as on officer or employee of the United States.

Mr. DOLE. Mr. President, I do not know of any objection to this amendment. This is not one of the major amendments. It is just to try to make certain that we do not have different members of staff who are on the staff of different commissions who can travel on that commission, then travel at USIA expense, and then travel on this new endowment program. It is just an effort to limit the staff travel and to make the staff member decide who he works for.

There is probably much worthwhile travel that staff members and elected Members make overseas. I am not criticizing that. I am not one who likes to travel that much. I think a lot of good comes from travel, and certainly staff members are as responsible, in most cases, as elected Members.

Elected Members have to justify their travel around the world, whether it is on official business or nonofficial business, or whatever, every time they run for reelection, because somebody is going to raise the question that there is a lot of travel going on that is not necessary.

The same is not true of staff. Let us face it, there are some staff who make a career out of traveling around the world as often as they can at taxpayers expense. I think the record would show that some break a record every year. They travel to so many countries this year and so many countries the next year.

What I am fearful of is we are going to have some of these professional travelers who have just found another way now to travel at taxpayer's expenses under this new Endowment for Democracy. That will be one more travel agency they can go and pick up a ticket and travel to some country they have not been to yet. We want them to see all the countries, but some have been to various countries seven or eight times with no real purpose.

It would seem to me that all this amendment does is simply says staff will not be reimbursed for their endowment travel by the endowment if they are otherwise employed by the Government. As I have indicated, elected Members are not included in this amendment because I hope that whatever travel we make from time to time—and some Members are required to do more than others, certainly members of the Senate Foreign Relations Committee have greater responsibilities worldwide than other Members, but that travel and the expense involved have to be justified from time to time at election time.

I hope that this amendment might be adopted. It might have some intact on those who might seek to use this new agency, if in fact it is created—it will be of highly doubtful value if it is—but if it is created, that at least we are going to have just another ticket window for somebody who wants to start seeing the world at taxpayers' expense.

The PRESIDING OFFICER. Without objection, the amendment will be in order.

Is there further debate?

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, the Senator from Kansas has made a compelling argument, as he always does. The managers of the bill would like to take a look at the amendment before we respond.

Let me ask the Senator from Kansas this question: If all travel is prohibited, would that not impinge upon the purposes for which the endowment has been created?

Mr. DOLE. The purpose of the amendment is if they are traveling with the endowment, they cannot be paid by another agency. I do not think it is unduly restrictive. It deals with making sure that someone either works for or travels for the endowment or some other taxpayer financed

entity—but not two or three such groups.

Mr. MATHIAS. In other words, what the Senator is getting at is people who are representing the endowment but also hold some other public office.

Someone who holds public office is not affected by the amendment.

Mr. DOLE. What I am getting at is there are some, and I am aware of some, who may belong to some commission, or some other agency, or some group who travel a great deal in that group, and now we are going to have this new source of travel, and if they cannot make it there, they will make it here, or maybe they will go on both. I am just trying to tighten it up.

If they are receiving compensation as an officer or employee of the United States, they cannot be reimbursed for their travel expenses in connection with the endowment.

Mr. MATHIAS. I think if it is clear that we are not prohibiting these people from carrying out their duties with the endowment but merely preventing a kind of sequential double compensation, that would make some sense. I take it that this amendment would prohibit drawing travel expenses from one agency for one trip and travel expenses from another agency for another trip.

I will defer to the ranking minority member of the Foreign Relations Committee.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. I would like to ask a question of the Senator from Kansas. What is the basic purpose of the amendment? The Senator says anybody traveling as a staff member of the endowment shall not be allowed to receive compensation from any other agency of the Government. What is the purpose?

Mr. DOLE. The purpose of the amendment, and I am reading it to see if it may be clarified, that I want to impose is that some staff of some other commission or some other agency who might be traveling in connection with the endowment is prohibited from receiving salary or travel expenses from the endowment.

There are some, and I do not want to get into too many specifics, who make a career out of traveling for various unrelated commissions, and they have just an open-ended ticket to travel the world at the taxpayers' expense.

Mr. PELL. In other words, the point is that somebody working for Uncle Sam should be able to travel for the branch of Government for which he works but not be paid by another branch.

Mr. DOLE. That is correct.

