tures become available, some months or years from now, I predict that these alarming trends will be shown to have continued and even accelerated in the years between 1967 and 1972. They are continuing at this moment.

SIMILARITIES AND DIFFERENCES IN BILLS

As I have already noted, the bill introduced today is identical to S. 1457 of the 92d Congress. That bill, in turn, resembled S. 1494, 91st Congress, in that both bills had, and have, as their main purpose the express authorization of civil actions to be filed by those injured by predatory pricing against those who practice such pricing. Both bills are aimed at the loss leader and below-cost selling. Both bills would allow the plaintiff to seek and, if successful, obtain treble damages, injunctive relief, or both. There the similarities end.

S. 1494 would have repealed section 3 of the Robinson-Patman Act and reenacted as a new section 3A of the Clayton Act one provision of section 3: the ban on sales "at unreasonably low prices for the purpose of destroying competition or eliminating a competitor." The present bill does not repeal section 3, and hence leaves alive the little-used criminal sanctions it contains.

S. 1494 used the section 3 language just quoted to describe the prohibited conduct. The new bill uses different and more specific language. It prohibits sales "below cost for the purpose of destroying competition or eliminating a competitor."

A ground for objection to S. 1494 was that the language "unreasonably low prices," was allegedly too vague. The new bill meets that objection by stating exactly what kind of prices are prohibited, namely, those that are "below cost." The term "below cost" is defined in language borrowed substantially verbatim from the opinion of the Eighth Circuit Court of Appeals in the leading case involving enforcement of section 3 of the Robinson-Patman Act as a criminal statute, *National Dairy Products Corporation* v. *United States*, 350 F. 2d 321, 329, (1965).

As that case makes clear, however, mere proof of sales below cost will not alone suffice to establish liability by a defendant to a plaintiff: there must also be proof of the predatory intent, the "purpose" to destroy competition or eliminate a competitor.

As the law stands now, we have this anomaly: below-cost selling with predatory intent is a Federal crime, for which the offender can be fined or even imprisoned, if the Justice Department elects to prosecute and a court convicts. But the person injured by the crime, the businessman destroyed in his livelihood, is given no remedy. He cannot sue the offender either for damages or injunction. The bill introduced today would end the anomaly. It would give the small businessman the right to sue his predatory competitor, and if he could prove below-cost selling and prove the "purpose" of that pricing was destruction of competition or a competitor, he could obtain an injunction and treble damages. This bill will restore force and meaning to an important part of the Nation's anti-monopoly law.

The forces pushing us toward concentration in industry after industry in our economy are very great. Some of them may be unavoidable; but one such force, the occasional practice of deliberate predatory pricing with the express purpose of destroying competition, is not in that class. It can and should be checked; yet it is not feasible or even, perhaps, desirable for the Justice Department to initiate a criminal prosecution every time the existing law against such pricing is broken. Unleashing the power of private civil enforcement will bring vitality to an important part of our national policy against economic concentration and monopoly power. To that end, this bill is dedicated.

By Mr. TUNNEY (for himself and Mr. GURNEY):

S. 782. A bill to amend the antitrust laws of the United States, and for other purposes. Referred to the Committee on the Judiciary.

THE ANTITRUST PROCEDURES AND PENALTIES ACT

Mr. TUNNEY. Mr. President, on behalf of the distinguished Senator from Florida (Mr. GURNEY) and myself, I am pleased to introduce S. 782, the Antitrust Procedures and Penalties Act. Senator GURNEY and I introduced this legislation last session, as S. 4014, but it was introduced so late in the session that it was impractical for the Antitrust and Monopoly Legislation Subcommittee to hold hearings on it.

Accordingly we are introducing the legislation early in this session with a view toward hearings which will be held on March 14, 15, and 16, 1973.

Because I described the legislation fully when we introduced it on September 21, 1972, I ask unanimous consent that, in lieu of an additional statement at this time, a copy of the bill, a section-by-section analysis, and my introductory remarks of last September, be printed at this point in the RECORD.

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

S. 782

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antitrust Procedures and Penalties Act."

CONSENT DECREE PROCEDURES

SEC. 2. Section 5 of the Act entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies, and for Other Purposes", approved October 15, 1914 (38 Stat. 730; 15 U.S.C. 16) is amended by redesignating subsection (b) as (h) and by inserting after subsection (a) the following:

"(b) Any consent judgment proposed by the United States for entry in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which that proceeding is pending and published in the Federal Register at least 60 days prior to the effective date of such decree. Simultaneously with the filing of the proposed consent judgment, unless otherwise instructed by the court, the United States shall file with the district court, cause to be published in the Federal Register and thereafter furnish to any person upon request a public impact statement which shall recite:

"(1) the nature and purpose of the proceeding;

"(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

"(3) an explanation of the proposed judgment, relief to be obtained thereby, and the anticipated effects on competition of that relief, including an explanation of any unusual circumstances giving rise to the proposed judgment or any provision contained therein;

"(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that the proposed judgment is entered;

"(5) a description of the procedures available for modification of the proposed judgment;

"(6) a description and evaluation of alternatives to the proposed judgment and the anticipated effects on competition of such alternatives.

"(c) During the 60-day period provided above, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposed consent judgment. The Attorney General or his designate shall establish procedures to carry out the provisions of this subsection, but the 60-day time period set forth herein shall not be shortened except by order of the district court upon a showing that extraordinary circumstances require such shortening and that such shortenings of the time period is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

"(d) Before entering any consent judgment proposed by the United States under this section, the court shall determine that entry of that judgment is in the public interest. For the purpose of this determination, the court shall consider:

"(1) the public impact of the judgment, including termination of alleged violation, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies, and any other considerations bearing upon the adequacy the judgment;

"(2) the public impact of entry of the judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit to be derived from a determination of the issues at trial.

