

St. Petersburg, Florida  
January 16, 1964

The enclosed clippings from the St. Petersburg Times are an indication of the reaction of most Floridians relative the disclosure of Senator Smather's land deals and investments in Florida Real Estate.

Sincerely yours

Larry

## St. Petersburg Times Editorials

"The policy of our paper is very simple—merely to tell the truth"

—Paul Poynter, publisher, 1912-1950

Editorial Page 8-A

Phone 894-1111

Wednesday, Jan. 15, 1964

# Our Senator's Deal

Senator George Smathers' explanation of his lucrative investment in a Florida land development, in which he shared the extremely high profits with Bobby Baker and Scotty Peek, is far too sketchy and incomplete to satisfy the voters who have given him the privilege of representing them in Washington.

**SENATOR SMATHERS** did not reveal other partners in the deal besides Baker, former secretary to the Senate's Democratic majority, and Peek, Smathers' former administrative assistant.

Senator Smathers did not explain how he managed profits of \$42,000 in seven years on a 180-acre tract near Maitland which he said he did not subdivide or develop.

**We cannot believe Smathers will choose to stand on the inadequate information given thus far on this matter. Surely he will understand the need for full disclosure of all facts relating to this deal as well as to other investments he might have made.**

From what is known so far, Bobby Baker's role in this is minor. It is easy to understand how Senator Smathers, once involved in such a deal, might be moved to share it with Peek and Baker.

**WHAT MANY FLORIDIANS** desire to know more about are the circumstances under which the Senator was drawn into the original investment. It may be that Smathers' public capacity was unrelated, that, as he implied, "some longtime friends" permitted him

to share their harvest of dollars because of their friendship. But Floridians will want to judge this for themselves based upon all the facts.

Smathers' involvement carries a strong argument for a law requiring all Federal officials, elected as well as appointed, to make public disclosures of their personal finances. Such a law would guard against conflict of interest and help maintain public confidence in Congress.

The move for a disclosure law has long remained dormant in Congress. In 1951, President Truman recommended the "prompt" passage of such a law.

**"PUBLIC OFFICE** is a privilege, not a right," Truman told Congress. "And people who accept the privilege of holding office in the government must of necessity expect that their entire conduct should be open to inspection by the people they are serving."

Since that time, more and more senators and congressmen voluntarily have disclosed their personal finances. The numbers now have reached at least 10 senators and 19 representatives.

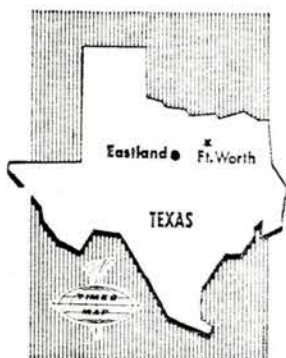
Among the senators are Mike Mansfield, Joseph Clark, Jacob Javits, Stephen Young, Philip Hart and, most recently, Wayne Morse. House members include Florida Congressmen Charles E. Bennett and Claude Pepper.

Senator Smathers should be the next to join this growing list. Until he discloses fully his personal finances, the questions already raised cannot be settled.

# Smathers Says His Land Venture Ethical

Editorial, 8-A.

By JERRY BLIZIN  
Times Bureau



## Eastland, Tex., Bans Cigarettes; Sets \$1,000 Fine

EASTLAND, Tex. (UPI) — Three smoking members and one non-smoking member of the Eastland City Council yesterday unanimously passed an ordinance prohibiting the sale or use of cigarettes within the municipal limits.

The ordinance provides a \$1,000 fine or three years imprisonment for any person caught with cigarettes or smoking them. Mayor Don Pierson said he expects the ordinance to become effective Feb. 20.

**THERE WERE** strong indications that if the ordinance was not passed as a joke, it may have about the same effect. S. G. Johndroe Jr., city attorney of nearby Fort Worth, said Eastland residents can smoke all they want to without fear of arrest.

Johndroe said that the state, in effect, approved the sale of cigarettes by taxing them. There is no local option law on cigarettes as there is on alcohol in Texas.

Furthermore, Johndroe said, the City Council of Eastland put the punishment too high. A city may not legally fine any person more than \$200 and can send to jail only a person who refused to pay his fine or is in contempt of court.

**MAYOR PIERSON**, a two-pack-a-day smoker until the government report on cigarettes came out Saturday, said the penalties were made severe to show people the council is "serious."

WASHINGTON—Florida Sen. George A. Smathers, who yesterday disclosed that he invests rather heavily in state real estate properties, said an Orange County venture with former Senate majority secretary Bobby Baker was beyond reproach.

Smathers sold one eighth interests in a 180-acre tract at Maitland, in northeast Orange County, to Baker and Scott I. Peek, Smathers' former administrative aide, in 1957.

**THE TWO MADE** \$7,000 apiece on \$1,500 investments, while Smathers—who owned the tract for two years before he offered interests to Baker and Peek—estimated he made \$42,000 on the land over a seven-year period.

"But if this is wrong with Baker and Peek," Smathers said, "then they've got to rewrite the Bible and the Constitution—particularly the Bible."

He insisted that he offered interests in the land because both Baker and Peek were young men, with growing families, and struggling to get ahead.

Peek was then making an estimated \$16,000, the next-to-the-top pay scale for Senate staff aides. Baker earned \$19,600 as majority secretary when he resigned in October. His 1957 pay rate was not immediately available yesterday.

**SMATHERS**, however, said he felt sorry for them.

"I help a lot of people—I've put four boys through college in addition to my two sons and I'm not a rich man. I expect to keep doing that."

Senate Rules Committee investigators yesterday promised to make a full probe of the Smathers-Baker-Peek land deal.

Committee Chairman B. Everett Jordan, D-N.C. said the group has no intention of calling Smathers to testify.

"We don't need him—we're

(Please see LAND, 2-A)

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# Land Deal Said Ethical

**FROM 1-A**

not investigating senators," Jordan said.

Jordan said the committee's assignment is to investigate Senate employes, past and present, and he said Smathers is not an employe of the Senate.

L. P. McLendon, special committee counsel said it was probable that Peek might be called.

**SMATHERS SAID** the Maitland tract was raw acreage he bought in 1957 with a group of private citizens, "none of them are public officials—they're just people I went to the University of Florida with."

Tuesday Smathers said his portion of the transaction was one fifth.

He declined to identify them. But Smathers said that he owns land in "various parts of Florida," — nine of it in Pinellas County.

"I don't know where it all is," he said, "some of it I bought as investment. Some of it was successful, and some of it I may be stuck with for some time."

All that remains of the 180-acre Maitland tract, which he said is about 20-25 miles north of Orlando, is a few lots. But Smathers said he had never subdivided or developed the property and has therefore treated all this income as capital gains instead of ordinary income.

**HE SAID** the Maitland acreage doesn't have any frontage on state highways.

"There is nothing wrong in this," Smathers said. "This was timber land, part of it in groves. It lies around a lake."

He said he has never used his office to promote the property in any way.

Nor, he said, did his unidentified Florida friends who hold part of the Maitland tract know that Baker or Peek held any interest in the land.

Smathers figured his gain in the sale of the property was at the same rate as that made by Baker and Peek.

Smathers said he knew of no other land in Florida in which Baker might have invested. He said he hasn't been involved in any other venture with Baker.

## Hearing Continues

WASHINGTON (AP) — A Miami vending machine operator testified yesterday that former Senate aide Robert G. Baker never used influence to help him.

Eugene A. Hancock, former president of Serv-U Corp., told the Senate Rules Committee that Baker plans to appear be-

fore the committee and challenge testimony that he accepted \$5,600 for helping another operator land a contract.

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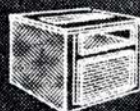
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### Not So Cold

Fair, low near 37 degrees. Scattered frost colder rural areas. High near 70; increasing cloudiness, warmer. SE to S winds 10 to 20 m.p.h. Weather data, Page 2-A; story, 1-B.

# St. Petersburg Times

President Support  
Medical Care  
See Page 10-

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76 PAGES

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## ✓✓ Smathers Refuses To Disclose Holdings

By **JERRY BLIZIN**  
Times Bureau

WASHINGTON—Sen. George Smathers yesterday refused to disclose his real estate holdings in Florida.

"When Nelson Poynter (editor and president of The St. Petersburg Times and Evening Independent) discloses his," Smathers said, "I'll disclose mine."

**SMATHERS**, junior senator from Florida, was identified Monday as a part owner of

acreage in Orange County in which former Senate majority secretary Robert G. (Bobby) Baker and Scott I. Peek, Smathers' former administrative assistant, also held one-eighth shares.

Smathers said yesterday that when Senate rules require disclosure of assets, he will comply. He contends his conduct in office is judged every time he runs for office.

The senator was elected to his third Senate term in 1962. His general election opponent was

Emerson Rupert, a St. Petersburg Republican. Smathers won, 657,633 to 329,381 votes.

✓ **POYNTER LATER** yesterday sent the following telegram to Smathers:

✓ "Dear George, Re your statement that you would disclose your real estate holdings if I would do so, mine consist of my home in St. Petersburg and property used in publishing The St. Petersburg Times and Evening Independent, including circulation substations and Clearwater bureau.

✓ "Please telegraph collect to The St. Petersburg Times, night press, the list of your holdings. Regards, Nelson Poynter."

✓ About a half-dozen senators have voluntarily disclosed their assets.

**IN DEFENDING** his role in the ownership of property with Baker and Peek, Smathers Tuesday said he owned "considerable land" in various parts of Florida.

Yesterday Smathers' cousin, Ben, an Orlando attorney who invited the senator to par-

ticipate in the \$423,000 purchase of acreage at Maitland, in Orange County, also defended the propriety of the purchase.

**SMATHERS' OFFICE**, inundated by requests for details for the Florida land venture, referred all calls to Ben Smathers.

Ben Smathers, his law partner, Charles O. Andrews Jr., and two Winter Park real estate men and developers, Charles and Malcolm Clayton, were disclosed as the purchasers of the 143-acre tract from J. Hilton

Sapp, a contractor.

The purchase was made in 1957, although Sen. Smathers was apparently invited to in the purchase during 1956.

Smathers yesterday revealed the figures on the Maitland landings.

Smathers said he bought 13 1/3 per cent of the enterprise in 1957, not 20 per cent as office announced on Tuesday.

"Somebody back there mentioned the figure one-fifth

(Please see **SMATHERS**, 2



## Smathers Refuses To Disclose Holdings

FROM 1-A

per cent)," the Florida Democrat said.

"The senator may have thought it was one-fifth because there were five people in it altogether," one of his secretaries suggested.

**UNDER A TRUST** agreement dated March 21, 1957, Smathers went into the deal with his cousin, the Claytons and Andrews.

Smathers subsequently sold one-eighth shares of his interest to Baker, former secretary to the Senate's Democratic majority, and to Scott I. Peek, former administrative assistant to the senator. Their association came to light Monday in testimony before the Senate Rules Committee, which is probing Baker's financial affairs.

For his share, Smathers paid \$12,000 in two checks payable to Andrews as trustee for the enterprise. One check for \$8,000 was dated April 4, 1957, and the second for \$4,000 was dated May 30, 1957.

In September of that year, Baker and Peek each bought in with \$1,500 checks payable to Smathers. Smathers said he cut them in because each was "trying to raise a large young family on a limited salary."

**SMATHERS SAID** his cousin, Ben, and Andrews invited him to join the venture. His personal secretary, Juanita Thomas, said Ben's invitation came in December 1956.

Smathers referred most questions on the deal to Miss Thomas, who he said handles most of his financial affairs. He said he was not directly involved in its progress and was unacquainted with all the business details.

Originally, said Miss Thomas, the Clayton brothers owned 60 per cent of the deal. Smathers, his cousin and Andrews owned the other 40 per cent in equal shares of 13 1/3 per cent each.

The trust was dissolved in 1959. Ben Smathers is now armed with the power of attorney to collect money for land sales. Smathers' office said, but the Claytons are no longer associated with the venture.

**THE ORIGINAL** five partners bought 143 acres of undeveloped land from J. Hilton Sapp, a wealthy contractor. Sapp said he thought the price was "about \$423,000." Smathers

has received some \$42,000 on his \$12,000 investment since 1957 from the land's resale.

Smathers corrected his estimate of his holdings after being asked how he was able to buy one-fifth of a \$423,000 enterprise for \$12,000.

He explained that he and his four partners made a 29 per cent down payment, then paid off the remaining 71 per cent with proceeds from sale of the land.

Twenty-nine per cent of \$423,000 is \$122,670. Thirteen and one-third per cent of \$122,670 is \$16,315 — not far away from the \$12,000 which Smathers paid.

The senator said he did not know if \$423,000 was the exact amount paid for Sapp's land.

**A CHECK OF** state stamps concerning the transaction indicated that the \$423,000 figure was correct.

Smathers said he did not know Sapp, who received two sizable contracts last year for work at Cape Kennedy, and said he had never intervened on behalf of Sapp for any defense work. "I've never even met him," the senator said.

Sapp said he contributed to Smathers' 1950 senatorial campaign against Claude Pepper. Smathers said he did not recall the amount.

And state records at Tallahassee do not reveal the amount either.

So far, Smathers' office said, Baker and Peek each has received a little over \$7,000 from their 1.67 per cent shares of the Maitland project.