Mr. PELL. What would happen, for the sake of argument, with a member of the endowment who is also a staff officer and also a Reserve officer? I can remember as a Reserve officer a few years back I traveled to Austria and back at Government expense. Does that mean I could not be an employee of the United States or a staff member of the endowment? I do not think the Senator means that.

Mr. MATHIAS. I do not think the amendment does that.

Mr. DOLE. No the amendment would not do that.

I do not want somebody to be made an officer of the endowment so he can get a ticket. Let us face it, there are a lot of staffers around and, I assume, some Members of Congress who can go anywhere in the world. They know all the angles. They know all the loopholes. If you make them an officer or member of the board of the endowment, they have an open-ended travel agency at their disposal.

Mr. MATHIAS. Bags packed, will travel.

Mr. DOLE. For this commission they have one bag, for this commission they have another bag, and for another commission they have another bag. Sometimes they come to Washington to get their laundry done and pick up their mail.

Mr. PELL. A staff employee of the Senate could not receive reimbursement for expenses from the endowment?

Mr. DOLE. That is correct. There are plenty of places they can get tickets around here for travel, though we have tried to tighten it up, I must say. I do not want to prevent the normal functions of whatever we are creating, this new endowment.

Mr. MATHIAS. Let me advise the Senator from Kansas that there has recently been adopted a substitute amendment for title IV which makes some substantial changes in the arrangements of the endowment. For instance, officers of the endowment may not receive any salary or other compensation from any source other than the endowment during the period of their employment by the endowment.

Further, the revised statute provides that the endowment shall be a private, nonprofit corporation known as the National Endowment for Democracy, which is not an agency or establishment of the U.S. Government. As I said, the officers cannot receive any salary from any other source than the endowment. So by that logic, they could not be employees or officers of any other agency.

Mr. DOLE. Then does that take care of the problem we raise?

Mr. MATHIAS. I think it does take care of the problem because it precludes any Government official from being on the payroll of the agency.

Mr. DOLE. Does it prohibit any staff member from traveling courtesy of the American taxpayers through the endowment?

Mr. MATHIAS. It says:

> Nothing in this title shall be construed to make the endowment an agency or establishment of the United States Government or to make the members of the board of directors of the endowment or the officers or employees of the endowment officers or employees of the United States.

I would think that it would make it very difficult for the endowment to provide travel expenses for employees of agencies of the Government.

Mr. PELL. There are two specific categories I would like to ask the Senator from Kansas about. One, personal staff members cannot tavel abroad unless they are on Senate business.

Mr. DOLE. That is correct.

Mr. PELL. In other words, if a personal staff member wanted to go on endowment business, the endowment could pay for his travel under this amendment as presently written?

Mr. DOLE. I do not think the Endowment could pay for it. I do not see why they should. Maybe some of us are worried that this Endowment we are creating is a travel agency. I heard the President's response last night of all the good it is going to do around the world, and I hope that is true.

But we also have some concerns about it. I think one way to make certain it is going to be for the purpose everybody hopes it is going to pursue would be to make it rather difficult for people just to fly around the world at taxpayers' expense.

Mr. PELL. To be specific, Mr. President, the Senator, who is not a member of the Foreign Relations Committee, might have a personal staff member who followed him and might want him to go down and see whether they were doing a good job or a bad job of Endowment business. Under this amendment, the Senate could not pay for his travel, nor could the Endowment. So how could he be sent?

Mr. DOLE. Mr. President, why could not the Senate pay for his travel?

Mr. PELL. Under the rules, as I understand it, and please correct me if I am wrong, personal staff members cannot travel outside the United States unless they are accompanying a Senator. Am I wrong about that? Under our rules?

Mr. DOLE. It is a question of jurisdiction and of who pays for the travel. There might be a need for an exception.

Mr. PELL. I think that should be covered.

Mr. DOLE. I think we all have the same intent. The Finance Committee deals with foreign trade. We do some—not nearly so much; we do not have the requirements the members of the Foreign Relations Committee have. What I want to suggest is that there is plenty of taxpayer financed legitimate travel.

I think one public criticism of this new Endowment for Democracy is that we are creating—at least it is pictured that way—some way for somebody to get a free ticket to India, Africa, England, wherever one wants to go, and the taxpayers pick up the tab. We ought to make certain we have this fairly tight.

Mr. PELL. Mr. President, I wonder if the Senator from Kansas might accept another suggestion.

Mr. DOLE. Certainly, Mr. President.