"(e) In making its determination under subsection (d), the court may—

"(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participants or upon its own motion, as the court may deem appropriate;

"(2) appoint a special master, pursuant to rule 53 of the Federal Rules of Civil Procedure, and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual group or agency of government with respect to any aspect of the proposed judgment of the effect thereof in such manner as the court deems appropriate;

"(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to rule 24 of the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

"(4) review any comments or objections

concerning the proposed judgment filed with the United States under subsection (c) and the response of the United States to such comments or objections;

"(5) take such other action in the public interest as the court may deem appropriate.

"(f) Not later than 10 days following the filing of any proposed consent judgment under subsection (b), each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any officer, director, employee, or agent thereof, or other person except counsel of record, with any officer or employee of the United States concerning or relevant to the proposed consent judgment.

Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this section have been complied with and that such filing is a true and complete description of such communications.

"(g) Proceedings before the district court under subsections (d) and (e), and public impact statements filed under subsection (b) hereof, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 4A of this Act nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding."

PENALTIES

SEC. 3. Sections 1, 2, and 3 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 209; 15 U.S.C. 1, 2, and 3) are each amended by striking out "fifty thousand dollars" and inserting "five hundred thousand dollars if a corporation, or, if any other person, one hundred thousand dollars."

EXPEDITING ACT REVISIONS

SEC. 4. Section 1 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 28; 49 U.S.C. 44), commonly known as the Expediting Act, is amended to read as follows:

"SECTION 1. In any civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, wherein the United States is plaintiff and equitable relief is sought, the Attorney General may file with the court, prior to the entry of final judgment, a certificate that, in his opinion, the case is of a general public importance. Upon filing of such certificate, it shall be the duty of the judge designated to hear and determine the case, or the chief judge of the district court if no judge has as yet been designated, to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

SEC. 5. Section 2 of that Act (15 U.S.C. 29; 49 U.S.C. 45) is amended to read as follows:

"(a) Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgment entered in any such action shall be taken to the court of appeals pursuant to section 1291 and 2107 of title 28 of the United States Code. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a) (1) and 2107 of title 28 of the United States Code but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28 of the United States Code.

"(b) An appeal from a final judgment pursuant to subsection (a) shall lie directly to the Supreme Court if:

"(1) upon application of a party filed within five days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice; or

"(2) the Attorney General files in the district court a certificate stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice; or

"(3) the district judge who adjudicated the case, sua sponte, enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice."

A court order pursuant to (1) or (3) or a certificate pursuant, to (2) must be filed within fifteen days after the filing of a notice of appeal. When such an order or certificate is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. That Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a)."

SEC. 6. (a) Section 401 (d) of the Communications Act of 1934 (47 U.S.C. 401(d)) is repealed.

(b) The proviso in section 3 of the Act of February 19, 1903, as amended (32 Stat. 848, 849; 49 U.S.C. 43), is repealed and the colon preceding it is changed to a period.

SEC. 7. The amendment made by section 2 of this Act shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act.

ANTITRUST PROCEDURES AND PENALTIES ACT—SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title

The Act may be cited as "The Antitrust Procedures and Penalties Act."

Sec. 2 Consent Decree Procedures

Section 2 adds a series of new subsections to Section 5 of the Clayton Act (15 USC § 16) to establish procedures governing the filing and entry of a consent judgment settling a civil antitrust suit by the United States. These new subsections, numbered "(b)-(g)" are inserted after the present subsection "(a)" in Section 5 of the Clayton Act.

SUBSECTION (B)—PUBLIC IMPACT STATEMENT

This subsection provides that any consent decree proposed by the United States must be filed with the court in which the case is pending and simultaneously published in the Federal Register at least 50 days prior to the effective date of the decree. In addition the Government must file a "public impact statement" containing the following:

(1) the nature and purpose of the proceeding;

(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) an explanation of the proposed judgment, the relief to be obtained thereby, the anticipated effects on competition of that relief and an explanation of any special circumstances giving rise to the proposed judgment or any provision contained therein.

(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that the judgment is entered;

(5) a description of the procedures available for modification of the judgment;

(6) a description and evaluation of alternatives to the proposed judgment and the anticipated effects on competition of such alternatives.

The public impact statement required by this subsection is analogous to the environmental impact statement presently required from governmental agencies by the National Environmental Policy Act.

SUBSECTION (C)—PROCEDURES FOR PUBLIC COMMENT AND DEPARTMENTAL RESPONSE

This subsection lengthens the present 30 day public comment period to 60 days. It also provides that the sixty day period may be shortened by order of court but only upon a showing that extraordinary circumstances require it and that such a shortened time period would not be adverse to the public interest.

An additional requirement contained in this subsection is a filing by the Justice Department of a formal response to comments submitted to it pursuant to this provision. This requirement has two purposes: first, to give some assurance that public comments will in fact be considered by the Department when received; and second, to provide additional data to the district court in making its decision whether to enter the decree.

SUBSECTION (D)—ENTRY OF THE DECREE

This subsection establishes the general criteria by which the court should determine whether to enter a particular decree.

The mandate is phrased first in general terms: Before entering any consent judgment, the court shall determine that entry of that judgment is in the public interest.

In addition, however, and as an aid to the court in making its independent judgment, the bill provides a number of more detailed criteria for determination of the public's interest. Those criteria are as follows:

(1) the public impact of the judgment, including termination of alleged violation, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies, and any other considerations bearing upon the adequacy of the judgment; and

(2) the public impact of entry of the judgment upon the public generally and persons alleging specific injury from the violations set forth in the complaint; including consideration of the public benefit to be derived from a determination of the issues at trial.

SUBSECTION (E)—PROCEDURES AVAILABLE TO THE COURT

This subsection adds a series of discretionary procedural devices to assist the court in making the determination of public interest required by the Act. Those procedures are as follows:

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master, pursuant to Rule 53 of the Federal Rules of Civil Procedure, and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect

to any aspect of the proposed judgment or the effect thereof in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies; including appearance amicus curiae, intervention as a party pursuant to Rule 24 of the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments or objections concerning the proposed decree filed with the United States under subsection (c) and the response of the United States to such comments or objections;

(5) take such other action in the public interest as the court may deem appropriate.