Baker was making \$19,600 a year and Peek \$16,500 at the time they left their Washington jobs last year. Clarifying Smathers' remark that their incomes were "limited" when he offered them the land shares, his office said Wednesday that their wages in 1957 were considerably less — \$15,500 for Baker, \$13,500 for Peek.

**IN ORLANDO,** Andrews issued a statement confirming the senator's revised description of the over-all financial structure of the trust. He said the negotiations were handled in the same manner as countless other land transactions.

Andrews declined to say how much land was re-sold for as it was developed into a swank residential area known as Dommerich Estates and Dommerich Woods.

The Dommerich series of homes in the \$30,000 range sold quickly. Few lots remain.

One of the biggest booms to the subdivision's success was its popularity among executives and top engineers at the Martin Co., a mammoth rocket plant at Orlando.

Martin, one of the state's largest employers, was mushrooming to peak size at almost the identical time the Dommerich development came into being.

The Clayton brothers, builders of hundreds of homes in the Orlando area, found continuing success in bringing Martin personnel to the Dommerich neighborhoods. Most of the homes surround wooded lakes. The development on U.S. 17 and 92 is about a half-hour drive from the Martin plant south of Orlando.

In November 1961 Sapp and his company were indicted by a Volusia County grand jury for taking more than \$100 worth of school board property. The charges were dropped before trial.

## LBJ Nominations Sent To Senate

WASHINGTON (AP) — President Johnson yesterday nominated C. Burke Elbrick, a career Foreign Service officer, to be ambassador to Yugoslavia, replacing George F. Kennan, who resigned months ago.

A native of Louisville, Ky., Elbrick has had a variety of State Department posts.

Other nominations sent to the Senate yesterday included: **Cyrus R. Vance** to be deputy secretary of defense, succeeding Roswell L. Gilpatric. Vance is now secretary of the Army; **Stephen Ailes**, deputy secretary of the Army, to be secretary of the Army, succeeding Vance; **Edwin M. Martin**, to be ambassador to Argentina. Martin had been assistant secretary of state for inter-American affairs.

## Estes Sentence Upheld

AUSTIN, Tex. — The Texas Court of Criminal Appeals yesterday unanimously upheld the swindling conviction of Billie Sol Estes, pushing the bankrupt fertilizer king a step closer to an 8-year prison term.

Estes also faces a 15-year federal prison sentence for fraud. He is free in appeals bonds totaling \$130,000.

## Ted Sorensen First To Quit

FROM 1-A

written now, with full time devoted to the chore, or it might never be written.

The bespectacled lawyer said his book would contain personal reminiscences and also analyze what Kennedy did and tried to do — "what kind of person he was, what kind of president he was."

**JOHNSON SOUGHT** several times to stave off the resignation, which Sorensen decided upon "in a general sense" about a month ago.

Sorensen said the President made one final effort to change his mind yesterday.

No one on Kennedy's immediate staff seemed as close to the late president personally, politically and ideologically as Sorensen. Though Sorensen was the son of a midwestern Republican and Kennedy a New England Roman Catholic, both shared "liberal" views that formed an unshakable bond.

Born to parents of Danish and Russian extraction, the lean, bespectacled Sorensen attended the University of Nebraska, won a Phi Beta Kappa key, and was graduated at the top of his law class at the same university in 1951.

Sorensen joined the government, and was hired as legislative research assistant by Kennedy, then a senator from Massachusetts, in 1953. Sorensen quickly showed sharpness and drive, plus a brilliant flair for speechwriting, and he soon became Kennedy's right-hand man.

**WHEN SORENSEN** went to the White House, his title, special counsel to the President, did not tell the whole story. He was not only Kennedy's speechwriter and adviser but an intellectual alter ego. "If you cut Kennedy, Sorensen bleeds," went the saying in Washington political circles.

A quiet, almost ascetic-looking man, Sorensen scrupulously avoided the limelight during the Kennedy years. But in a revealing series of lectures at Columbia University, Sorensen spoke knowingly of presidential decision-making at the White House under Kennedy.

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Friday Jan 17<sup>th</sup> 1964 W. P. 201

## Smathers Invited to Tell Of Florida Land Holdings

Sen. George A. Smathers (D-Fla.) was invited yesterday to make a disclosure of his newspaper properties, including Florida land holdings by a home state newspaper. He has not responded to the invitation.

Nelson P. Poynter, publisher of the St. Petersburg Times, queried Smathers about the disclosure in a "Dear George" telegram to the Florida Democrat.

It was sent in the aftermath of disclosure by the Senate Rules Committee that Smathers held a joint interest with former Senate Majority Secretary Robert G. (Bobby) Baker in a speculative tract near the booming Cape Canaveral area. The investment brought Smathers an estimated \$42,000 profit over a seven-year period and Baker a profit of more than \$7000.

The St. Petersburg Times reported that one of its Washington correspondents asked Smathers, after the story broke, if he would disclose his other land holdings in Florida.

Smathers replied, according to the newspaper, that he would make such a disclosure after Poynter disclosed his Florida land holdings.

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## Conflict Bill Reported Out

By the Associated Press

The House Judiciary Committee yesterday unanimously approved a bill designed to strengthen and simplify the laws dealing with conflict-of-interest among Government employes.

The bill tightens existing bans on certain transactions between Government officials and private interests, eases restrictions on part-time employes and consultants and codifies the bribery statutes.

It is the product of three years' effort by the committee and its staff and has the support of the administration and leading bar associations.

Representative Celler, Democrat of N. Y., chairman of the committee, and Representative McCulloch, Republican of Ohio, the ranking Republican, joined in sponsoring the measure.

Mr. Celler said the aim is to prevent "improper and unethical practices without depriving the Government of the services of conscientious men and women."

Mr. McCulloch hailed the bill as "a real step forward in a field with many twilight zones. It should inure to the benefit of the entire public."

One of the major provisions would prohibit an ex-Government official who enters private business from taking part in a transaction he worked on with the Government. Present law bans such participation for only two years.

1959

See line 24

563. PAYMENTS FOR SERVICES RENDERED BY OTHER THAN EMPLOYEES

In the form below give information concerning payments, fees, retainers, commissions, gifts, contributions, assessments, bonuses, pensions, subscriptions, allowance for expenses, or any form of payments amounting in the aggregate to \$20,000 or more during the year to any corporation, institution, association, firm, partnership, committee, or any person other than one of respondent's employees covered in schedule 502 in this annual report, for services or as a donation, except that with respect to contributions under \$20,000 which are made in addition with other carriers under a joint arrangement in payment for the performance of services or as a donation, each such contribution shall be reported, respectively of the amount thereof, if the total amount paid by all contributors for the performance of the particular service is equal to the sum of \$20,000 or more.

bureaus, boards, and other organizations maintained jointly by railroads shall also be included. The enumeration of these kinds of payments should not be understood as excluding other payments for services not included below.

To be excluded are: Rent of buildings or other property, taxes payable to the Federal, State, or local governments, payments for heat, light, power, telegraph, and telephone services, and payments to other carriers for the costs of lawful tariff charges or for the interchange of equipment between carriers, as well as other payments for services which both as to their nature and amount may reasonably be regarded as ordinarily connected with the routine operation, maintenance, or construction of a railroad, but any special and unusual payments for services should be reported. Payments of \$20,000 or more to organizations maintained jointly by railroads with other railroads are not to be included even if their services are regarded as routine. If more convenient, this schedule may be filed out for a group of roads considered as one system and shown only in the report of the principal road in the system, with references thereto in the reports of the other roads.

If any doubt exists in the mind of the reporting officer as to the reportability of any type of payment, request should be made for a ruling before filing this report.

Name of recipient (a)	Nature of service (b)	Amount of payment (c)
Alabama Railroad Association	Expenses	1 870
American Red Cross	Contribution	2 200
Association of American Railroads	Assessments	143 936
Association of Southeastern Railroads	Expenses	22 451
Bureau of Information of the Southeastern Railways	Assessments	34 551
Caples Company, The	Advertising	267 930
Chase Manhattan Bank, The	Services, Fees and Expenses	41 328
Coverdale and Colpitts	Services and Expenses of Efficiency Consultants	101 227
Florida Railroad Association	Expenses	17 388
National Safety Council	Contribution	2 846
National Travelers Aid Association	Contribution	1 542
North Carolina Railroad Association	Expenses	4 969
Rail Travel Credit Agency	Expenses	4 426
Railroad Association of Georgia	Expenses	9 928
Railroad Perishable Inspection Agency	Expenses	1 997
Railway Advisory Services, Inc.	Services and Expenses of Advisory Consultants	16 489
Richmond Area Community Chest	Contribution	8 200
Shea, Greenman and Gardner	Legal Services	27 500
Smathers, Thompson and Dyer	Legal Services and Expenses	34 290
South Carolina Railroad Association	Assessment	7 991
Southeastern Committee for the National Adjustment Board	Assessments	14 361
Southeastern Demurrage and Storage Bureau	Expenses	110 166
Southeastern Railroads Associated Bureaus	Expenses	11 039
Southern Classification Committee	Expenses	11 766
Southern Freight Association	Expenses	129 538
Southern Passenger Association	Expenses	34 024
Southern Ports Foreign Freight Committee	Expenses	2 184
Southern Weighing and Inspection Bureau	Expenses	129 811
Tax Foundation, Inc.	Contribution	300
Traffic Executive Association - Eastern Railroads	Expenses	1 200
Transportation Association of America	Dues as Sustaining Member	1 010
Virginia Railway Association	Expenses	2 327
Willkie Farr Gallagher Walton & FitzGibbon	Legal Services and Expenses	93 319
Wyer, Dick & Company	Services and Expenses of Efficiency Consultants	51 443
Total		1 345 547

Annual D.C. Report, Seaboard RR

1960

See line 24

ALL PAYMENTS FOR SERVICES RENDERED TO OTHER THAN EMPLOYEES

Name of recipient	Description of Service	Amount of Payment
Alabama Railroad Association	Expenses	1 870
American Red Cross	Contribution	2 400
Association of American Railroads	Assessments	157 385
Association of Southeastern Railroads	Expenses	22 115
Bureau of Information of the Southeastern Railroads	Assessments	55 764
Caples Company, The	Advertising	327 185
Chase Manhattan Bank, The	Services, Fees and Expenses	49 506
Committee for Economic Development	Contribution	1 000
Coverdale and Colpitts	Services and Expenses of Efficiency Consultants	28 318
Florida Railroad Association	Expenses	16 561
National Safety Council	Contribution	2 888
National Travelers Aid Association	Contribution	1 542
North Carolina Railroad Association	Expenses	5 813
Rail Travel Credit Agency	Expenses	5 340
Railroad Association of Georgia	Expenses	9 966
Railroad Perishable Inspection Agency	Expenses	1 935
Railway Advisory Services, Inc.	Services and Expenses of Advisory Consultants	19 261
Shee, Greenman and Gardner	Legal Services	46 358
Smathers, Thompson and Dyer	Legal Services and Expenses	62 610
South Carolina Railroad Association	Assessments	7 994
Southeastern Committee for the National Adjustment Board	Assessments	12 860
Southeastern Demurrage and Storage Bureau	Expenses	113 434
Southeastern Railroads Associated Bureaus	Expenses	38 369
Southern Classification Committee	Expenses	11 591
Southern Freight Association	Expenses	155 767
Southern Passenger Association	Expenses	35 537
Southern Ports Foreign Freight Committee	Expenses	2 210
Southern Weighing and Inspection Bureau	Expenses	131 104
Tax Foundation, Inc.	Contribution	300
Traffic Executive Association - Eastern Railroads	Expenses	1 200
Transportation Association of America	Dues as Sustaining Member	1 000
United Rivers Fund of Richmond, Resource and Chesterfield, Inc.	Contribution	9 000
Virginia Railway Association	Expenses	2 509
W. L. Farr, Gallagher, Walton & Fitzhibbon	Legal Services and Expenses	152 699
Yerkes, Cox & Company	Services and Expenses of Efficiency Consultants	73 504

## Mrs. La Gorce Among

By BERNARD O'BRIEN  
Contributing Writer

MIAMI BEACH, Fla. — Members of the Gold Coast social set are still going strong, but they are getting tired. "Is the season ever going to end?" is a stock question at parties, and from all indications, the answer is "no."

Mrs. John Oliver La Gorce, widow of the chairman of the board of the National Geographic magazine, arrived here last Sunday to spend 10 days or so with Mrs. Frank Katzentine.

First, Mrs. La Gorce visited in Palm Beach with the Bernard Gimbels and then went on to Fort Lauderdale for a few days. There, she was the houseguest of Mr. and Mrs. John Wrathers. At Lauderdale, and also Palm Beach, a series of small parties were given in her honor. Mrs. Wrathers entertained on a luncheon cruise aboard their yacht.

While on the yacht, Mrs. La Gorce was reminiscing on her recent South Seas islands cruise where she found Tahiti "just as intriguing as in Adventures in Paradise." She left Washington before Christmas for the six-week cruise.

La Gorce Drive and La Gorce Country Club were named for her late husband, who was a resident here on the beach.

### Lemnitzers Here

Gen. Lyman L. Lemnitzer last week addressed a formal stag dinner of the Miami Beach Committee of 100. He and Mrs. Lemnitzer stayed at the fashionable Surf Club Apartments.