Mr. PELL. That is to take his amendment and add a phrase, say at the end of it, a phrase saying, unless so authorized by the President pro tempore of the Senate or the Speaker of the House. Or by both.

Mr. DOLE. That might improve it, but again, I cannot speak for the House. It is not too difficult to get travel approved.

Mr. PELL. I think that would provide for the insurance I am talking about and make it absolutely acceptable to me. That would be assuming an officer or employee of the United States unless he is so authorized by the President pro tempore of the Senate or the Speaker of the House.

Mr. DOLE. Let me suggest the absence of a quorum and see if we can work out any difference we have without gutting the amendment.

Not too many people get to travel around the world and when they do, they have to pay for it themselves. They do not particularly like to pay for our travel, and we are elected. Members of the Senator's committee have an obligation to travel and they are criticized for it from time to time. So are the rest of us. We ought to make certain that we are not just creating another big travel bureau here, for a ticket to anywhere. I am certain that is what might happen.

Let me suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, the managers of the bill have looked at the amendment of the Senator from Kansas and we think that it has some merit.

I think it will, in all fairness, be the subject of controversy in the conference with the House, but that is something that we cannot control. The Senator from Kansas is an experienced legislator, and he knows what the difficulties are when there is a contest in a committee of conference. But subject to that reservation, I think the managers of the bill are prepared to have a vote at this time.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2379) was agreed to.

Mr. PELL. Mr. President, I would like the record to show that I voted in the negative.

The PRESIDING OFFICER. The record will so indicate. Is there a motion to reconsider?

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. There was a unanimous-consent agreement pursuant to which the Mathias amendment was laid aside to take up several amendments sponsored by the Senator from Kansas.

Are there additional amendments by the Senator from Kansas?

AMENDMENT NO. 2380

(Purpose: To provide further for designation of the Chairman of the Commission on Security and Cooperation in Europe)

Mr. DOLE. Mr. President, I send another amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an amendment numbered 2380.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the bottom of page 48, add the following:

TITLE VII—GENERAL PROVISIONS

DESIGNATION OF CHAIRMAN OF THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

SEC. 701. Section 3 of the Act entitled "An Act to establish a Commission on Security and Cooperation in Europe", approved June 3, 1976 (90 Stat. 661), is amended—

(1) by inserting "(a)" after "Sec. 3.";

(2) by striking out the second sentence of paragraph (1); and

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

"(b) Beginning with the start of the first calendar year after the date of enactment of the Department of State Authorization Act, Fiscal Years 1984 and 1985, the Speaker of the House of Representatives shall designate one of the members of the Commission on Security and Cooperation in Europe appointed from the House of Representatives to serve as chairman during each odd-number calendar year and the President of the Senate, on the recommendation of the Majority Leader, shall designate one of the members of the Commission appointed from the Senate to serve as chairman during each even-numbered calendar years.

Mr. DOLE. Mr. President, I think some Senators are aware of what this amendment does. All we are seeking to do in this amendment is return the so-called Helsinki Commission, the CSCE, to the nonpartisan committee it was intended to be. There always has been great bipartisan interest in the Helsinki Accords, and it is clear to me that the original Helsinki Commissioners had in mind a chairmanship arrangement that would reflect that bipartisanship. But this arrangement never came into being, and what we have today is a permanent chairman appointed by the Speaker of the House. Even though Senators serve on that committee—Republican Senators, Democratic Senators, Republican House Members, Democratic House Members—the chairmanship never rotates. It is one of these unusual things that happened in the Congress for reasons unknown to this Senator.

This amendment simply provides that the chairmanship rotate at the start of each calendar year between a Member appointed by the Speaker of the House and a Member appointed by the majority leader in the Senate. Whether it is a Democratic majority or a Republican majority, it gets it back into the spirit of rotation. I think a little background is in order.

At a hearing on July 27, 1976, dealing with the original establishment of the Commission, the late Senator Case of New Jersey, Congresswoman Fenwick, and Representative FASCELL, all whom were instrumental in the creation of the Commission, discussed their understanding as to how the chairmanship would be handled, and the following exchange occurred.

Representative FASCELL. One of the things that came up immediately was maybe an oversight, but probably not. I think it was probably a psychological kind of an effort on the question of rotation of chairmanships. The legislation provides for a House Member to be chairman.

When that question was raised I said I have absolutely no objection to a Senator. I love Senators, and some of my best friends are Senators.