SUBSECTION (F)—RECORD OF LOBBYING ACTIVITIES

This subsection provides that not later than 10 days following the filing of any proposed consent judgment as required by the bill each defendant must file with the district court a description of any and all written or oral communications by or on behalf of the defendant with any officer or employee of the United States concerning or relevant to the consent judgment or the subject matter thereof. Included under this provision are contacts on behalf of a defendant by any of its officers, directors, employees or agents, or any other person acting on behalf of the defendant, with any federal official or employee. Thus, for example, the provision would include contacts with Members of Congress or staff, Cabinet officials, staff members of executive departments and White House staff.

The only exception is a limited exception for attorneys representing the defendant who are of record in the judicial proceeding. The exception is designed so as to avoid interference with legitimate settlement negotiations between attorneys representing a defendant and Justice Department attorneys handling the litigation. However, the provision is not intended as a loophole for extensive lobbying activities by a horde of "counsel of record."

In addition, the subsection requires that prior to entry of the consent judgment by the court, each defendant must certify to the court that the requirements of the section have been complied with and that the filing is a true and complete description of all such contracts or communications.

SUBSECTION (G)—PRIMA FACIE EFFECT

A final provision in the consent decree procedures retains the provision presently contained in Section 5 of the Clayton Act which prevents use of a consent decree in any way in subsequent litigation as prima facie evidence of violation. A new subsection (g) would be added which provides that proceedings before the district court in connection with the decree pursuant to this Act and public impact statements filed pursuant to the act are not admissible against any defendant in any action or proceeding brought by any other party against that defendant under the antitrust laws or by the United States under Section 4A of the Clayton Act, nor constitute a basis for introduction of the decree as prima facie evidence against such defendant in any such action or proceeding.

The basic reason for including this provision is to preserve the consent decree as a substantial enforcement tool by declining to give it prima facie effect as a matter of law.

SECTION 3. CRIMINAL PENALTIES

This section increases the penalties for criminal violations of the antitrust laws from $50,000 to $100,000 for individuals and $500,000 for corporations.

SECTION 4–7. EXPEDITING ACT REVISIONS

These sections incorporate revisions of the Expediting Act which previously passed both House and Senate in the 91st Congress. They provide for intermediate appellate review of antitrust cases, with direct appeal to the Supreme Court retained for cases of general public importance. In addition, the present uncertainty regarding the opportunity for appeal by the Government from a denial of a preliminary injunction by a district court is resolved by allowing such appeals.

REMARKS BY MR. TUNNEY

Mr. President, we have learned a great deal about the importance of the Nation's antitrust laws in recent months and in particular about the manner in which they are administered. Two recent books, Morton Mintz and Jerry Cohen's "America, Inc." and the Ralph Nader study group's "The Closed Enterprise System," have focused with remarkable clarity upon the impact of economic concentration on the everyday lives of American citizens.

Combined with the Judiciary Committee's recent hearings, these events have crystalized the rather vague concept of antitrust into a very tangible reality.

Perhaps for the first time since the now famous electric company price-fixing cases in the 1950's, public attention has been focused in a very direct and emphatic way upon the administration of the Nation's antitrust laws. Concern has been renewed about the standards and the safeguards which apply when the stakes are high.

That concern is not limited to any one party or one administration. Confidence in the process by which public decisions are made is an issue in which every public official has very immediate investment. Moreover, it is an investment which must be shared with every member of the electorate. The disaffection which an increasing number of Americans have come to feel for their Government poses the gravest of threats to the delicate balance by which we all consent to be governed.

The problem is especially acute where the issue is antitrust because the stakes are high. Antitirust cases often carry with them profound implications not only for the particular defendants but for the millions of voiceless consumers with whom they deal. The decision to settle a case, and the components of that settlement, may affect the price, the quantity, and the quality of the most basic commodities. The elimination of several independent bakeries or dairies in a metropolitan area, for example, may have a very direct effect upon the cost of bread and milk to millions of families. Or the commodity might be drugs: For example, between 1953 and 1961, 100 tablets of the antibiotic tetracycline retailed for about $51. Ten years later, after exposure of an illegal conspiracy which had set prices, the same quantity was approximately $5, a 90-percent decrease.

In short, enforcement of the antitrust laws may have a very profound effect on the lives of every citizen of this country.

But beyond the economic effect, there is a political effect. Increasing concentration of economic power, such as has occurred in the flood of conglomerate mergers, carries with it a very tangible threat of concentration of political power. Put simply, the bigger the company, the greater the leverage it has in Washington. Bigness may not be bad in itself, but it carries with it a wide range of implications and consequences that must be examined very carefully.

We are not yet a corporate state but we may wish to decide whether we want to be before it happens by default.

All of these considerations point to the fact that the public has a direct and vital interest in effective enforcement of the antitrust laws, particularly in the process by which antitrust cases are resolved.

For these reasons I am today introducing S. 4014, the Antitrust Procedures and Penalties Act. I am pleased and honored to have my distinguished colleague on the Antitrust and Monopoly Subcommittee, Mr. GURNEY, join me as a prime sponsor.

The bill which we are introducing today has three basic provisions. The first establishes a reasonable but specific set of standards and guidelines to govern the process by which antitrust suits may be settled and consent judgments entered. The second increases the penalties for criminal violations of the antitrust statutes. Finally, a third provision revises the Expediting Act to improve the process of appellate review of antitrust cases, and in particular to authorize the United States appeal from the denial of a preliminary injunction at the trial court level.

I. CONSENT DECREE PROCEDURES

By the most recent figures available, over 80 percent of the civil antitrust suits brought by the Justice Department and disposed of through consent decrees—voluntary settlements negotiated between defendants and the Government and adopted by the court prior to trial. Essentially the decree is a device by which the defendant, while refusing to admit guilt, agrees to modify its conduct and in some cases to accept certain remedies designed to correct the violation asserted by the Government.

The consent decree has a number of major public consequences, however. First, it means that the substantial resources of the Justice Department will be removed from the effort to establish that the antitrust laws were violated. Because consent decrees by statute carry with them no prima facie effect as an admission of guilt, private parties who may have been damaged by the alleged violations are left to their own resources in their efforts to recover damages. As a practical matter because of the protracted nature of antitrust litigation, and the deep pockets of many corporate defendants, few private plaintiffs are able to sustain a case in the absence of parallel litigation by the Justice Department.