Mr. James Gerity of Michigan, president of the committee, and Mrs. Gerity entertained for the Lemnitzers at a dinner-dance at the Indian Creek Country Club. Included in the party were the general's aides, Maj. Elmer Dunn and Maj. Robert Cushing and Gen. and Mrs. Edward Barber.

A dinner was given last week at the Fontainebleau Hotel for Mr. Grant Stockdale, Ambassador-designate to Ireland. This was a bon voyage event and attracted several hundred persons.

At Palm Beach, the Herbert Mays have been busy with guests. Directors of the Nickel Plate Railroad last week held their annual board

meeting at the May estate, "Mar-a-Lago." Mr. May is a director and the group was entertained there for luncheon. Senator George Smathers came down from Washington for the meeting.

Mr. May invited a number of Palm Beach town officials, civic, business and professional leaders to meet the directors, and there were 120 at the luncheon. Mrs. May entertained the wives at a luncheon at the Bath and Tennis Club.

Mr. and Mrs. James M. Johnston of Washington were at the Palm Beach Towers for a week. Mr. Johnston, an investment banker and one of the directors of the Washington Senators Ball Club, was here for the big gathering at the May home.

### Princess Shops

Her Imperial Highness, Princess Shahnaz, daughter of the Shah of Iran, was delighted in the "incomparable beauty" of Palm Beach and spent most of her time on

Worth avenue for her two-ter, Mahnaz, Florida sport herself.

Princess S. the Iranian Minister accompanied Minister and vani. Upon pink champ was given at tel where tl penthouse d visit.

Attending St. Lewis of 1 mer Amba Griffis and Hynes of W York and Pa princess can Washington Lady Ball."

Senator T. of Connecticut dressed the Round Table World's Gre the exclus Club. Mr. ar Landa were H



Mr. Drew Pearson  
Bell Syndicate  
1313 - 29th Street, N. W.  
Washington, D. C.

85TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ No. 1647

TRANSPORTATION ACT OF 1958

*Passed and  
became law  
in 85th Congress*

REPORT  
OF THE  
COMMITTEE ON  
INTERSTATE AND FOREIGN COMMERCE

ON

S. 3778



TOGETHER WITH

INDIVIDUAL VIEWS

*May 8, 1958  
introduced by  
[Signature]*



JUNE 3, 1958.—Ordered to be printed

UNITED STATES  
GOVERNMENT PRINTING OFFICE

WASHINGTON : 1958

TRANSPORTATION ACT OF 1958

JUNE 3, 1958.—Ordered to be printed

Mr. SMATHERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

INDIVIDUAL VIEWS

[To accompany S. 3778]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3778) to amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

I. INTRODUCTION

The purpose of this bill is to amend the Interstate Commerce Act, as amended, in order to provide necessary and desirable changes to enable strengthening of our Nation's transportation system, in the public interest.

This bill is the outgrowth of extensive hearings held by the Surface Transportation Subcommittee on the deteriorating position of American railroads. Those hearings were begun in January 1958 and lasted for 3½ months. For 2 days in May the full committee held additional hearings solely on the subcommittee's recommendation for amendment to the rule of ratemaking found in part I of the Interstate Commerce Act. Part I applies mainly to the regulation of railroads.

II. ADOPTION OF THE SUBCOMMITTEE REPORT, WITH AMENDMENTS, BY THE FULL COMMITTEE

The report of the subcommittee entitled "Problems of the Railroads," committee print dated April 30, 1958, with certain technical amendments, is printed at the end of this report. This subcommittee report is hereby adopted as the report of the full committee on S. 3778,

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island	JOHN W. BRICKER, Ohio
A. S. MIKE MONRONEY, Oklahoma	ANDREW F. SCHOEPPPEL, Kansas
GEORGE A. SMATHERS, Florida	JOHN MARSHALL BUTLER, Maryland
ALAN BIBLE, Nevada	CHARLES E. POTTER, Michigan
STROM THURMOND, South Carolina	WILLIAM A. PURTELL, Connecticut
FRANK J. LAUSCHE, Ohio	FREDERICK G. PAYNE, Maine
RALPH YARBOROUGH, Texas	NORRIS COTTON, New Hampshire

EDWARD JARRETT, *Chief Clerk*

BERTRAM O. WISSMAN, *Assistant Chief Clerk*

HAROLD I. BAYNTON, *Chief Counsel*

JAMES E. BAILEY, *Assistant Chief Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION

GEORGE A. SMATHERS, Florida, *Chairman*

FRANK J. LAUSCHE, Ohio	ANDREW F. SCHOEPPPEL, Kansas
RALPH W. YARBOROUGH, Texas	WILLIAM A. PURTELL, Connecticut

FRANK L. BARTON, *Transportation Counsel*

WILLIAM L. KOHLER, *Assistant Counsel*

subject to the changes agreed to by the full committee discussed below and reflected as amendments to S. 3778 as reported to the Senate.

### III. DISCUSSION OF CHANGES IN THE SUBCOMMITTEE REPORT MADE BY THE FULL COMMITTEE

Changes were made, as follows, in three of the recommendations contained in the subcommittee report:

#### (1) Subcommittee recommendation No. 3, "Competitive Ratemaking"

Upon consideration of the amendment recommended by the subcommittee to section 15a of the Interstate Commerce Act, designated the rule of ratemaking, the full committee agreed to further hearings on this recommendation, which were held May 20-21, 1958.

Representatives of all interested modes of transportation, railway labor, shippers, and the Interstate Commerce Commission were present and offered testimony at the hearing. Upon further consideration, the committee, in the light of this testimony, concluded that an amendment to the rule of ratemaking should apply to the several modes of transportation subject to parts I, II, III, and IV of the Interstate Commerce Act and should be constituted as a new subparagraph (3) to section 15a of the act to read as follows:

In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act.

In making this amendment to section 5 of S. 3778, the committee agrees with and wishes to emphasize the import of the following excerpt from the subcommittee report:

The subject of competitive ratemaking as between the different forms of transportation was discussed at length during the hearings, the railroads urging enactment of legislation that would restrict substantially the authority of the Interstate Commerce Commission in this field. The subcommittee is not convinced that the record before it justifies approval of the railroads' proposal.

It is the policy of this subcommittee, and it is believed to be the policy of the Congress, that each form of transportation should have opportunity to make rates reflecting the different inherent advantages each has to offer so that in every case the public may exercise its choice, cost and service both considered, in the light of the particular transportation task to be performed. The subcommittee believes and the national transportation policy is clear, however, that such ratemaking should be regulated by the Commission to prevent unfair destructive practices on the part of a carrier or group of carriers.

It nevertheless appears that the Interstate Commerce Commission has not been consistent in the past in allowing one or another of the several modes of transportation to assert their inherent advantages in the making of rates. The subcommittee recommends, therefore, that the Commission consistently follow the principle of allowing each mode of transportation to assert its inherent advantages, whether they be of service or of cost. In 1945 in *New Automobiles in Interstate Commerce* (259 ICC 475), the subcommittee believes that the Commission properly construed the intent of Congress in this respect when it said:

"As Congress enacted separately stated rate-making rules for each transport agency, it obviously intended that the rates of each such agency should be determined by us in each case according to the facts and circumstances attending the movement of the traffic by that agency. In other words, there appears no warrant for believing that rail rates, for example, should be held up to a particular level to preserve a motor-rate structure, or vice versa (259 ICC at p. 538)."

The subcommittee wishes to affirm the interpretation of the Commission given in the Automobile case epitomized in the words quoted above. The subcommittee therefore believes it necessary to amend the act only so as, in effect, to admonish the Commission to be consistent in following the policy enunciated in the Automobile case thus assuring reasonable freedom in the making of competitive rates. \* \* \*

The subcommittee anticipates that the broad effect of this amendment will be to encourage competition between the different modes of transportation to the benefit of the shipping public. \* \* \*

The subcommittee further notes that the Supreme Court in *Schaeffer Transportation Co. et al. v. U. S.* (No. 20, October term, decided December 9, 1957), — U. S. —, 78 S. Ct. 173, 178, in reversing the Interstate Commerce Commission for denying a motor carrier application because rail service was "reasonably adequate," said: "To reject a motor carrier's application on the bare conclusion that existing rail service can move the available traffic, without regard to the inherent advantages of the proposed service, would give one mode of transportation unwarranted protection from competition from others."

The purpose of this amendment is to produce consistency in the interpretation of the national transportation policy.

The committee wishes further to emphasize that the amendment in regard to section 5 amending section 15a of the act as framed by the committee is designed to encourage competition in transportation by allowing each form of transportation subject to the Interstate Commerce Act full opportunity to make rates reflecting the inherent advantages each has to offer, with such ratemaking being regulated by the Interstate Commerce Commission, however, to prevent "unfair or destructive competitive practices" as contemplated by the declaration of national transportation policy. Under the committee amendment the principal emphasis, but not the exclusive emphasis, is in a competitive ratemaking proceeding involving different modes of

*gives railroads more leeway  
in ratemaking*

transportation will be on the conditions surrounding the movement of the traffic by the mode to which the rate applies.

(2) *Subcommittee Recommendation No. 6, "Agricultural Commodities Exemption"*

The committee agrees with the subcommittee that the agricultural exemption contained in section 203 (b) (6) of the Interstate Commerce Act should be revised.

The committee favors a "freeze" of the present status of the exemption recommended by the subcommittee. The committee further agrees that the "freeze" should be on the basis of ruling No. 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, with the exception recommended by the subcommittee that the transportation of frozen fruits, frozen berries, and frozen vegetables be made subject to ICC regulation. Since ruling No. 107 does not list the items, such as fresh fruits and vegetables, about which there has been no controversy, the subcommittee language requires revision to reflect this condition.

Further, the committee was in agreement that the subcommittee's language that "imported agricultural products," as distinguished from those produced domestically, be subjected to economic regulation should be eliminated. The problems engendered by commingling such imported products with domestic agricultural products, making the whole subject to regulation, would, in the committee's opinion, more than offset any gains to be made by subjecting imported agricultural products to regulation by the Commission. A change in the subcommittee's recommendation is made accordingly.

Finally, the committee is of the opinion that the seafood industry is due an additional measure of relief from regulation in the transportation of some of its products under section 203 (b) (6). The amendment suggested is not intended to include within the exemption fish and shellfish which have been treated for preserving, such as canned, smoked, salted, pickled, spiced, corned, or kippered products.

The committee's changes are reflected in the following:

Clause (6) of subsection (b) of section 203 of the Interstate Commerce Act, as amended, is amended by striking out the semicolon at the end thereof and inserting in lieu thereof a colon and the following:

"*Provided*, That the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' as used herein shall include property shown as 'Exempt' in the 'Commodity List' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'Not exempt': *Provided further, however*, That notwithstanding the preceding proviso the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall not be deemed to include frozen fruits, frozen berries, or frozen vegetables and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish, when frozen or fresh."

*Curb on Truckers?*  
(3) *Subcommittee Recommendation No. 7, "Economic Regulation of Commercial Transportation"*

The committee is in thorough accord with the subcommittee recommendation that the "primary business test" contained in *Brooks Transportation Co. v. U. S.* (340 U. S. 925 (1951)) should be written into the Interstate Commerce Act to effect a prohibition that no person in any commercial enterprise other than a duly authorized or specifically exempt for-hire transportation business shall transport property by motor vehicle in interstate or foreign commerce unless such transportation is, in the subcommittee's words, "within the scope and in furtherance of a primary business enterprise (other than transportation) of such person." Such an amendment, it is believed, would serve to correct most of the abuses that have arisen in the name of private carriage and yet would not in any way jeopardize or interfere with the operations of private carriers who provide transportation service—even if a charge is made—as an integral part of their primary business function.

The committee believes, however, that the language of the following proposed amendment to the Interstate Commerce Act more accurately reflects the holding in the Brooks case than that proposed by the subcommittee:

Subsection (c) of section 203 of the Interstate Commerce Act, as amended, is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "nor shall any person in any other commercial enterprise transport property by motor vehicle in interstate or foreign commerce unless such transportation is incidental to, and in furtherance of, a primary business enterprise (other than transportation) of such person."

#### IV. TRANSPORTATION STUDY

It should be noted that the full committee adopted Senate Resolution 303, as recommended by the subcommittee, to provide for a study of basic long-range transportation problems in the public interest.

#### V. AGENCY COMMENTS

Comments were available from three agencies at the time this report was written. The Comptroller General of the United States stated that while the General Accounting Office is not in a position to make any definite recommendations on the remedial proposals contained in S. 3778, it is not anticipated that enactment of the bill would have any adverse effect upon the interests of the United States as a shipper or upon GAO operations in the audit of transportation disbursements.

The Civil Aeronautics Board commented that inasmuch as the legislation is limited to amending the Interstate Commerce Act and relates solely to surface transportation, the Board has no comment to make on the bill.

The Department of Agriculture offered comments on section 8 of S. 3778 as follows: (1) The Department objects to eliminating frozen fruits, frozen berries, and frozen vegetables from the exemption from

Public Law 85-625  
85th Congress, S. 3778  
August 12, 1958

AN ACT

To amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes.

*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 "Transportation Act of 1958".*

Transportation  
Act of 1958.

AMENDMENT TO INTERSTATE COMMERCE ACT, RELATING TO LOAN  
GUARANTIES

SEC. 2. The Interstate Commerce Act, as amended, is amended by inserting immediately after part IV thereof the following new part: 56 Stat. 284.  
49 USC 1001.