Senator Case is here. We have just really started, Senator, at this point.

I assume that means that Senator Case had just walked into the room.

Senator CASE. I made the mistake of stopping in the office on the way over here.

Chairman FASCELL. I discussed the problem with Senator PELL, and some of you informally, and certainly we ought to have rotating chairmanships on this matter between the House and the Senate. I think that for the moment that certainly Senator PELL ought to be designated as cochairman, and that is what the legislation calls for, with Senator PELL as cochairman, and we can rotate it the next time around, and the Senator will be the chairman, and the House Member will be a cochairman.

We could get around, Senator, if this agreeable to the group, to making the necessary changes in the legislation at an appropriate time.

My own feeling is we ought not to rush it.

Well, I must say we have not rushed into it. It has been almost 8 years now.

He said:

We have an understanding, and if the Commission agrees we can proceed that way and designate Senator PELL as cochairman from this moment on.

Senator Clark is now here.

We will find an appropriate vehicle and we will make the necessary change in the law.

Does that seem agreeable with members of the Commission?

Representative FENWICK. It is perfect.

Chairman FASCELL. We will proceed on that basis, and the record will reflect as of this moment that Senator PELL is the cochairman.

Now, I have not practiced law for a long time, and did not practice much when I did, but it seems that we have a fairly clear-cut case here. You have an admission by the man who has been the chairman since 1976 that we ought to rotate it. And there was an agreement. We have his quote saying this is a deal, this is perfect.

But 7 years have passed and the chairmanship has not been rotated.

In fact, Chairman FASCELL has quite a tight rein on the Commission. After he fired the deputy staff director, whom I selected, he directed his staff to inform me that I, the cochairman of the Commission, would not be allowed to submit another staff recommendation.

Now, I do not think it is a personal conflict between me and Congressman FASCELL. I think it is a staff problem. They do crop up around here from time to time.

The Senator from Kansas feels that the staffing incident alone may underscore the way in which the Chairman of the Commission and staff have viewed the various cochairmen. No Commission of this type should have anybody's permanent stamp on it, and this amendment would simply correct the situation.

Over the years, Congress has created some 31 bipartisan Commissions of this type, ranging from the Board of Directors of Gallaudet College, to the Migratory Bird Conservation Commission to the U.S. Holocaust Memorial Council. Of all these Commissions, only the Commission on Security and Cooperation in Europe—the Helsinki Commission—has a Member of the House of Representatives as its permanent Chairman. A rotating chairman would not only be what the original commissioners had in mind, it would also eliminate what my research reveals to be a clearly unique situation in the history of bipartisan Commissions created by Congress.

The work the Helsinki Commission staff concerns matters of great importance to our Government and to the many American citizens who themselves monitor the East bloc's degree of compliance with the accords. Issues of travel, family reunification, and suppression of human rights are central of the Commissions casework. They are in a fundamental sense beyond politics. And that is the way that the Commission itself should be structured.

I must say—and I say it with all respect to my distinguished colleague from Rhode Island, who has done great work on the Commission, who is a loyal member of the Commission—that I have no quarrel with anybody in the Senate. But I believe that this is a matter the Senate should address. It is not a partisan matter. It is a matter of whether or not we are going to create a commission, whether we are going to let somebody in the House be the permanent chairman of the Commission, even though it be the only one of its kind among the 31 bipartisan commissions created, and even though there was an agreement on July 27, 1976, that the chairmen would rotate.

I understand that Representative FASCELL has done a good job. He is an outstanding Member of Congress; he is a friend of mine.

However, like so many commissions where you do not have a day-to-day contact, sometimes the staff runs the Commission. Sometimes they run the Senate. You have to keep an eye on what is going on. That is what is happening with this Commission.

It seems to me that it is a matter of comity between the House and the Senate.

Who knows what will happen next year? I know what will happen next year, but nobody knows what will happen in 1985, 1986, or 1987. So this is not an effort for some Republican to become a chairman.

I suggest that this is a matter of some importance. It may not be important to anyone who is not on the Commission. It may not be of great importance to anyone who is on the Commission, and maybe the entire CSCE should be abolished.

It seems to me that if we cannot agree—and I would think every Senator would agree—that if we cannot rotate the chairmanship on the CSCE, then, as an alternative, perhaps we ought to make the chairman of the National Endowment for Democracy a Member of the Senate, selected by the majority leader, whether it be a Democrat or a Republican. We cannot have it both ways. You cannot argue that you cannot rotate the chairmanship of the CSCE and then argue that you can rotate the chairmanship of the National Endowment for Democracy.