In addition, however, the consequences to the public of the provisions contained in the decree itself may be of major significance. Depending upon the skill of the Justice Department's attorneys and opposing counsel, and the relative leverage which they can bring to bear, a bad or inadequate consent decree may as a practical matter foreclose further review of a defendant's practices both inside and outside the scope of the decree.

Similarly, where the decree establishes guidelines for future conduct, the enforcement and modification of those guidelines takes on even more importance.

Finally, the public's interest in deterrence of future antitrust violations by the defendant and by other potential defendants may be affected profoundly by the willingness of the Justice Department to settle cases and the price exacted for such settlements.

None of these points implies that settlement of an antitrust case should necessarily be discouraged. There is in fact little question that consent decrees have been a particularly valuable enforcement tool.

But because of the frequency of their use, because of the importance a particular decree may have, and because of importance of public confidence in the manner a decree is arrived at, I believe we must provide specific standards and procedures to assure that the decision to settle and the settlement itself are in fact in the public interest.

A. PUBLIC IMPACT STATEMENT

Section 2 of the bill adds a new subsection (b) to section 5 of the Clayton Act (15 U.S.C. S. 16). This new subsection provides

that any consent decree proposed by the United States must be filed with the court in which the case is pending and simultaneously published in the Federal Register at least 60 days prior to the effective date of the decree. In addition, the Government must file a public impact statement" containing the following:

First, the nature and purpose of the proceeding;

Second, a description of the practices or events giving rise to the alleged violation of the antitrust laws;

Third, an explanation of the proposed judgment, relief to be obtained thereby, and the anticipated effects on competition of that relief, including an explanation of any unusual circumstances giving rise to the proposed judgment or any provision contained therein;

Fourth, the remedies available to potential private plaintiffs damaged by the alleged violation in the event that the proposed judgment is entered;

Fifth, a description of the procedures available for modification of the proposed judgment;

Sixth, a description and evaluation of alternatives to the proposed judgment and the anticipated effects on competition of such alternatives.

Each of these items is relatively self-explanatory. In sum, they have a dual purpose: first, they explain to the public particularly those members of the public with a direct interest in the proceeding, the basic data about the decree to enable such persons to understand what is happening and make informed comments of objections to the proposed decree during the 60-day period. Second, the items listed in the subsection will serve to focus additional attention by both sides during settlement negotiations upon the factors which should be considered in formulating a decree.

The requirements of this provision are departures from the current practice of the Antitrust Division, but are not necessarily burdensome ones. At present, proposed consent decrees are filed with the court 30 days before they are to be entered. Typically the Department issues a brief press release recounting the fact of the filing of the decree and in some cases giving some additional but limited information about the litigation. Following the 30-day period during which public documents are received—but rarely solicited—the decree is entered by the court.

This new subsection lengthens the comment period to 60 days and provides for circulation of both the decree and an analysis of its public impact by publication in the Federal Register. In addition, an affirmative duty is placed upon the Department to provide copies of both upon request.

The public impact statement required by this section is analogous to the environmental impact statement presently required from governmental agencies by the National Environmental Protection Act. It is therefore not without precedent but rather reflects a continuing concern on the part of the Congress to assure that decisions having a major public impact be arrived at through procedures which take account of that impact.

In addition, the public impact statement will serve as the basis for vastly improving the quality of comments filed in response to the decree. In so doing, it may render more meaningful the period for public comment which exists in shorter form under present procedure. Given the enormous amount of time and resources devoted to the prosecution of most antitrust suits, it is both logical and necessary that the end result be as carefully considered as possible.

The significance of this latter point should not be overlooked. Regardless of the ability and negotiating skill of the Government's attorneys, they are neither omniscient nor infallible. The increasing expertise of so-called public interest advocates and for that matter the more immediate concern of a defendant's competitors, employees, or antitrust victims may well serve to provide additional data, analysis, or alternatives which could improve the outcome.

B. PROCEDURES FOR PUBLIC COMMENT AND DEPARTMENTAL RESPONSE

As explained above, the bill would lengthen the present 30-day public comment period to 60 days. A new subsection (c) would be added to section 5 of the Clayton Act which would require the Attorney General or his designee to establish procedures to carry out the provision for public comment on the decree. The bill also provides that the 60-day period may be shortened by order of court but only upon a showing that extraordinary circumstances require it and that such a shortened time period would not be adverse to the public interest.

An additional requirement contained in this subsection is the filing by the Justice Department of a formal response to comments submitted to it pursuant to this provision. This requirement has two purposes: First, to give some assurance that public comments will in fact be considered by the Department when received; and second, to provide additional data to the district court in making its decision whether to enter the decree.

This latter point is particularly important because of the historically limited role which the courts have played in scrutinizing consent decrees. Before a court can be expected to exercise an independent judgment with respect to the merits of a particular decree, it must have adequate information available to it.

The public impact statement required by the bill, and the departmental response to public comments, can provide significant contributions toward the adequacy of the data available to the court.

C. ENTRY OF THE DECREE

A new subsection (d) which the bill would add to section 5 of the Clayton Act establishes the general criteria by which the court should determine whether to enter a particular decree.

The mandate is phrased first in general terms: Before entering any consent judgment, the court shall determine that entry of that judgment is in the public interest.

The mandate is a highly significant one because it states as a matter of law that the role of the district court in a consent decree proceeding is an independent one. The court is not to operate simply as a rubber stamp, placing an imprimature upon whatever is placed before it by the parties. Rather it has an independent duty to assure itself that entry of the decree will serve the interests of the public generally.

Though this may seem a truism to some, too often in the past district courts have viewed their rules as simply ministerial in nature—leaving to the Justice Department the role of determining the adequacy of the judgment from the public's view. While in most cases that judgment may be a reasonable one, there may well be occasions when it is not. Furthermore, the submission of the proposed decree to the court and its subsequent embodiment in a judgment lends a permanence that endures long after the passing of a particular administration of the Department.