"PART V

"PURPOSE

"SEC. 501. It is the purpose of this part to provide for assistance to common carriers by railroad subject to this Act to aid them in acquiring, constructing, or maintaining facilities and equipment for such purposes, and in such a manner, as to encourage the employment of labor and to foster the preservation and development of a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense.

"DEFINITIONS

"SEC. 502. For the purposes of this part—

"(a) The term 'Commission' means the Interstate Commerce Commission.

"(b) The term 'additions and betterments or other capital expenditures' means expenditures for the acquisition or construction of property used in transportation service, chargeable to the road, property, or equipment investment accounts, in the Uniform System of Accounts prescribed by the Interstate Commerce Commission.

"(c) The term 'expenditures for maintenance of property' means expenditures for labor, materials, and other costs incurred in maintaining, repairing, or renewing equipment, road, or property used in transportation service chargeable to operating expenses in accordance with the Uniform System of Accounts prescribed by the Commission.

72 Stat. 568.

72 Stat. 569.

"LOAN GUARANTIES

"SEC. 503. In order to carry out the purpose declared in section 501, the Commission, upon terms and conditions prescribed by it and consistent with the provisions of this part, may guarantee in whole or in part any public or private financing institution, or trustee under a trust indenture or agreement for the benefit of the holders of any securities issued thereunder, by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount, or advance, or on any commitment in connection therewith, which may be made, or which may have been made, for the purpose of aiding any common carrier by railroad subject to this Act in the financing or refinancing (1) of additions and betterments or other capital expenditures, made after January 1, 1957, or to reimburse the carrier for expenditures made from its own funds for such additions and betterments or other capital expenditures, or (2) of expenditures for the maintenance of property: *Provided*, That in no event shall the

aggregate principal amount of all loans guaranteed by the Commission exceed \$500,000,000.

"LIMITATIONS

"SEC. 504. (a) No guaranty shall be made under section 503—

"(1) unless the Commission finds that without such guaranty, in the amount thereof, the carrier would be unable to obtain necessary funds, on reasonable terms, for the purposes for which the loan is sought;

"(2) if in the judgment of the Commission the loan involved is at a rate of interest which is unreasonably high;

"(3) if the terms of such loan permit full repayment more than fifteen years after the date thereof; or

"(4) unless the Commission finds that the prospective earning power of the applicant carrier, together with the character and value of the security pledged, if any, furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor and reasonable protection to the United States.

A statement of the findings of the Commission required under the provisions of this subsection shall be made a matter of public record by the Commission with respect to each loan guaranteed under the provisions of this part.

"(b) It shall be unlawful for any common carrier by railroad subject to this Act to declare any dividend on its preferred or common stock while there is any principal or interest remaining unpaid on any loan to such carrier made for the purpose of financing or refinancing expenditures for maintenance of property of such carrier, and guaranteed under this part.

"MODIFICATIONS

"SEC. 505. The Commission may consent to the modification of the provisions as to rate of interest, time of payment of interest or principal, security, if any, or other terms and conditions of any guaranty which it shall have entered into pursuant to this part, or the renewal or extension of any such guaranty, whenever the Commission shall determine it to be equitable to do so.

"PAYMENT OF GUARANTIES; ACTION TO RECOVER PAYMENTS MADE

"SEC. 506. (a) Payments required to be made as a consequence of any guaranty by the Commission made under this part shall be made by the Secretary of the Treasury from funds hereby authorized to be appropriated in such amounts as may be necessary for the purpose of carrying out the provisions of this part.

"(b) In the event of any default on any such guaranteed loan, and payment in accordance with the guaranty by the United States, the Attorney General shall take such action as may be appropriate to recover the amount of such payments, with interest, from the defaulting carrier, carriers, or other persons liable therefor.

"GUARANTY FEES

"SEC. 507. The Commission shall prescribe and collect a guaranty fee in connection with each loan guaranteed under this part. Such fees shall not exceed such amounts as the Commission estimates to be necessary to cover the administrative costs of carrying out the provisions of this part. Sums realized from such fees shall be deposited in the Treasury as miscellaneous receipts.

"ASSISTANCE OF DEPARTMENTS OR OTHER AGENCIES

"SEC. 508. (a) To permit it to make use of such expert advice and services as it may require in carrying out the provisions of this part, the Commission may use available services and facilities of departments and other agencies and instrumentalities of the Government, with their consent and on a reimbursable basis.

"(b) Departments, agencies, and instrumentalities of the Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the objectives of this part.

"ADMINISTRATIVE EXPENSES

"SEC. 509. Administrative expenses under this part shall be paid from appropriations made to the Commission for administrative expenses.

"TERMINATION OF AUTHORITY

"SEC. 510. Except with respect to such applications as may then be pending, the authority granted by this part shall terminate at the close of March 31, 1961: *Provided*, That its provisions shall remain in effect thereafter for the purposes of guaranties made by the Commission."

AMENDMENTS TO SECTION 1 OF INTERSTATE COMMERCE ACT

SEC. 3. Section 1 of the Interstate Commerce Act, as amended, is amended (1) by inserting in subparagraph (a) of paragraph (2) thereof, after the word "aforesaid" and before the semicolon following that word, a comma and the words "except as otherwise provided in this part" and (2) by striking out the period at the end of the proviso in subparagraph (a) of paragraph (17) thereof and inserting in lieu thereof the following: "and except as otherwise provided in this part." 49 USC 1.

INTRASTATE RATES, FARES, CHARGES, CLASSIFICATIONS, REGULATIONS, OR PRACTICES

SEC. 4. The first sentence of paragraph (4) of section 13 of the Interstate Commerce Act, as amended, is amended to read as follows:

"(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce (which the Commission may find without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier, or group or groups of carriers wholly within any State), which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, discrimination, or burden: *Provided*, That upon the filing of any petition authorized by the provisions of paragraph (3) hereof to be filed by the carrier concerned, the Commission shall forthwith institute an investigation as aforesaid into the lawfulness of such rate, fare, charge, classification, regulation, or practice

(whether or not theretofore considered by any State agency or authority and without regard to the pendency before any State agency or authority of any proceeding relating thereto) and shall give special expedition to the hearing and decision therein."

## NEW SECTION 13A OF INTERSTATE COMMERCE ACT

49 USC 13.

SEC. 5. The Interstate Commerce Act, as amended, is amended by inserting after section 13 thereof a new section 13a as follows:

## "DISCONTINUANCE OR CHANGE OF CERTAIN OPERATIONS OR SERVICES

"SEC. 13a. (1) A carrier or carriers subject to this part, if their rights with respect to the discontinuance or change, in whole or in part, of the operation or service of any train or ferry operating from a point in one State to a point in any other State or in the District of Columbia, or from a point in the District of Columbia to a point in any State, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot or other facility served thereby, notice at least thirty days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said thirty days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. Upon the institution of such investigation, the Commission, by order served upon the carrier or carriers affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than four months beyond the date when such discontinuance or change would otherwise have become effective. If, after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that the operation or service of such train or ferry is required by public convenience and necessity and will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service of such train or ferry, in whole or in part, for a period not to exceed one year from the date of such order. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.

72 Stat. 571.

72 Stat. 572.

"(2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this part, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph."

## AMENDMENT TO SECTION 15A OF THE INTERSTATE COMMERCE ACT

SEC. 6. Section 15a of the Interstate Commerce Act, as amended, is amended by inserting after paragraph (2) thereof a new paragraph (3) as follows:

49 USC 15a.

"(3) In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act."

72 Stat. 572.

72 Stat. 573.

## AMENDMENT TO SECTION 203 (B) OF INTERSTATE COMMERCE ACT

SEC. 7. (a) Clause (6) of subsection (b) of section 203 of the Interstate Commerce Act, as amended, is amended by striking out the semicolon at the end thereof and inserting in lieu thereof a colon and the following: "Provided, That the words 'property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' as used herein shall include property shown as 'Exempt' in the 'Commodity List' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'Not exempt': *Provided further,*

49 USC 303.

however, That notwithstanding the preceding proviso the words 'property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shell fish when frozen or fresh (but not including fish and shell fish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned or kippered products);".

(b) Unless otherwise specifically indicated therein, the holder of any certificate or permit heretofore issued by the Interstate Commerce Commission, or hereafter so issued pursuant to an application filed on or before the date on which this section takes effect, authorizing the holder thereof to engage as a common or contract carrier by motor vehicle in the transportation in interstate or foreign commerce of property made subject to the provisions of part II of the Interstate Commerce Act by paragraph (a) of this section, over any route or routes or within any territory, may without making application under that Act engage, to the same extent and subject to the same terms, conditions and limitations, as a common or contract carrier by motor vehicle, as the case may be, in the transportation of such property, over such route or routes or within such territory, in interstate or foreign commerce.

(c) Subject to the provisions of section 210 of the Interstate Commerce Act, if any person (or its predecessor in interest) was in bona fide operation on May 1, 1958, over any route or routes or within any territory, in the transportation of property for compensation by motor vehicle made subject to the provisions of part II of that Act by paragraph (a) of this section, in interstate or foreign commerce, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on May 1, 1958, during the season ordinarily covered by its operations and has so operated since that time), except in either instance as to interruptions of service over which such applicant or its predecessor in interest had no control, the Interstate Commerce Commission shall without further proceedings issue a certificate or permit, as the type of operation may warrant, authorizing such operations as a common or contract carrier by motor vehicle if application is made to the said Commission as provided in part II of the Interstate Commerce Act and within one hundred and twenty days after the date on which this section takes effect. Pending the determination of any such application, the continuance of such operation without a certificate or permit shall be lawful. Any carrier which on the date this section takes effect is engaged in an operation of the character specified in the foregoing provisions of this paragraph, but was not engaged in such operation on May 1, 1958, may under such regulations as the Interstate Commerce Commission shall prescribe, if application for a certificate or permit is made to the said Commission within one hundred and twenty days after the date on which this section takes effect, continue such operation without a certificate or permit pending the determination of such application in accordance with the provisions of part II of the Interstate Commerce Act.

49 USC 301.

49 USC 310.

49 USC 301.

72 Stat. 573.

72 Stat. 574.

AMENDMENT TO SECTION 203 (C) OF INTERSTATE COMMERCE ACT

SEC. 8. Subsection (c) of section 203 of the Interstate Commerce Act, as amended, is amended by striking out the period at the end thereof and inserting in lieu of such period a comma and the following: "nor shall any person engaged in any other business enterprise transport property by motor vehicle in interstate or foreign commerce for business purposes unless such transportation is within the scope, and in furtherance, of a primary business enterprise (other than transportation) of such person."

Approved August 12, 1958.

49 USC 303.

economic regulation by the ICC now afforded these products; (2) the Department objects to subjecting imported agricultural products to economic regulation by the ICC; and (3) the Department raises questions concerning interpretations that may arise because of the technical language used in the bill to incorporate into the Interstate Commerce Act ruling 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission.

It should be noted that amendments have been made in S. 3778 as reported by the committee that take into account the comments of the Department of Agriculture numbered (2) and (3) above.

*Special plea for  
railroads*

**REPORT OF THE SUBCOMMITTEE ON SURFACE  
TRANSPORTATION**

APRIL 30, 1958

**PROBLEMS OF THE RAILROADS**

**I. INTRODUCTION**

The Surface Transportation Subcommittee is concerned generally with the welfare of the Nation's transportation system and particularly with those carriers performing surface transportation, motor carriers, freight forwarders, railroads, and domestic water carriers.

The subcommittee believes that all forms of transportation must be kept healthy and vigorous if the economy of the United States is to be adequately served and if the Nation's defense is to be properly maintained.

For generations the railroads have been the bedrock of our Nation's transportation system. It was the railroads that pioneered the development and growth of the East, the West, the North, and the South. Their history is closely linked with the economic progress of our Nation. It was only a few years ago that the railroads were the biggest business of the Nation. They ranked first as a purchaser of goods and services. Steel mills once counted them as their best single customer as did the fuel oil sellers, the lumbermen, the coal-mine operators, and many others.

During times of crisis for our Nation the railroads have met the challenge. During World War II the railroads transported more than 90 percent of all military freight traffic and 97 percent of organized military passenger movements. Thus the railroads were, and are, a vital part of this Nation's security.

Because of the essential part the railroads play in our whole transportation system, it was a cause of great concern to your subcommittee when we observed the rapid deterioration of the railroad position in the fall of 1957.

For example, the carloadings of class I railroads for the week ending November 9, 1957, declined 12.6 percent from the same period of 1955. Figures for September 1957, showed net income to be \$65 million as compared to \$80 million for September 1955, a decrease in excess of 18 percent. Another discouraging sign was the decrease in railroad net working capital from approximately \$880 million in September 1955 to approximately \$526 million in September 1957; it is considered that \$600 million is the minimum safe net working capital necessary for railroads.

It was clear from these and other similar figures that not only were the railroads being adversely affected by the business recession which was then appearing, but that, in fact, the sickness of the railroads was contributing greatly to the deepening recession of the Nation.

As a result of these observations, it was determined that the Subcommittee on Surface Transportation should hold hearings and look into the problems of the railroads in relation to our national transportation system and the recession. Consequently, on November 22, 1957, hearings were announced to begin on January 13, 1958.