I hope we can accept this amendment. In my view, we might be able to work it out.

I have no quarrel with Representative FASCELL. I do not believe he has any quarrel with me. But I think we would have a lot more Senate participation on the so-called Helsinki Commission if we had rotating chairmanships and if we had more input at the staff level.

So I hope we can accept this amendment.

Mr. PELL. Mr. President, as the Senator from Kansas knows, I have great regard and admiration for him and his ability to shed light on debate and discussions.

I understand completely the point he is making. But I would be remiss if I did not express that I have a personal interest in this issue since I was the first Cochairman of the Commission and an initial member. The Senator from Kansas is correct: The understanding was that we would rotate the next time around, but no decision was made as to exactly when this would happen.

Frankly, the Commission is functioning very well. I think that Congressman FASCELL is doing an excellent job as Chairman and he certainly is dedicated to the Commission and its work. Over the years I have noted that attendance by Commission members from the Senate, myself included, has often been poor. Whether this was due to a lack of time or of interest, I am not sure. But from the viewpoint of the national interest and of the Commission, it seemed best to leave the Chairmanship in the House.

My colleagues know that I do not like to engage in partisan battles or squabbles about turf. I have felt, and I continue to feel, that Congressman FASCELL has run the Commission well. He has acquired a good deal of expert knowledge in the last 7 years. He is an enthusiastic and effective Chairman and I believe that he should continue to serve in that position.

Also, frequent rotation of the Chairmanship creates the possibility of the staff running the Commission rather than the Chairman.

Finally, in view of the tremendous amout of work all of us have as Senators, I question if any of us has the time to devote to the Chairmanship of the Commission.

For all these reasons, I believe the present arrangement should be left as it is. When the time comes that Congressman FASCELL loses his vigor or his interest, than we can and should reconsider this issue.

Mr. DOLE. Mr. President, that begs the question. There would be more than input if there were rotation, if Senators thought they had some influence on the Commission. We have a lot to do, but we do not take our duties lightly. The Senator from Rhode Island does not; the Senator from Kansas does not.

I do not assume that we are busier than Representative FASCELL. Just because he likes to be Chairman and somebody says he does a good job, then why should that not apply to all the other chairmen? Is the Senator from Rhode Island willing to make the Chairman of this new travel bureau, the National Endowment for Democracy, permanent, appointed by the majority leader, after consultation with the President? Why should we rotate that one?

Mr. PELL. If you find a good chairman, there would not be any reason for changing. We are about to adopt an amendment which I do not support, saying that we should rotate the Chairmanship of the Helsinki Commission. I would certainly go along with the Senator's suggestion that we not rotate the Chairmanship of the Endowment.

Mr. DOLE. It seems to me that we have created 31 commissions and only one has a permanent House Chairman. It is time to correct that.

I do not want the record to reflect for one moment that I am critical of Representative FASCELL. But we are all Senators here, and I think we are

equal with House Members; and sooner or later, somebody is going to recognize that maybe that was not a very good idea, after all.

It is not a question of one Senator versus one House Member. It is a question of whether this body is going to be equal with the House when it comes to the so-called Helsinki Commission, or whether we are going to say, "Well, if that's the attitude of the Senate, then maybe we should abolish the Commission." I think that probably would meet with the approval of some.

I hope this amendment will be adopted, to indicate that we are on the same plane as Members of the House and that we have a right, when we have membership on a commission, to have influence on that commission, particularly when the agreement was made that that is what would happen, and the agreement was made back in July of 1976.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. DOLE. I yield.

Mr. BAKER. Mr. President, I wish to commend the Senator from Kansas for his initiative in this respect. I will not prolong the debate except to say that I am glad he offered the amendment and I intend to support it.

Mr. PELL. Mr. President, do I understand the proposal of the Senator from Kansas to be that if we agree to make the Chairman of the National Endowment a Senator then he would withdraw his amendment? Is that his proposed package?

Mr. DOLE. That would be a backup. I really do not think it is a good idea though.

Mr. PELL. I would support that package if it is offered.