For all of these reasons, the mandate placed upon the court by this section, even though a general one, carries with it a major significance.

In addition, however, and as an aid to the court in making its independent judgment, the bill provides a number of more detailed criteria for determination of the public's interest. Those criteria are as follows:

First, the public impact of the judgment, including termination of alleged violation, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies, and any other considerations bearing upon the adequacy of the judgment;

Second, the public impact of entry of the judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaints including consideration of the public benefit to be derived from a determination of the issues at trial.

The thrust of those criteria is to demand that the court consider both the narrow and the broad impacts of the decree. Thus, in addition to weighing the merits of the decree from the viewpoint of the relief obtained thereby and its adequacy, the court is directed to give consideration to the relative merits of other alternatives and specifically to the effect of entry of the decree upon private parties aggrieved by the alleged violations and upon the enforcement of the antitrust laws generally.

These latter two points merit some additional explanation. First, as is well known by the antitrust bar, in the vast majority of cases, the Government is the only plaintiff with resources adequate to the task of protracted antitrust litigation. Thus, a major effort of defense counsel in any antitrust case is to neutralize the Government as plaintiff and leave prospective private plaintiffs to their own resources. Consent decrees have that effect because by statute they cannot be used as prima facie evidence of a violation in subsequent suits by private plaintiffs.

Thus, removal of the Government as plaintiff through entry of a consent decree has a profound impact upon the ability of private parties to recover for antitrust injuries. Such a result is by no means improper nor perhaps in every case unreasonable. But because of that impact, it is a factor which should enter into the calculus by which the merits of the decree are assessed. It may well be that the economic cost to the public of a particular antitrust violation merits the application of governmental resources toward gaining a recovery of that cost in damages for those who can establish their injury.

Similarly, the court is instructed to look at the question of antitrust enforcement generally to determine whether there may be overriding public interest in denying a particular settlement or even forcing a trial on the merits. For example, it may be that a particular case presents issues which demand an outcome which carries value as precedent. Such considerations would thus be added to the guides by which the court would arrive at its decision.

D. PROCEDURES AVAILABLE TO THE COURT

To assist the court in making the determination of public interest required by the bill, a variety of discretionary procedural devices are provided in a new subsection (e). Those procedures are as follows:

First, take testimony of government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

Second, appoint a special master pursuant to rule 53 of the Federal Rules of Civil Procedure, and such outside consultants or expert witnesses as the court may deem appropriate, and request and obtain the views, evaluations or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect thereof in such manner as the court deems appropriate;

Third, authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae intervention as a party pursuant to rule 24 of the Federal

Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

Fourth, review any comments or objections concerning the proposed decree filed with the United States under subsection (c) and the response of the United States to such comments or objections;

Fifth, take such other action in the public interest as the court may deem appropriate.

A few key factors should be mentioned. First, all of the procedural devices continued in this subsection are discretionary in nature. They are tools available to the district court for its use, but use of a particular procedure is not required.

The decision to make those procedures discretionary is dictated by a desire to avoid needlessly complicating the consent decree process. There are some cases in which none of these procedures may be needed. On the other hand, there have been and will continue to be cases where the use of many or even all of them may be necessary. In fact, in a very few complex cases, failure to use some of the procedures might give rise to an indication that the district court had failed to exercise its discretion properly.

Second, the procedures are not meant to be exclusive. Rather, they are designed as guides for the courts to follow. To a considerable extent, they serve as safe harbors for a court to look to when faced with a difficult case. By following one or more of the procedures contained in this provision, an individual judge can develop the data he needs without fear that he is embarking upon an untried and perhaps reversible journey. This point is particularly significant where courts have been confronted in the past with the argument that any effort to make an independent examination of the decree is unprecedented.

Turning to the specific procedures provided by the bill, most are quite simple. The first two mechanisms, testimony of expert witnesses and special masters or other expert consultants, are designed to allow the court to obtain from whatever source necessary the technical expertise required to assess the merits of the decree or its consequences. This might include, for example, calling upon an economist from the Antitrust Division to explain the practices complained of and the effect of the relief sought. Or it might involve testimony from an expert obtained by the court from the SEC or some other Government agency. In a particularly complex case, it might include appointing one or more special masters or expert consultants to analyze and evaluate the decree or other arguments in its support. In short, the court would be authorized to obtain, from whatever source deemed appropriate, information sufficient to make an informed judgment about the decree.

In addition, the court may take appropriate measures to solicit comments on the decree from groups, agencies of government, or individual members of the public to assure itself that the decree has received adequate public attention. While it seems clear that the court would have such authority in the absence of legislation, this provision like those discussed above serves to encourage such requests by removing any aura of extraordinariness.

A third provision outlines a variety of methods in which interested third parties may be authorized to participate in the proceedings. The thrust of this provision is broadly flexible. It ranges from full intervention as a party under rule 24 of the Federal Rules of Civil Procedure down through a wide variety of more limited forms of participation. The basic point, however, is that the court is given broad discretion to fashion the degree of participation necessary to assure an adequate airing of the merits of the decree. Thus, for example, it need not allow an intervenor to come in with all the rights of a party to the litigation, but can choose instead to confer more limited rights. The effect of this provision should be to allow more extensive participation by so-called public representation where useful or appropriate without needlessly complicating the entire litigation.

The fourth procedural mechanism deals with public comments other than through actual participation in the proceedings before the court. Thus public comments received during the 60-day period for such comments together with the Justice Department's response would be available to the court.

Finally, a blanket authorization for other appropriate procedures is included to encourage the court to fashion such additional tools as may be useful in fulfilling the mandate placed upon it to evaluate the proposed decree.

E. RECORD OF LOBBYING ACTIVITIES

One of the unfortunate lessons which the American people have learned in the past few months is that access to governmental institutions and governmental decisionmakers is inherently unequal. Large corporations and their officials can obtain a hearing at the highest levels of government on a scale that is beyond the imagination of the average citizen. This problem is not unique to the present administration, it is a fundamental reality of any administration. And it will continue to be a problem as long as we continue to finance political campaigns by watering at the big money trough.