In announcing the hearings, three main areas were suggested as topics for attention. First, matters on which the railroads could help themselves; second, desirable changes in ICC policy and practices, and, third, new legislation necessary to revitalize the railroad industry and maintain it as an efficient part of our national transportation system.

The hearings proceeded over an 11-week period during which 103 witnesses were heard. Witnesses appeared on behalf of railroads, motor carriers, air carriers, water carriers, representatives of the State and Federal regulatory commissions (including the Interstate Commerce Commission), the Defense Department and the Agriculture Department. There also appeared representatives of shippers, agricultural associations, and labor organizations, as well as experts on transportation matters from leading educational institutions, economists, analysts, financial experts, and others. The hearings were concluded on April 3, 1958.

## II. GENERAL COMMENTS

The testimony substantiated the subcommittee's concern about the deteriorating railroad situation. As a matter of fact, the uncontroversial testimony revealed that the decline in the railroad position was occurring at a greater rate than the decline in the Nation's economy.

It was obvious from the testimony that the railroads no longer are a monopoly in the transportation field. This was dramatically illustrated by the fact that the railroad's share of freight traffic had declined from 74.9 percent of the total intercity ton-miles in 1929 to 48.2 percent in 1956.

Likewise, the railroads' share of passenger miles declined from 70.7 percent of the total for commercial carriers in 1929 to 34.9 percent in 1956. The testimony revealed that railroad passenger miles in the first 2 months of 1958 declined at a faster rate than comparable months in 1957.

The decline in railroad employment indicates the general decline of the railroad position. In 1923 railroad employees numbered 1,857,674. This declined to 861,928, a loss of about 1 million, by February 1958. Unemployment in the industry is accelerating rapidly. There has been a decrease of 348,182 jobs from March 1953 to March 1958; an average decrease per month of 5,800 employees for the past 60 months.

The railroads as a whole are in a poor financial position. Net working capital as shown by the railroads has declined as follows:

Dec. 31, 1945.....	\$1,643,100,000
Dec. 31, 1955.....	938,100,000
Dec. 31, 1956.....	683,600,000
Dec. 31, 1957.....	555,300,000
Jan. 31, 1958.....	396,500,000

This is particularly significant when it is pointed out that the total cash expenses of the railroads (wages, fuel and materials, rents and taxes) are approximately \$750 million per month. The rate of return on net investment in the railroad industry has moved downward from 4.22 percent in 1955, to 3.95 percent in 1956, and down to 3.35 percent in 1957.

Freight carloadings for class I railroads declined from 3,446,330 cars in March 1957 to 2,702,066 cars in March 1958 a decline of 21.6 percent.

According to the statistics of the First National City Bank of New York, for the calendar year 1956, the rate of return on net assets of the 73 leading corporations in the industrial group revealed that the class I railroads were third from the bottom for that year. Many other class I railroads were below the average figure.

The largest rail carrier, the Pennsylvania Railroad, returned only 2.9 percent in 1956 and last year this small return was reduced by over 50 percent, giving the Pennsylvania Railroad a return of only 1.4 percent in 1957. During the first 2 months of 1958 this carrier lost more than \$11 million.

The aggregate net income shown by all class I railroads for the first 2 months of 1957 was \$91.4 million. Their net income for the corresponding 2 months of 1958 is down to \$6 million.

Comparing February of 1957 with February of 1958: In February, 1957, the class I railroads had a \$47.5 million profit, in February, 1958, the class I railroads of this country had a \$10.7 million loss.

The subcommittee realizes that the railroads' financial condition results, in a large measure, from the general passenger deficit of about \$700 million in 1956 and similar large amounts in recent years. The railroads are attempting to eliminate a great deal of this unprofitable passenger service. The subcommittee believes, however, that the railroads should retain a certain amount of passenger service, whether profitable or not, as part of the railroads' obligation to serve the public and to provide for the national defense. This subject of declining railroad passenger service is recommended for further study.

Because of their financial plight, the railroads find it extremely difficult to borrow money other than by the issuance of equipment obligations. The situation of the eastern railroads is particularly serious. Eastern railroads are in worse financial straits than the southern and western railroads because they operate in a densely populated area of high costs and severe competition from other modes of transportation. The presence of the large volume of commuter traffic, carried at a loss, also contributes to the poor financial condition of the eastern railroads. The southern and western railroads are not in as serious condition as those in the East because operating conditions are more favorable in the South and West. However, the problems of the southern and western railroads are mounting and following the pattern of the railroads in the East.

## III. REASONS FOR THE RAILROAD DECLINE

From the testimony, the subcommittee has concluded that the general decline is due to a number of reasons, some of which we will

mention here. One reason is the development of newer methods of transportation that offer intense competition to the railroads. These newer methods include the tremendous number of private cars on the highways, the development of airplanes, and the building of modern highways on which move a large number of buses and trucks. All of these modes of transportation cut into the traffic that could be hauled by the railroads.

A second reason for the general decline of the railroads is the Government assistance offered to the railroads' competitors. This includes the building of highways and airports, the provision of toll-free waterways, and other facilities.

A third reason for the decline of the railroads is overregulation. The Federal Government, through the Interstate Commerce Commission, and the vast majority of the 48 States, through State regulatory agencies, supervise and dictate to the railroads, usually under laws and procedures that are ancient and outmoded.

A fourth reason is the attitude of some railroad managements. There has been a failure to recognize changing conditions, times and tastes. A failure to compete aggressively for business by use of modernized equipment, by adjustments in plant and financial structures, as well as failure to adjust rates to compete effectively for traffic.

#### IV. HELP NEEDED BY THE RAILROADS

From the facts adduced at the hearings your subcommittee has concluded that the railroads are in need of help, some immediate and some long range, some by the industry itself, some by Government agencies, some by labor organizations, and some by the Congress.

##### COMMUTER SERVICE AND LOCAL AND STATE TAXES

The subcommittee would like to comment on problems in two areas in which the railroads' difficulties are attributable to factors principally under the control of State and local governments and their agencies. One is the burden imposed on the railroads by commuter service in large metropolitan areas.

The subcommittee heard much testimony with respect to the problem of continuing commuter service by railroads. It was clear from the testimony that the railroads were operating these services at enormous losses. This is the result of many factors which we will not go into here. It may be said that basically the commuter service problem is a local one having both social and economic implications. However, it is also a matter of deep concern to the Federal Government because of the impact that losing commuter service can have on the ability of an interstate rail carrier to render its interstate service. That this is so, is clearly evident from the fact that there are several large carriers in the East which are faced with the imminent threat of bankruptcy primarily because of the heavy losses from rendering commuter and other local passenger service. Because of the burden that these losing intrastate services are imposing on interstate commerce, the subcommittee feels that the Federal Government can no longer stand aside to the extent it has in the past. The Interstate Commerce Commission already has authority to require increases in intrastate rates where there is an

unjust discrimination or burden on interstate commerce, but in many cases the answer to the losses from commuter services does not lie in merely increasing fares. It is evident that fares which would theoretically return a profit to the railroads would generally result in charges substantially greater than commuters are accustomed to paying and, in some instances, prohibitive charges. Accordingly, the solution is not readily apparent. Because the solutions which may be found for this problem are essentially local, the subcommittee deems it desirable to leave to the local government agencies involved the job of seeking specifically tailored solutions to their particular problem.

Solutions to this problem cannot be longer delayed and it is believed that the clarification of the Interstate Commerce Commission's authority over intrastate rates, together with the new authority conferred upon the Commission over service as subsequently explained in this report, will lead to the prompt finding of appropriate solutions by local authorities.

The second matter on which the subcommittee is constrained to comment is the amount of State and local taxes paid by the railroads. Representatives of the railroads testified that local and State taxes borne by the rail lines are disproportionately high and bear no relationship to the earnings of the properties and, therefore, constitute an unfair burden on their operations. The subcommittee suggests that State and local governments reexamine taxes now borne by the railroads for the purpose of determining and correcting inequitable tax situations that exist.

The subcommittee further suggests that if communities and States take action to allow reduced taxes for the railroads in order to maintain railroad commuter service, the Federal Government should likewise give a proportionate remittance of Federal income taxes to allow the amount of such local and State tax reductions to be retained by the railroads.

##### A. Help by the industry

The railroad industry has not, in the subcommittee's opinion, been sufficiently interested in self-help in such matters as consolidations and mergers of railroads; joint use of facilities in order to eliminate waste, such as multiple terminals and yards that require expensive interchange operations; reduction of duplications in freight and passenger services by pooling and joint operations; abandonment or consolidation of nonpaying branch and secondary lines; abolishing of unnecessarily circuitous routes for freight movements; improved handling of less-than-carload traffic; coordination of transportation services and facilities by establishment of through routes and joint rates with other forms of transportation; and modernization of the freight-rate structure, including revision of below-cost freight rates to levels that cover cost and yield some margin of profit as well as adjustment of rates excessively above cost to attract traffic and yield more revenue.

##### B. Help by railroad labor

The subcommittee wishes to commend railroad labor on the aggressive spirit that it shows in approaching its problems but points out that there should be reappraisal of the entire railroad labor

situation in the light of the present plight of the railroads. This is necessary because the number and kind of jobs held by the membership of the railroad labor unions is inextricably intertwined with the economic welfare of the railroad industry. The problems of the two groups are mutual problems.

The brotherhoods should realize that if the railroads should go under, the Federal Government is not going to take over uneconomic railroads and continue to operate them in an uneconomic fashion. If bankruptcy results in Government operation, it is clear that there will be fewer jobs than at present in the railroad industry. The subcommittee urges that railroad labor cooperate in proceedings designed to strengthen the economic position of the railroads.

#### *C. Help by the Interstate Commerce Commission*

Help can be given by the Interstate Commerce Commission without additional legislation. The subcommittee has noted with approval that in recent years the ICC has improved the speed of its administration of the regulatory process. The subcommittee urges that there be continued effort for improvement in the handling of regulatory proceedings. The subcommittee likewise urges that the ICC continue to take into account current competitive factors in the adjudication of rate cases.

The subcommittee, from its observation of the Commission, is not satisfied that the Commission is devoting its efforts to the most fruitful areas of regulation. The Commission should earnestly examine the Interstate Commerce Act, and related acts, and come forward with legislative recommendations which will reduce its sphere of action to matters which fundamentally affect transportation. There are some activities now required of the Commission which are of no great consequence but which take time and effort. This attention could be devoted to matters of greater significance. These matters of importance are now delayed because of preoccupation with relatively minor problems.

Over a period of many years regulatory commissions, like individuals dealing with controversial issues, tend to form habits of belaboring relatively unimportant details involving form rather than substance, while procrastinating on coming to grips with important policy matters that involve serious matters of public interest.

The subcommittee suggests the need for reexamination and revision of the objectives of the statutes under which the Commission operates. For instance, under the various parts of the Interstate Commerce Act, the Commission, in the exercise of its power to prescribe just and reasonable rates, is charged with giving due consideration among other factors, to the need of revenues sufficient to enable the carriers "under honest, economical and efficient management" to provide railroad transportation service. It is doubtful that the Commission itself would assert that it has used its powers under this provision of law to the full extent to protect the public interest.

Although it is not directly related to the problems of the railroads, another example of the Commission's performance that concerns the subcommittee arises because no definite plan was prescribed in advance concerning the nature of the territory to be served by motor carriers following their regulation in 1935. As an outgrowth of grandfather certificates granted pursuant to this legislation, there are many kinds,

types and descriptions of certificates and operating rights, many of them restrictive and uneconomic. Where such operations prevent full loading and return loads, regulation promotes waste.

When public convenience and necessity is narrowly construed, as it was by the ICC in granting these grandfather rights, common carriers, both regular and irregular route, are permitted to transport only specific commodities. The commodity descriptions in carrier certificates have little uniformity, are confusing and instigate protracted proceedings on interpretation of the language. Sometimes they are limited to intended use, such as, "commodities to be used in a drug-store," or "grocery store," causing innocent as well as deliberate violations. Many motor carriers have accumulated certificates, as many as 200, piece by piece, some of which cover varying commodities and run into overlapping territories. In such instances local terminal managers themselves find difficulty in interpreting and complying with certificated authority. Loose compliance results. The Commission and its staff spends a disproportionate amount of time struggling with the details of this situation.

A final example of an area in which the Commission could help lies in the area of rate relationships. As has been confirmed by the statements made in the recent hearings, the Commission appears to be losing control over rate relationships. When carriers are permitted to meet competition by other carriers or by private carriage at limited points without reference to the rates at other points, it legalizes the disturbance of rate relationships to the detriment of shippers.

When a rate is suspended and made subject to investigation, a decision generally cannot be reached within the 7-month suspension period provided by law. This rate action may involve a single rate covering relatively unimportant movements or rates involving a movement of great economic impact. Each receives the same "due process" treatment and formal consideration. If the rate is found to be unlawful, it is ordered canceled. In the meantime, the rate may have gone into effect automatically because the 7-month suspension period has expired. If it is ordered canceled, a rate situation is disrupted which has been in effect for a considerable period of time and to which the parties and competitors have adjusted themselves in the meantime. Yet the Commission will often base its decision on a record which may be 2 or more years old and not representative of current conditions. In fact, the shipper may have resorted to private transportation or gone out of business since the rate was first proposed.

If rates are attacked by complaint, the rate is already in effect and the shipper may continue paying that rate and suffering the economic consequences for years before question of the lawfulness of the rate is actually decided.