Mr. DOLE. I think the best thing is to make the Helsinki Commission like the 31 other Commissions. That is the real thrust. But it would seem to me if everything else fails then I might offer the other amendment. But it makes no sense. I do not want to delay this argument because it is maybe not that important to a lot of Members, but it is a principle that someday the Democrats may be in the majority again and someone on that side may say why have we permitted this to happen.

It is one thing when we have a House Democrat and a Senate Republican rotating but quite another thing if there is some Democratic Senator who is not becoming chairman and he might do a great job.

So it is a principle involved. I do not really believe that we should have any commission where we have House Members and Senators supposed to be equal serving on that Commission where the Chairmanship is locked up by a Senator or by a House Member.

That is all I am suggesting. If so, we should go back and change the other 31.

We already made one mistake. We should not make another. I think we should correct the first mistake.

Mr. ZORINSKY. Mr. President, the Commission on Security and Cooperation in Europe has functioned under the leadership of Congressman DANTE FASCELL since its creation by Congress in 1976. Over the years, Congressman FASCELL has devoted an incalculable amount of time and energy to the activities of the Commission. He has proven to be an effective Chairman and a true champion of the cause of human rights for the peoples of the Soviet Union and Eastern Europe.

While I appreciate Senator DOLE's desire to rotate the Chairmanship of the Commission, I seriously doubt whether any Member of the Senate has the time to fill that position effectively. At present, I see no apparent need to change the existing arrangement which is working so well.

Mr. PELL. Mr. President, I do not wish to prolong the debate either. I suggest we have a voice vote.

Mr. MATHIAS. I think we are prepared to vote on this.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Kansas.

(Putting the question.)

Mr. PELL. Mr. President, I wish the RECORD to show I voted in the negative.

The amendment (No. 2380) was agreed to.

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order the Senator from Kansas is entitled to introduce further amendments he may have.

Mr. DOLE. Mr. President, I withdraw any further amendments.

VOTE ON AMENDMENT NO. 2378

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from Minnesota (Mr. DURENBERGER), the Senator from Washington (Mr. EVANS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Florida (Mrs. HAWKINS), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

Mr. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Louisiana (Mr. LONG) are necessarily absent.

The PRESIDING OFFICER. Are there any Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 34, as follows:

[Rollcall Vote No. 306 Leg.]

YEAS—56

Andrews	Eagleton	Mitchell
Baucus	Ford	Moynihan
Bentsen	Glenn	Nunn
Biden	Gorton	Packwood
Bingaman	Hart	Pell
Boren	Hatfield	Percy
Boschwitz	Heinz	Proxmire
Bradley	Huddleston	Pryor
Bumpers	Inouye	Quayle
Burdick	Kassebaum	Randolph
Byrd	Kennedy	Riegle
Chafee	Lautenberg	Rudman
Chiles	Leahy	Sarbanes
Cochran	Levin	Sasser
Cohen	Lugar	Specter
Danforth	Mathias	Stafford
DeConcini	Matsunaga	Tsongas
Dixon	Melcher	Weicker
Domenici	Metzenbaum	

NAYS—34

Abdnor	Heflin	Simpson
Armstrong	Helms	Stennis
Baker	Hollings	Symms
D'Amato	Humphrey	Thurmond
Denton	Jepsen	Tower
Dole	Kasten	Trible
East	Laxalt	Wallop
Exon	Mattingly	Warner
Garn	McClure	Wilson
Grassley	Nickles	Zorinsky
Hatch	Pressler	
Hecht	Roth	

NOT VOTING—10

Cranston	Goldwater	Murkowski
Dodd	Hawkins	Stevens
Durenberger	Johnston	
Evans	Long	

So the Mathias-Eagleton amendment (No. 2378) was agreed to.

Mr MATHIAS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order. The Senate will be in order.

Mr. BYRD. Mr. President, I ask for order in the Senate. I am going to inquire of the majority leader as to what the program is for the rest of the day and the rest of the week. I congratulate the Chair in seeking to get order.

Mr. President, the Senate is not yet in order.

Senators are wondering what will be happening the rest of the day and how many more rollcall votes there will be and whether we can go home and whether we ought to invite our wives out for dinner and what votes there will be tomorrow, so I hope that we can get order so that we can hear.

Mr. BAKER. Mr. President, the minority leader has the floor. If he will yield to me, I would reinforce his request. I hope we could have the attention of Senators for a moment while we try to arrange the schedule of the Senate.

Mr. BYRD. Mr. President, we will have order before I proceed. We always do. One way to get order is