But having said that, we must also assure that adequate safeguards govern the manner and extent of corporate influence.

The problem is particularly critical where the antitrust laws are concerned because to a considerable extent those laws are viewed as a direct threat by those who exercise the greatest corporate influence. And because the stakes are high the level of lobbying is equally high.

For this reason, it is particularly important to assure some measure of public scrutiny of the exercise of that influence. Justice Brandeis once said, "Sunlight is the best of disinfectants." And it is sunlight which is required in the case of lobbying activities attempting to influence the enforcement of the antitrust laws.

To deal with this problem in a constructive way, the bill proposes a new provision in the Clayton Act which would require a disclosure of lobbying activities on behalf of any defendant in connection with a consent decree proceeding.

The bill adds a new subsection (f) which provides that not later than 10 days following the filing of any proposed consent judgment as required by the bill each defendant must file with the district court a description of any and all written or oral communications by or on behalf of that defendant with any officer or employee of the United States concerning or relevant to the consent judgment or the subject matter thereof. Included under this provision are contacts on behalf of a defendant by any of its officers, directors, employees or agents or any other person acting on behalf of the defendant, with any Federal official or employee. Thus, for example, the provision would include contacts with Members of Congress or staff, Cabinet officials, staff members of executive departments and White House staff.

The only exception is a limited exception for attorneys representing the defendant who are of record in the judicial proceeding. The exception is designed to avoid interference with legitimate settlement negotiations between attorneys representing a defendant and Justice Department attorneys handling the litigation. However, the provision is not intended as a loophole for extensive lobbying activities by a horde of "counsel of record."

In operation, the provision would require disclosure, for example, of a meeting between a corporate official and a Cabinet officer discussing "antitrust policy" during the pendency of antitrust litigation against that corporation. The disclosure intended is a disclosure of the fact of the meeting and the general subject matter. It obviously does not envision an outline of the conversation. But the essential data, that is, the date, the participants, and the fact that antitrust matters were discussed must be disclosed.

In addition, the bill requires that prior to entry of the consent judgment by the court, each defendant must certify to the court that the requirement of the section have been complied with and that the filing is a true and complete description of all such contacts or communications.

The requirements of this section are by no means burdensome. They demand no extraordinary efforts on the part of any defendant in order to comply with the duties imposed in the section.

Furthermore, they apply equally to contact with any branch of Government, including the Congress. I believe it is important that we in the Congress accept the same scrutiny as we would impose on any other branch. Furthermore, I believe there is a great deal to be gained by having a corporate official who seeks to influence a pending antitrust case through congressional pressure, know that his activity is subject to public view.

For all these reasons, I believe this section will be an important contribution toward vastly improving the atmosphere in which the Antitrust Division must operate in seeking to enforce the law. I have little doubt that enactment of this section might enable the Government's attorneys to do an even better job of litigating a particular case.

F. PRIMA FACIE EFFECT

A final provision in the consent decree procedures retains the provision presently contained in section 5 of the Clayton Act which prevents use of a consent decree in any way in subsequent litigation as prima facie evidence of violation. A new subsection (g) would be added which provides that proceedings before the district court in connection with the decree and public impact statements filed pursuant to the provisions of the bill are not admissible against any defendant in any action or proceeding brought by any other party against that defendant under the antitrust laws or by the United States under section 4A of the Clayton Act, nor may they constitute a basis for introduction of the decree as prima facie evidence against such defendant in any such action or proceeding.

The basic reason for including this provision is to preserve the consent decree as a substantial enforcement tool by declining to give it prima facie effect as a matter of law.

Although there have been suggestions that such effect be written into the law this bill does not reflect such suggestions. Since the primary purpose of the new consent decree procedures is to improve the process by which such decrees are used, continuation of the protection against prima facie effect appears necessary.

However, this provision is not intended to affect the Government's ability to require a so-called asphalt clause providing such effect where such a clause is deemed appropriate.

II. INCREASED CRIMINAL PENALTIES

A second part of the bill increases the penalties for criminal violations of the antitrust laws from $50,000 to $100,000 for individuals and to $500,000 for corporations. In an era when the profits available through

antitrust violations can run to the millions of dollars, this increase is long overdue.

Former Attorney General John Mitchell, himself no stranger to corporate boardrooms, said this in support of increased corporate penalties in 1969:

The maximum fine for violations of the Sherman Antitrust Act was increased to $50,000 in 1955. Since that time the assets and profits of corporations have increased dramatically, while the purchasing power of the dollar has decreased greatly. Consequently, the basic purpose of such a fine—to punish offenders and to deter potential offenders—are frustrated because the additional profits available through prolonged violation of the law can far exceed the penalty which may be imposed. The $50,000 statutory maximum makes fines in criminal antitrust cases trivial for major corporate defendants.

The need for this increase is self-evident. The only way violations of the antitrust laws will be deterred is by making the cost of violations unacceptable. Increasing the fines is not the only solution; more jail sentences for individual defendants might well be the most effective deterrent. But increasing the monetary penalties might well remove some of the profits which make antitrust violations attractive to otherwise ethical businessmen.

Increasing the maximum fine will do nothing if judges fail to use it effectively. Actual fines in the past have been far below the maximum possible. The Ralph Nader study group report on antitrust enforcement recently estimated that between 1955 and 1965, corporate fines average $13,420 and individual fines $3,365. Unless judges are prepared to make a violation economically painful, mere increases in statutory maximums will carry little deterrent value.

III. APPELLATE REVIEW OF ANTITRUST CASES

Mr. President, the final portion of this bill would amend the Expediting Act to improve the procedures for appeals in antitrust cases, and particularly to permit immediate Supreme Court review of those cases of general public importance. Additionally, it would remove the present uncertainty as to whether or not the interlocutory appeal statute is available under the Expediting Act. This present uncertainty has hampered the Department of Justice in obtaining preliminary injunctions in antitrust cases because of the doubt as to the applicability of appellate review.