The Commission might help the carriers, and shippers as well, by improving its performance in this area.

#### *D. Help by the Congress*

This assistance can be provided by a number of amendments to the Interstate Commerce Act:

(1) To establish a plan of guaranteed loans under the administration of the Interstate Commerce Commission, to aid temporarily in the financing of railroads, subject to the Interstate Commerce Act that

are unable to obtain needed funds upon reasonable terms through ordinary commercial channels;

(2) To provide for the establishment by common carriers subject to the Interstate Commerce Act of "construction reserve" funds as a means of obtaining tax deferrals to stimulate investment in equipment and other necessary transportation facilities;

(3) To amend the Interstate Commerce Act, section 15 (a), by adding a new subparagraph 3 to read as follows:

In a proceeding involving competition with another mode of transportation, the Commission, in determining whether a rail rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by railroad and not by such other mode.

(4) To make more effective those provisions of the Interstate Commerce Act enabling the Interstate Commerce Commission to remove discrimination against interstate or foreign commerce found to result from intrastate rates;

(5) To vest the Interstate Commerce Commission with authority to authorize, in proper cases, the discontinuance, curtailment or consolidation of unprofitable railroad services and facilities burdening interstate commerce;

(6) To limit the scope and application of the agricultural commodities clause under which motor vehicles engaged in the transportation of certain commodities are exempt from economic regulation under the Interstate Commerce Act and to redefine the exemption to bring under economic regulation frozen fruits and vegetables and imported agricultural commodities; and

(7) To make it clear that all commercial transportation of property by motor vehicle in interstate or foreign commerce, except private carriage and transportation otherwise specifically exempt, is subject to regulation.

(8) To provide for a transportation policy study group of three qualified transportation experts to study important matters of transportation policy and report thereon within 18 months.

#### V. RECOMMENDATIONS NOT WITHIN JURISDICTION OF THIS SUBCOMMITTEE

Because of the jurisdictional limitations of the various congressional committees, there are some proposals we submit to the appropriate committees with recommendations for action.

(1) The Senate Finance Committee should recommend repeal of the Federal excise taxes of 10 percent on passenger transportation charges and 3 percent on freight transportation charges.

(2) The subcommittee also urges that the Senate Finance Committee give favorable consideration to the railroads' proposal that legislation be enacted providing that, at the election of the taxpayer, the maximum useful life of depreciable railroad property may be considered 20 years for tax purposes.

(3) The Senate Post Office and Civil Service Committee should take action to modernize legislation applying to those forms of transportation necessary for carrying United States mail. The legislation should provide equitable treatment for all such modes of transporta-

tion, in regard both to opportunity to obtain the traffic and payment for service performed.

#### VI. DISCUSSION OF SUBCOMMITTEE'S LEGISLATIVE PROPOSALS

There follows explanation and discussion of the subcommittee's several recommendations for immediate legislative action noted above.

##### 1. GUARANTEED LOANS FOR RAILROADS

As has been emphasized earlier in this report the economic position of the railroads in the country as a whole is an unfavorable one, and the position of some of the railroads primarily located in the East is an extremely serious one. Some of those in the most precarious financial position are our largest railroads in point of employees, wages, purchases, and track miles. Some of them have millions of dollars of deferred maintenance, millions of dollars owed in unpaid loans and State taxes, and a few of them have so little operating capital remaining that there is considerable likelihood of their being unable to meet their payrolls in the ensuing months. Heretofore these railroads have been strong economic factors in the areas in which they operate but today their economic condition is such that they no longer have sufficient credit standing to borrow money through the ordinary commercial channels. Bankruptcy is a likely prospect for several of them if present conditions remain unchanged. In your subcommittee's opinion such a failure on the part of any one or more of them would not only result in the hardship of loss of jobs, service, and payrolls to those persons directly involved, but any such failure would adversely affect our entire economy.

Thus the subcommittee proposes that in keeping with the procedures established under the housing program, merchant marine programs, feeder airline programs, and others, a program of Federal guaranteed loans be provided for the railroads subject to the Interstate Commerce Act.

Your subcommittee recommends that the Federal Government guarantee loans made by private commercial institutions, including unpaid interest on such loans, in an aggregate amount not to exceed \$700 million.

We propose that such a guaranteed loan program be set up under the direction of the Interstate Commerce Commission. The requirements for a Government guaranty are similar to those that were applicable for a direct loan from the Treasury under section 210 of the Transportation Act of 1920.

The principal requirements for authorizing the guaranty of a loan by the Government are findings by the Commission that:

(a) The proposed loan is necessary or appropriate to effectuate the purposes for which loans eligible for guaranty are authorized;

(b) The applicant is unable to obtain the needed funds from private sources on reasonable terms without a guaranty of the loan by the Government;

(c) Prospective earnings of the applicant carrier are such that there is reasonable assurance of repayment of the loan; and

(d) The applicant carrier is not in need of reorganization of its capital structure.

Such guaranties shall be made for loans for the following:

Funds to finance or refinance the acquisition or construction of equipment and other additions or betterments for use in transportation service; or to provide funds for operating expenses, working capital, and interest on existing obligations.

Guaranteed loans for operating expenses and interest on existing obligations are limited to \$150 million.

Other important features of the proposal include provisions that:

The Interstate Commerce Commission shall prescribe the security, if any, that is to be required; the term of a loan eligible for guaranty shall not exceed 15 years; no dividends shall be paid by a carrier so long as any loan guaranteed by the Government under this provision is outstanding; the authority to guarantee loans shall terminate December 31, 1960, unless further extended by the Congress; the Commission would be empowered to enter into guaranty agreements with trustees under a trust indenture or agreement for the benefit of the holders of any securities issued thereunder; the Secretary of the Treasury is delegated responsibility for any payments that may become necessary as the consequence of any guaranty; and the Attorney General shall be given the duty of protecting the interests of the United States as a creditor in the event payment under a guaranty should become necessary.

The subcommittee is mindful of the fact that there needs to be a balancing of considerations that are basically difficult of reconciliation. The subcommittee is desirous of preventing bankruptcy for those railroads that are in precarious financial condition, but at the same time does not contemplate that this should constitute a giveaway program. The subcommittee feels that by conferring upon the Interstate Commerce Commission the task of determining whether a particular loan should be guaranteed by the Government under the standards prescribed, it has adopted the means best calculated to accommodate its principal objectives. The Commission has functioned in this capacity previously under two different statutes, the Transportation Act of 1920 and the Reconstruction Finance Corporation Act and its record in connection with those two acts gives the subcommittee confidence that it can perform the present assignment successfully and efficiently.

It should be stated that the subcommittee does not believe that this temporary financial assistance to the railroads in the form of guaranteed loans as an answer to the long-range railroad problems. Enactment of other legislative proposals herein recommended will furnish a more substantial basis for curing the basic ills of the railroads. This guaranteed loan program is only offered as a palliative to meet the short-range emergent fiscal problems of some few of the major railroads and to give them time in which to start feeling the beneficial effects that will result from the adoption of the other legislative proposals and recommendations herein contained.

## 2. CONSTRUCTION RESERVE FUNDS

One of the proposals advanced to encourage the replacement of railroad facilities and the necessary modernization of the railroad plant involves the creation of a reserve on which taxes are deferred if deposits in the reserve are used for the purpose stated in the act.

Described as a "construction reserve fund," the plan is similar in purpose to the relief now provided by the Merchant Marine Act of 1936 to encourage ship construction. The subcommittee recommends that this benefit be likewise extended to all common carriers subject to the Interstate Commerce Act.

The proposal, which the subcommittee approves, contemplates the creation of a construction reserve fund on the books of common carriers regulated under the Interstate Commerce Act in accordance with regulations jointly prescribed by the Secretary of the Treasury and the Interstate Commerce Commission. In the computation of its Federal income tax, a deduction would be allowed equal to the amount deposited in the fund, but not to exceed in any one year an amount equal to the depreciation allowed under the uniform system of accounts prescribed by the Interstate Commerce Commission. Funds in this account would be limited in their use to the acquisition of equipment or other property used by the common carrier in the transportation business or for the reduction of debt, in whole or in part, which was incurred as an incident of any such acquisition after the passage of the act.

Amounts deposited in this fund must be used for the purposes intended within 5 years from the date of deposit; if not, any such amount will be taxed, plus interest, at the rate applicable to the year for which the deduction was taken. In this connection, the proposal contemplates that withdrawals for the purposes intended would be applied against deposits in the order of the deposits. The proposal further contemplates that as funds are withdrawn for the purposes intended, there will be a corresponding reduction in the basis of the property so acquired for the purpose of computing depreciation in respect thereof. Withdrawals for the reduction of debt, incurred in connection with acquisitions prescribed by the proposal, would be limited in amount to the adjusted basis of the assets in regard to which the debt is being reduced. Any interest earned by the fund must be retained in the fund.

In the event funds deposited in the "construction reserve," and earnings thereon, are not expended for the purposes prescribed by the act, provision is made for taxing such deposits, with interest, from the date of such deposit, and the collection of such taxes and interest before withdrawal from the "construction reserve."

Recognizing the importance of maintaining the railroad industry, and other common carriers, in a state of operational efficiency and being assured that the transportation industry is unable by reason of its financial condition adequately to maintain, replace, or modernize its facilities and plant, the subcommittee has determined that this proposal is reasonable and appropriate. Taxes are deferred pursuant to this proposal; not forgiven. It is believed that aside from the immediate beneficial effect that will result from this proposal, it will also have a long-range beneficial effect, not only on the operating efficiency of the carriers, but also on our economy. The use of this fund as a means of providing for capital replacement or expansion would also seem to provide a means whereby the level of procurement in this industry would be constant despite the rise and fall in the economy. This, of course, contributes to an orderly and stable economy redounding to the benefit of all.

## 3. COMPETITIVE RATEMAKING

The subject of competitive ratemaking as between the different forms of transportation was discussed at length during the hearings, the railroads urging enactment of legislation that would restrict substantially the authority of the Interstate Commerce Commission in this field. The subcommittee is not convinced that the record before it justifies approval of the railroads' proposal.

It is the policy of this subcommittee, and it is believed to be the policy of the Congress, that each form of transportation should have opportunity to make rates reflecting the different inherent advantages each has to offer so that in every case the public may exercise its choice, cost and service both considered, in the light of the particular transportation task to be performed. The subcommittee believes and the national transportation policy is clear, however, that such ratemaking should be regulated by the Commission to prevent unfair destructive practices on the part of any carrier or group of carriers.

It nevertheless appears that the Interstate Commerce Commission has not been consistent in the past in allowing one or another of the several modes of transportation to assert their inherent advantages in the making of rates. The subcommittee recommends, therefore, that the Commission consistently follow the principle of allowing each mode of transportation to assert its inherent advantages, whether they be of service or of cost. In 1945 in *New Automobiles in Interstate Commerce* (259 ICC 475), the subcommittee believes that the Commission properly construed the intent of Congress in this respect when it said:

As Congress enacted separately stated ratemaking rules for each transport agency, it obviously intended that the rates of each such agency should be determined by us in each case according to the facts and circumstances attending the movement of the traffic by that agency. In other words, there appears no warrant for believing that rail rates, for example, should be held up to a particular level to preserve a motor-rate structure, or vice versa (259 ICC at p. 538).

The subcommittee wishes to affirm the interpretation of the Commission given in the Automobile case epitomized in the words quoted above. The subcommittee therefore believes it necessary to amend the act only so as, in effect, to admonish the Commission to be consistent in following the policy enunciated in the Automobile case thus assuring reasonable freedom in the making of competitive rates. Such amendment can be made by adding to the Interstate Commerce Act, section 15 (a), a new subparagraph 3 to read as follows:

In a proceeding involving competition with another mode of transportation, the Commission, in determining whether a rail rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by railroad and not by such other mode.

The subcommittee anticipates that the broad effect of this amendment will be to encourage competition between the different modes of transportation to the benefit of the shipping public. Some members of the subcommittee are of the opinion that the amendment recom-

mended does not give sufficient freedom for making competitive rates; but, for the purpose of reporting to the full committee, the language was adopted as shown.

The subcommittee further notes that the Supreme Court in *Schaeffer Transportation Co. et al v. U. S.* (No. 20, October term, decided December 9, 1957), in reversing the Interstate Commerce Commission for denying a motor carrier application because rail service was "reasonably adequate," said—

To reject a motor carrier's application on the bare conclusion that existing rail service can move the available traffic, without regard to the inherent advantages of the proposed service, would give one mode of transportation unwarranted protection from competition from others.

Later it said—

The ability of one mode of transportation to operate with a rate lower than competing types of transportation is precisely the sort of "inherent advantage" that the congressional policy requires the Commission to recognize.

The purpose of this amendment is to produce consistency in the interpretation of the national transportation policy.

## 4. ICC AUTHORITY OVER INTRASTATE RATES

According to testimony received from the rail witnesses during the course of the hearings, a troublesome problem of the railroads arises from the difficulties and delays encountered when they seek to raise the level of rates, fares, and charges effective on like interstate traffic. The situation is most burdensome in cases of prolonged delay when authority is sought at the State level to make general increase in intrastate rates, fares, and charges corresponding to interstate increases authorized by the Interstate Commerce Commission, but the problem of delay is not confined to that found in general rate adjustments. Nor, as will be seen, is the matter of delay the only basis for complaint in connection with adjusting the level of intrastate rates, fares, and charges.

Under section 13 of the Interstate Commerce Act, the Interstate Commerce Commission is authorized, in certain cases, to require changes in the intrastate rates, fares, and charges of railroads and certain other carriers. If the Commission finds, after full hearing, that any rate, fare, or charge made or imposed by State authority causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other, or any undue, unreasonable, or unjust discrimination against interstate commerce, the Commission is empowered to prescribe for the future such rate, fare, or charge as, in its judgment, will remove the advantage, preference, prejudice, or discrimination; and the rates, fares, and charges so prescribed by it "shall be observed while in effect \* \* \*, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

The Commission and the courts have construed the phrase "undue, unreasonable, or unjust discrimination against interstate \* \* \* com-

merce" as encompassing discrimination against interstate commerce resulting from intrastate rate levels relatively so low that they fail to contribute their proportionate share of the revenues necessary for the maintenance of an adequate railroad system. The Commission has often availed itself of the power conferred upon it, so construed, and ordered increases in the level of intrastate rates, particularly in instances where, subsequent to a general increase in rates for interstate traffic States have failed to authorize similar increases in the rates for intrastate traffic.

The Commission, however, exerts the power with hesitancy, regarding Federal authority in the area of intrastate rates as an authority to be exercised with considerable delicacy; and for reasons of "comity" it does not ordinarily take action looking toward removal of disparities between interstate and intrastate rates under the circumstances described until the appropriate State regulatory authority has been invoked, and until the matter has been disposed of finally at the State level. For this reason, there is ordinarily very wide opportunity for inordinate delay at the State level before the protection afforded by the Interstate Commerce Act may, as a practical matter, be invoked.

To alleviate this burdensome delay in obtaining prescription of lawful intrastate rates by the Interstate Commerce Commission, it is proposed to provide in section 13 of the Interstate Commerce Act that upon the filing of a proper petition involving the lawfulness of any intrastate rate, fare, or charge the Commission shall institute its investigation forthwith and act with special expedition (whether or not the rate, fare, or charge has theretofore been considered by State regulatory authority and without regard to the pendency of any State proceeding thereon). Similarly, it would be provided that when railroads are before the Interstate Commerce Commission in connection with general adjustments in interstate rates they may seek authority in the same proceeding to make comparable adjustments in intrastate rates and the Commission, incident to its authorization of interstate rate adjustments, shall grant like authority for intrastate rate adjustments if it finds them justified.

This approach would meet the need of the carriers for more prompt regulatory action in the adjustment of intrastate rates and has the merit of doing so without enlarging the authority of the Interstate Commerce Commission for, as mentioned earlier, the Commission already has the power under present law to remove discrimination against interstate commerce caused by any intrastate rate, fare, or charge. The subcommittee's proposal would merely implement that power.

The subcommittee also proposes to strengthen section 13 of the Interstate Commerce Act in another particular. The grounds upon which the Interstate Commerce Commission may require changes in intrastate rates would be more clearly defined. Under present law, as has been pointed out, the Commission is given authority to require such changes to the extent found by it to be necessary to remove any undue, unreasonable, or unjust discrimination against interstate commerce. In many instances, because of the vagueness of this standard, it is impossible as a practical matter to make the showing necessary to justify an order by the Commission requiring an adjustment in intrastate rates, fares, or charges. This situation would be substantially and beneficially corrected by authorizing the Commission also

to require changes in intrastate rates, fares, or charges found by it to impose an undue burden on interstate commerce.

Moreover, one further clarification of the standard is made desirable by reason of the possible effect of the recent decision of the Supreme Court of the United States in *Chicago, Milwaukee, St. Paul and Pacific Railroad Co. v. State of Illinois* (78 S. Ct. 304), decided January 13, 1958. In that case, at page 309, it was held that under present section 13 of the Interstate Commerce Act the deficit from this single commuter operation cannot—

fairly be adjudged to work an undue discrimination against the Milwaukee Road's interstate operations without findings which take the deficit into account in the light of the carrier's other intrastate revenues from Illinois traffic, freight and passenger.

From the testimony, it is clear that this opinion of the Supreme Court not only places an intolerable burden under present accounting practices, but in addition presents an almost impossible obstacle because of the problem of segregating intrastate and interstate expenses of rail operation. Further the subcommittee thinks that each service should stand on its own feet, supported by rates that are compensatory.

Fear has been expressed that this case might be construed as requiring that the finding of "undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce" stipulated by the act be made only in the light of the overall, statewide totality of a carrier's operating results deriving from the entire body of that carrier's rates applicable within the State, thus precluding such a finding on a showing of only the effect of the particular rate or rates in issue. To protect against such an interpretation of the Milwaukee case it is proposed to provide that the Commission, in determining whether any intrastate rate causes discrimination against, or burden on, interstate commerce, need not consider in totality the overall statewide results of the carrier's operations but need consider only the effect of the particular rate or rates in issue.

##### 5. ICC AUTHORITY OVER UNPROFITABLE SERVICES AND FACILITIES

A most serious problem for the railroads is the difficulty and delay they often encounter when they seek to discontinue or change the operation of services or facilities that no longer pay their way and for which there is no longer sufficient public need to justify the heavy financial losses entailed. The subcommittee believes that the maintenance and operation of such outmoded services and facilities constitutes a heavy burden on interstate commerce.

Railroad management, it must be understood, is not always free without authorization to discontinue, curtail, consolidate or otherwise change services or facilities in an effort to deal realistically with unprofitable, deficit-producing operations. Generally speaking, such matters fall within the scope of State law; and in a great many instances a railroad may not discontinue or change the operation of a train or other service or facility without first obtaining permission to do so from the regulatory authority of the State in which the operation is conducted.

Without reciting individual cases the subcommittee is satisfied that State regulatory bodies all too often have been excessively conservative and unduly repressive in requiring the maintenance of uneconomic and unnecessary services and facilities. Even when allowing the discontinuance or change of a service or facility, these groups have frequently delayed decisions beyond a reasonable time limit. In many such cases, State regulatory commissions have shown a definite lack of appreciation for the serious impact on a railroad's financial condition resulting from prolonged loss-producing operations.

To improve this situation, the subcommittee proposes to give the Interstate Commerce Commission jurisdiction in the field of discontinuance or change of rail services and facilities similar to the jurisdiction it now has over intrastate rates under section 13 of the Interstate Commerce Act so that when called upon to do so it may deal with such matters that impose an undue burden on interstate commerce. This, the subcommittee believes, would protect and further the broad public interest in a sound transportation system and would prevent undue importance being attached to matters of a local nature.

#### 6. AGRICULTURAL COMMODITIES EXEMPTION

The so-called agricultural commodities exemption contained in section 203 (b) (6) of the Interstate Commerce Act provides that nothing in part II of the act (relating to the regulation of motor carriers), except certain requirements as to qualifications and maximum hours of service of employees and safety of operation or standards of equipment, shall be construed to include:

motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation.

This exemption from economic regulation appears originally to have been intended to aid farmers and other producers of domestic foodstuffs by relieving them of some of the burdens of regulation so that the movement of their products from point of production to market or to processing or storage points would be facilitated. By a continuing process of administrative and judicial interpretation, however, the exemption has been extended to the transportation of commodities that have received varying degrees of commercial processing, and to the transportation of such commodities in ordinary commercial channels beyond the initial movement from the point of production. It has also been held to apply to the transportation of imported commodities as well as to those domestically produced.

Regulated carriers are handicapped in their competition for traffic in "agricultural" commodities, for while the rates of the regulated carriers are strictly and rigidly controlled and are required to be published, the rates of the exempt haulers are not subject to any control and need not even be made public. As a consequence, large and ever-growing volumes of important traffic have been diverted to the exempt truckers and the diversion continues. The impact upon the regulated carriers is already serious; and the erosion of further

classes of traffic is threatened by the trend of administrative and judicial determinations expanding the scope of the exemption.

Attempts have been made to demonstrate that the benefits of the agricultural exemption accrue to the farmer in the form of increased income. These attempts are not convincing to the subcommittee, and it appears that others than farmers are receiving benefits. It is important that this trend be halted before the position of the regulated carriers is more seriously impaired. The subcommittee, therefore, recommends a freezing, with a slight rollback, of the agricultural exemption in accordance with ruling No. 107, March 19, 1958, Bureau of Motor Carriers of the Interstate Commerce Commission.

The limited amendment of section 203 (b) (6) recommended by the subcommittee would halt further expansion of the exemption, and it would return to economic regulation the transportation of frozen fruits and vegetables and imported agricultural commodities.

Grandfather rights would also be provided. Any person engaged on January 1, 1958, in trucking commodities brought back under regulation by the above-described amendment of section 203 (b) (6) would be entitled to a certificate or permit allowing him, under regulation, to continue hauling the same commodities within the same areas or between the same points.

#### 7. ECONOMIC REGULATION OF COMMERCIAL TRANSPORTATION

A matter of serious concern to the subcommittee is the growing practice of persons engaging in the commercial transportation of property by motor vehicle under circumstances that do not constitute bona fide private carriage, as that term is properly understood, but that nonetheless enable them to evade the economic regulation to which common and contract carriers by motor vehicles are subject even though the transportation services performed are not specifically exempt from such regulation. Most frequently, perhaps, evasion of the economic regulation to which it is intended that all for-hire carrier transportation of property other than that specifically exempted shall be subject is accomplished under the guise of private carriage.

The enormous growth of commercial private carriage of property by motor vehicle in recent years, resulting as it has in a continuing erosion of huge volumes of traffic that would otherwise be available for transportation by public carriers, is a serious problem for the railroads and other common carriers. To the extent that this growth has occurred in bona fide private carriage, i. e., the transportation of one's own materials, supplies, and products in one's own vehicles within the scope and in furtherance of one's primary business enterprise (other than transportation), there is no room for complaint; but there is just cause for complaint as to motor carriage which although performed under the guise of private transportation is actually public transportation. Not only do the purveyors of the transportation service evade economic regulations; but in many instances payment of the Federal transportation excise taxes is also avoided, for the tax on amounts paid for the transportation of property is not levied on proprietary transportation.

Various subterfuges are employed to evade economic regulation and avoid imposition of the transportation excise taxes. The one

most commonly used is the so-called buy-and-sell method of operation involving the issuance of bills of sale, invoices, and other such instruments to make it appear that the commodities being transported are those of the vehicle owner when in fact the transaction is merely a device to provide transportation for hire without a certificate or permit and without payment of the transportation tax. Another is the backhaul method of operation increasingly engaged in by concerns that deliver in their own trucks articles which they manufacture or sell and then purchase merchandise at or near their point of delivery for transportation back to a point near their own terminal for sale to others, or where they transport property they do not own, such transportation being performed only for the purpose of receiving compensation for the otherwise empty return of their trucks.

There are numerous variations but, whatever the precise nature of the subterfuge employed, carriage of this sort undermines the strength of the regulated for-hire carriers and in so doing it also injures the public which is largely dependent upon regulated for-hire carriage for its transportation requirements. Protection is needed from destructive competition of this kind.

The Interstate Commerce Commission has said that this is one of the problems of most serious concern to it in administration of the Interstate Commerce Act, that where so-called private carriage is a subterfuge for engaging in public transportation it constitutes a growing menace to shippers and carriers alike, being injurious to sound public transportation, promoting discrimination between shippers, and threatening existing rate structures. It was to curb just such practices that part II of the Interstate Commerce Act was enacted.

In the first session of the present Congress (Public Law 85-163, approved August 22, 1957) the Interstate Commerce Act was amended to prohibit one (except as otherwise specifically provided) from engaging in any "for-hire transportation business by motor vehicle" in interstate or foreign commerce without a certificate or a permit authorizing such transportation. This prohibition is expected to prove helpful in correcting certain of the abuses described, but it appears that loopholes may still remain. What is needed, in the opinion of the subcommittee, is a further prohibition to the effect that no person in any commercial enterprise other than a duly authorized or specifically exempt for-hire transportation business shall transport property by motor vehicle in interstate or foreign commerce unless such transportation is solely within the scope and in furtherance of a primary business enterprise (other than transportation) of such person.

With the Interstate Commerce Act amended in this way commercial highway transportation of property in interstate or foreign commerce would, with certain specific exemptions, be required to fall into one or another of three classes: (a) duly certificated common carriage, (b) duly permitted contract carriage, or (c) transportation solely within the scope and in furtherance of a primary business enterprise (other than transportation) of the transporter. Other commercial highway transportation, except as specifically provided, would be prohibited. This, it is believed, would serve to correct most of the abuses that have arisen in the name of private carriage and yet would not in any way jeopardize or interfere with what might be called legitimate or bona fide private carriage. Indeed the "primary business test"

contained in *Brooks Transportation Co. v. U. S.* (340 U. S. 925 (1951)), so sacrosanct to the private carriers and deemed by them essential to their best interests and the preservation of their rights, would be written directly into the statute.