In brief, the proposal would amend section 1 of the Expediting Act (15 U.S.C. 28, 49 U.S.C. 44) which provides for a three-judge district court in civil actions where the United States is a plaintiff under the Sherman or Clayton Antitrust Acts or certain sections of the Interstate Commerce Act, when the Attorney General files with the district court a certificate that the case is of general public importance. The section also provides that the hearing and determination of such cases shall be expedited. The amendment would eliminate the provision that a three-judge court be impaneled when the Attorney General files his expediting certificate, but would retain the expediting procedure in single-judge courts.

The bill would amend section 2 of the act (15 U.S.C. 29, 49 U.S.C. 45), which provides that appeal from a final judgment of a district court in any civil action brought by the United States under any of the acts covered by section 1 of the Expediting Act will lie only in the Supreme Court. The amendment would eliminate directed appeal to the Supreme Court in such actions for all but cases of general public importance, substituting normal appellate review through the courts of appeals with discretionary review by the Supreme Court. The amendment provides that any appeal from a final judgment in a government civil case under the antitrust laws, or other statutes of like purpose, and not certificated by the Attorney General or the district court as requiring immediate Supreme Court review will be taken to the court of appeals pursuant to section 1291 and 2107 of title 28 of the United States Code. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to section 1292(a)(1) and 2107 of title 28 of the United States Code, but not otherwise. Any judgments entered by the courts of appeals in such actions shall be subject to review by the Supreme Court upon a writ of certiorari.

The amendment also provides that an appeal and any cross-appeal from a final judgment in such proceedings will lie directly in the Supreme Court if, not later than 15 days after the filing of appeal, (1) upon application of a party, the district judge who decided the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice or (2) the Attorney General files in the district court a certificate containing the same statement. Upon filing of such an order or certificate, the Supreme Court shall either dispose of the appeal and any cross-appeal in the same manner as any other direct appeal authorized by law or deny the direct appeal and remand the case to the court of appeals. Review in that court could then go forward without further delay. This is similar to the procedure of the Criminal Appeals Act (18 U.S.C. 3731).

These revisions represent a substantial improvement in the appellate process for antitrust cases. In addition, the provisions authorizing appeal by the Government from a denial of a preliminary injunction at the district court level are directly responsive to the repeated pleas of the former head of the Antitrust Division, Richard McLaren, voiced recently. Judge McLaren repeatedly emphasized the need for legislation to give the government the right to appeal from such denials:

Again, I refer to the fact that we have asked, or the Department asked, repeatedly for legislation that would give us the right to appeal in those denials.

That request has been echoed recently by Donald Baker, Chief of Policy Planning and Education for the Antitrust Division:

Under present law, the government has no effective appeal from a denial of a preliminary injunction in a merger case. We have sought unsuccessfully to get that power in recent years. Congress has not acted.

This bill will resolve that problem in a manner acceptable to the Justice Department. All of the revisions of the Expediting Act contained in this bill have been endorsed by the Department in hearings during the 91st Congress.

Mr. GURNEY. Mr. President, I am pleased to join with the distinguished Senator from California (Mr. TUNNEY) in reintroducing legislation which would amend the antitrust laws so as to make more information available to the courts, and to the public, about proposed consent decree settlements of antitrust cases. The consent decree is an important and useful tool in the enforcement of our antitrust laws, and this legislation to enhance its effectiveness will serve to strengthen our national commitment to the ideals of freedom and the free enterprise system.

Consistently with the ideals of freedom and the free enterprise system, competition by entrepreneurs in the marketplace is generally considered indispensable to the production of high-quality goods at the lowest possible price. Producers and consumers alike benefit when no one company or corporation controls an industry to the extent that competitive producers can be driven out of the market or that prices can be set arbitrarily at high levels.

Just as Government is charged with the duty to protect the rights of individuals in a political and social sense, so, too, does it have an obligation to protect their rights in an economic sense. To meet this obligation, legislation has been passed, starting with the Interstate Commerce Act in 1887, to protect businessmen and consumers alike from monopolistic practices that act in restraint of free and open trade. The Sherman Act, the Clayton Act, and the creation of the Federal Trade Commission are but a few examples of our efforts to insure that the free enterprise system remains free and competitive.

The trend toward "consumerism" in recent years emphasizes that effective antitrust legislation is as important today as it ever was, and while the laws on the books have served us well, changing times always leave room for improvements to be made. It is the purpose of this bill to improve the procedures for enforcement of our antitrust laws by providing the public with greater information with which to assess antitrust effectiveness.

For example, in recent years we have seen a dramatic increase in the number of conglomerates or holding companies—huge corporations that have interests in a wide range of industries. There is nothing necessarily wrong with size, per se, and in many cases the industries involved may benefit. Yet unless a watchful eye is kept on such developments there is a danger that the interests of the public may be done a disservice. Although there is no inherent danger to size, the very vastness of some companies presumably has some effect on the Nation's economy.

The key here is information, information on what is being contemplated, how it came to pass, what the public impact may be, and how individuals affected might obtain recourse in case of injury. With present-day business dealing more complex than ever, the public has a need for a greater amount of information than ever, if its interests are best to be served. And that is exactly what this bill proposes to do—make more information available to all concerned.

Specifically, this bill establishes a specific but reasonable set of standards and guidelines to govern the settlement of antitrust cases and, in particular, the procedures by which consent judgments are entered into. This bill basically expands upon existing law and does not work undue hardship upon anyone. In my view, its passage would have the positive effect of enhancing public confidence in the way antitrust cases are being handled.

Basically, the bill can be divided into three sections. The first section would require that any consent decree proposed by the Justice Department must be filed with the court and published in the Federal Register 60 days before it is intended to take effect. At the same time the Department would be required to file a "public impact" statement listing in-

formation on the case, the settlement proposed, the remedies available to potential private plaintiffs damaged by the alleged violation, a description of alternatives to the settlement, and the anticipated effects of such alternatives.

As it stands now, these consent decrees must be filed with the court 30 days in advance and similar public impact statements are already required in other areas by the National Environmental Protection Act. The extra time and additional information that this bill requires is for the purpose of encouraging and, in some cases, soliciting additional information and public comment that will help the court decide if the consent degree should be granted. To insure that public comment receives consideration, a further provision requires that the Justice Department file a formal response to it.

As to whether or not the consent decree should be accepted by the Court, this bill requires that the decree be accepted only after the Court has determined that it is in the public interest. This is a particularly important provision since, after entry of a consent decree, it is often difficult for private parties to recover damages for antitrust injuries. In some cases, the Court may find that it is more in the public interest, for this reason and others, for the case to go to trial instead of being settled by agreement.

Because the consent decree is an important and useful method of antitrust enforcement, it is not the purpose of this bill to undo its effectiveness. Instead, the bill provides that proceedings before the district court in connection either with the decree itself or the required public impact statements are not admissible against any defendant in any antitrust action nor may they be used as a basis for introduction of the decree itself as evidence. By declining to give it prima facie effect as a matter of law, the consent decree is thereby preserved as an effective tool of law enforcement.

The other portions of the bill are also very important and valuable. They raise the penalties for criminal violations of the antitrust laws and improve the appeals procedures in antitrust cases. The present maximum fine of $50,000 is an inadequate deterrent against violations, and providing for immediate Supreme Court review of those cases of general public importance can only benefit everyone concerned.

The use of consent decrees by the Department of Justice is highly important to the effective administration of our antitrust laws. A great number of judgments each year result from this practice. During the years 1955 to 1967, 81 percent of all antitrust judgments were represented by consent decrees. The following figures show the percentage of antitrust judgments represented by consent decrees during the period 1955 to 1972:

	Percent
1955	91
1956	91
1957	88
1958	88
1959	82
1960	100
1961	70
1962	100
1963	82
1964	88
1965	75
1966	80
1967	53
1968	66
1969	57
1970	84
1971	93
1972	76

If we are to be effective in our efforts to promote free enterprise and to discourage monopolistic business activity, we must be firm, we must be fair, and we must insure that the public interest—the rights of indivduals to buy and sell goods at the marketplace without undue interference—shall to the greatest extent possible be protected.

By Mr. CHILES (for himself and Mr. JACKSON):

S. 783. A bill to establish the Everglades-Big Cypress National Recreation Area in the State of Florida, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. CHILES. Mr. President, in 1971, before I introduced an acquisition bill last year along with Senator JACKSON, I studied various alternatives to protect this beautiful and vital area of Florida. I came to the conclusion that the direct acquisition of this area was the most straightforward and fair approach and the most complete way of protecting a key link to the survival of Everglades National Park.

I am today reintroducing along with Senator JACKSON a reacquisition bill.

I am delighted that the President and Secretary Morton have come out in full support of an acquisition approach as the best way to protect the Big Cypress watershed. At that time 25 of our colleagues had cosponsored one or another of the acquisition approaches. In addition, this approach has received another boost by the chairman of the House Interior Committtee, Congressman JAMES HALEY of Florida.

Although the Big Cypress is a treasure worth protecting in itself, its role in supplying over one-half of the flow of ground water into western portions of the park makes the Big Cypress an absolute link in the park's future.

It seems to me that not only is direct acquisition the best way but that it is the only right way to protect the rights of owners in the area. This bill protects the rights of sportsmen-hunters and fishermen. This has long been a great area for hunters and fishermen and is an area that should be protected and utilized for that purpose.

Mr. President, there are some people who actually live in the proposed acquisition area. These people, many of whom have sold their homes in the city and moved into a permanent residence in the Big Cypress, deserve to be protected. In addition, there may be a small handful of commercial establishments in the area which I feel should also retain some rights also subject to proper regulation by the Secretary. Also, there are a few sportsmen who have longstanding camps who could be included. These sportsmen agree that no further changes should be made in Big Cypress and I want to see the area remain in its present state. In fact, most agree the existing uses of this area today are not the problem. The danger lies in any proposed new uses.

There is language in the bill along the lines of giving a term in years or a life estate in these holdings for the owner, his wife, or children as long as the property is being utilized in a consistent way according to the Secretary's rules and the fair market value for his holdings less the rights he retains. It goes without saying that the owner of property has a right to just compensation for his property and if he cannot agree on this compensation, he would be entitled to a jury trial in a Federal district court.

The State of Florida wants to make its contribution to the protection of the area through possible future management of the acquired lands and possibly sharing a part of the acquisition costs.

The Big Cypress watershed can remain a viable natural resource or it can be carelessly exploited for the immediate gain of a few—and which will result in an enduring disaster to many.

Maintained as a protected ecosystem, Big Cypress will provide major benefits which can be grouped in several broad areas.

As an entity in itself, considered apart from its surroundings, Big Cypress watershed is a distinctive community of highly diverse plant and animal life, including a number of endangered species such as the Florida panther, the Everglades mink, southern bald eagle, and roseate spoonbill. It serves as a habitat for the continuing evolution of plant and animal species whose potential in an evolving world is as yet unexplored, and furnishes opportunities for hunting, fishing, airboating, and other kinds of recreation in a natural setting for a contact with nature of a kind that is increasingly scarce and hard to find.

As a source of fresh water and essential nutrient supply to the estuaries of Everglades National Park and the Ten Thousand Islands, Big Cypress Watershed is the key to survival of the far-reaching recreational and commercial shrimping and fishing enterprises that depend upon those estuaries.

The entire food-chain relationship that supports a major segment of Everglades National Park's plant and animal communities depends on maintaining the continuing flow of Big Cypress water. The quality and quantity of the water and the timing of its delivery into the park must remain much the same as it is at present if the Everglades ecosystem and its wildlife are to survive.

The Big Cypress watershed serves as a natural water conservation area, recharging the aquifer from which rapidly growing neighboring communities will draw much of their fresh water. Deprived of this recharge, the aquifer would be vulnerable to damaging salt-water intrusion.

The natural cycles of Big Cypress' waterflow and the life cycles of the living things dependent on that flow are integral and vital parts of the lives of