## VII. DISCUSSION OF RECOMMENDATIONS NOT WITHIN JURISDICTION OF THIS SUBCOMMITTEE

### 1. REPEAL OF TRANSPORTATION EXCISE TAXES

In the opinion of the subcommittee, repeal of the transportation taxes would do a great deal to improve the depressed condition of the railroads. These taxes were established as temporary measures during wartime and unfortunately no termination date was provided in the original legislation. Repeal of these taxes will be helpful not only to the railroads but to the general economy because the transportation tax applies to every successive stage of production from raw material to finished product. If there are five transportation movements of an item, there are five 3-percent individual tax assessments on the transportation cost, causing a total cumulative effect which is extremely serious. The 3-percent transportation tax encourages shippers to provide their own fleet of private trucks, thereby causing a loss of business to regulated carriers. The small-business man often cannot buy his own trucks so he is penalized by having to use common carriers and pay the transportation tax. Thus, from the point of view of the transportation industry and the consumer, removal of these unsound and burdensome taxes would be an immediate help both to economic recovery and to improving the health of the regulated industry.

For these and other reasons, 14 Senators have sponsored a measure designed to repeal these transportation taxes. It is the sincere hope of the subcommittee that repeal of taxes will be approved by the Senate Finance Committee.

### 2. TWENTY-YEAR DEPRECIATION PERIOD FOR RAILROAD PROPERTY

As it is now, extremely long service lives ranging in some cases from 50 to 100 years, are assigned to depreciable railway property of the railroads. These long lives attributed to railroad property for tax purposes are wholly unrealistic and constitute a severe handicap. Allowing a 20-year life for depreciable property of railroads would bring about a reasonable increase in depreciation charges on railroad property and would help railroad management to undertake changes in existing property and make additions and betterments that are necessary to meet the modern competitive situation faced by the railroads.

### 3. MAIL TRANSPORTATION LEGISLATION

From the testimony the subcommittee believes that the statutes for transporting mail are obsolete and should be amended. Consequently it is urged that the Post Office and Civil Service Committee reexamine present laws to provide fair and impartial treatment for hauling mail by all forms of transportation. For instance, the railroads are required to haul the mail as directed by the Post Office Department under threat

of fine for not performing. Consideration should be given to removing this compulsion. Modern legislation is likewise needed to provide for hauling of mail by highway carriers.

#### VIII. RECOMMENDATION FOR TRANSPORTATION POLICY STUDY

The subcommittee has pointed out the existence of a number of long-range policy matters that need extensive study and recommendations to the end that appropriate legislation be enacted to insure a sound national transportation system. It is a subcommittee recommendation that the Senate Committee on Interstate and Foreign Commerce be authorized to make the necessary studies, with authority to employ three highly qualified experts in the field of transportation for the purpose. Reports on the results of the studies should be made to the committee within 18 months. Sufficient staff and other resources should be provided to allow adequate studies and recommendations to be made within the specified time.

It is recommended that the proposed study include the following:

1. The need for regulation of transportation under present-day conditions and, if there is need for regulation, the type and character of that regulation. The hearings on the railroad situation show one thing above all else: The existence of substantial doubt concerning the efficacy of present transportation regulation. To ascertain the public interest in regulation, the burden should be placed on the public and the carriers to show why it is needed and to what extent. Critical answers to specific proposals for less regulation are required to settle the constant agitation for change and the resulting confusion in the public mind concerning the need and propriety of Government regulation of transportation under prevailing conditions.
2. The area of Federal policy dealing with Government assistance provided the various forms of transportation and the desirability of a system of user charges to be assessed against those using such facilities.
3. The subject of the ownership of one form of transportation by another. Such ownership, except in unusual cases, is generally either forbidden or made extremely difficult under existing statutes.
4. Examination of Federal policy on the subject of large-scale consolidations and mergers in the railroad industry.
5. Policy considerations for the kind and amount of railroad passenger service necessary to serve the public and provide for the national defense.
6. Additional matters of Federal regulation (and exemption therefrom) and promotional policy that are related to the above-mentioned subjects.

#### INDIVIDUAL VIEWS OF SENATOR FRANK J. LAUSCHE

I am in concurrence generally with the contents of the report being submitted to the members of the Interstate and Foreign Commerce Committee of the Senate by the Special Subcommittee on Surface Transportation under the chairmanship of Senator George A. Smathers of Florida.

There are certain aspects of the report and particularly the recommendations with which, however, I am not in agreement.

#### GUARANTEED LOAN

I favor the enactment of a bill that will authorize the Federal Government to guarantee loans made to railroads in the aggregate amount of \$700 million, providing such loans are used by the borrowing railroads to purchase capital equipment. I do not join in the recommendation of my associate members on the subcommittee that the borrowing railroads be permitted to use any part of the borrowed moneys for the purpose of paying interest on their funded debt or for the defrayal of operating expenses. Authorizing the borrowed money to be used for the paying of interest on bonded indebtedness would be a wrong to the taxpayers and a thoroughly unjustified boon to the bondholders. To authorize even a limited part of the guaranteed loans to be used for operating expenses of the railroads would be wrong because of the dangerous precedent which it would establish for other segments of the economy in the future to expect similar service from the Federal Government.

#### EXCISE TAX

I favor the proposal that the 3-percent excise tax, now existent against freight transportation, be repealed, but not the 10-percent excise tax on passenger transportation. The testimony in the hearings conducted by the subcommittee clearly disclosed that the existence of the 3-percent excise tax against freight transportation has caused many private shippers to discontinue the use of public carriers, establish their own transportation system, and thus escape the paying of the tax. While there was evidence that passenger business was being increasingly lost to the air, bus carriers, and the private passenger automobile, in my opinion, it did not establish that the elimination of the passenger excise tax would restore to the railroads any part of the passenger business.

#### CONSTRUCTION RESERVE FUNDS

I do not join in the recommendation that the rail, air, and barge, and truck carriers, should be permitted to establish a construction reserve fund to be exempt from income-tax assessments until such time, not to exceed 5 years, when the fund is invested in the acquisition of capital equipment. I oppose the adoption of this new method of deferred taxation in the isolated method proposed. If the establishment by business and industry of construction reserve funds,

with the right to defer payment of income taxes until the time, not to exceed 5 years, such funds are invested in capital equipment, is economically sound, then the right ought to be made available, not only to the common carriers, consisting of the truckers, the railroads, the airlines, and the barge carriers, but also to all other types of business and industry.

#### ACCELERATED DEPRECIATION

The report of the majority members of the Surface Transportation Subcommittee recommends to the Finance Committee the adoption of a law that would allow the railroads, airlines, truckers, and barge carriers, the right to accelerate the depreciation of their properties, and thus be given relief from their present income-tax burdens. With regard to this proposal, I likewise feel that it should not be treated in isolation and separation from all other businesses and industries which are likewise affected.

The proposals, respectively, for legislation that would authorize (1) the establishment of construction reserve funds for the purpose of enjoying the benefits of deferred taxation and (2) the granting of the right to accelerate the depreciation of the properties of businesses and industries for the purpose of obtaining relief against the income-tax burden cannot intelligently and safely be acted upon by the members of the Interstate and Foreign Commerce Committee dealing only with the businesses of the railroads, barge lines, airlines, and truckers. It should be studied by the Finance Committee, which, because of its overall knowledge of Federal tax and fiscal problems, will be able better to determine (1) the impact such a program would have upon the fiscal soundness of the Nation, and (2) the justification for the adoption of these new methods of providing tax relief.

#### GREATER FREEDOM TO MANAGE ITS OWN BUSINESS

Though I concur with the recommendation made by my colleagues on the Surface Transportation Subcommittee which, if carried into effect, will give the railroads greater freedom in using their inherent advantage in competing with truck lines and barge lines for freight business, I recognize that strong arguments can be made that the subcommittee should have gone further and followed the suggestions made by the Secretary of Commerce on the subject.

The establishment of a \$700 million fund to guarantee loans, the elimination of the 3-percent excise tax on freight transportation, the tax relief that might come through the adoption of the construction reserve fund, and the acceleration of depreciation of properties of the railroads, in my opinion, will not provide the long-range remedy needed by them. That remedy can only be provided through a liberalization of the railroads' abilities to manage their own businesses without carrying an umbrella for the protection of the competing modes of transportation. Liberalization of the rights of railroads to manage their own businesses, circumscribed, of course, against the right to engage in cutthroat competition by offering services below cost, is further emphasized by the admitted facts that their competitors, the airlines, trucklines, and barge lines, are now being either directly or indirectly subsidized by the Federal Government.

FRANK J. LAUSCHE.

#### INDIVIDUAL VIEWS OF SENATOR WILLIAM A. PURTELL

I concur in general with the contents of the report herewith submitted by the Subcommittee on Surface Transportation to the members of the Interstate and Foreign Commerce Committee. However, there are certain aspects of the report and particularly the recommendations therein with which I am not in complete agreement.

I therefore reserve the right to suggest such modifications, changes, or corrections as may appear desirable prior to final action thereon by the full committee.

WILLIAM A. PURTELL.

## CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; and existing law in which no change is proposed is shown in roman):

## INTERSTATE COMMERCE ACT

(Title 49, U. S. C.)

## Sec. 1.

\* \* \* \* \*

(2) The provisions of this part shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid *except as otherwise provided in this part*;

\* \* \* \* \*

(17) (a) The directions of the commission as to car service and to the matters referred to in paragraphs (15) and (16) may be made through and by such agents or agencies as the commission shall designate and appoint for that purpose. \* \* \* *Provided, however, That nothing in this part shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except insofar as such requirement is inconsistent with any lawful order of the commission made under the provisions of this part [.] and except as otherwise provided in this part.*

\* \* \* \* \*

[(4) Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful it shall prescribe the rate, fare, or charge, or the maximum or minimum, maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be

observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.]

(4) *Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce (which the Commission may find without considering in totality the operations or results thereof of any carrier, or group or groups of carriers wholly within any State), which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, discrimination, or burden: Provided, That upon the filing of any petition authorized by the provisions of paragraph (3) hereof to be filed by the carrier concerned, the Commission shall forthwith institute an investigation as aforesaid into the lawfulness of such rate, fare, charge, classification, regulation, or practice (whether or not theretofore considered by any State agency or authority and without regard to the pendency before any State agency or authority of any proceeding relating thereto) and shall give special expedition to the hearing and decision therein.*

(5) *In any proceeding before the Commission involving an investigation of or authorization or permission for a general adjustment in rates, fares, or charges, or any of them, or carriers subject to this part for the transportation of property or passengers, or both, in interstate commerce throughout, or substantially throughout, the United States, or one or more of the three major rate classification territories thereof (Official, Western or Southern), any such carrier or carriers parties thereto may by petition seek authority or permission of the Commission for a comparable adjustment of rates, fares, or charges for the transportation of like property or passengers wholly within an individual State or individual States. If, in such proceeding, the Commission finds (as it is hereby authorized to do) that authorizing or permitting an adjustment in interstate rates, fares, or charges without authorizing or permitting a comparable adjustment in intrastate rates, fares, or charges would cause, or create a circumstance of, advantage, preference, prejudice, discrimination or burden declared in paragraph (4) of this section to be unlawful, the Commission shall, incident to any adjustment it may authorize or permit in such interstate rates, fares, or charges, authorize or permit a comparable adjustment in such intrastate rates, fares, or charges. Pursuant to such authorization the said carrier or carriers, upon making any adjustment so authorized or permitted by the Commission in such interstate rates, fares, or charges may without further authority make a comparable adjustment in such intrastate rates, fares, or charges and adjustments so made in intrastate rates, fares, or charges shall be observed while continued in effect by the said carrier or carriers, the law of any State or the decision or order of any State authority to the contrary notwithstanding.*

13a. *A carrier or carriers subject to this part, if their rights with respect to the discontinuance or change, in whole or in part, of the*

operation or service of any train or ferry engaged in the transportation of passengers or property in interstate, foreign and intrastate commerce, or any of them, or of the operation or service of any station, depot or other facility where passengers or property are received for transportation in interstate, foreign and intrastate commerce, or any of them, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, mail to the Governor of each State in which such train, ferry, station, depot or other facility is operated, and post in every station, depot or other facility directly affected thereby, notice at least thirty days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this section, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said thirty days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. Upon the institution of such investigation, the Commission by order served upon the carrier or carriers affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train, ferry, station, depot or other facility to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than four months beyond the date when such discontinuance or change would otherwise have become effective. If, after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that the operation or service of such train, ferry, station, depot or other facility is required by public convenience and necessity and that such operation or service will not result in a net loss therefrom to the carrier or carriers and will not otherwise unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service of such train, ferry, station, depot or other facility, in whole or in part, for a period not to exceed one year from the date of such order. The provisions of this section shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this section provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this section shall again be invoked by the carrier or carriers.

\* \* \* \* \*

15a.

(1) When used in this section, the term "rates" means rates, fares, and charges, and all classification, regulations, and practices relating thereto.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors

to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

(3) In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act.

\* \* \* \* \*

20d. (1) It is the purpose of this section to aid common carriers by railroad subject to this part in rendering proper transportation service to the public by providing temporary financial assistance to them in obtaining funds to finance or refinance the acquisition or construction of equipment or additions and betterments for use in transportation service and in obtaining funds needed for operating expenses, working capital, and interest on existing obligations, all to the end of fostering the preservation and development of a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and national defense.

(2) In order to carry out the purpose declared in this section, the Commission, upon terms and conditions prescribed by it and consistent with the provisions of this section, may guarantee any lender, or trustee under a trust indenture or agreement for the benefit of the holders of any securities issued thereunder, by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount, or advance, or on any commitment in connection therewith, which may be made for the purposes set forth in this section, except that there shall be no guarantee of a loan to be used in reduction of the principal of an obligation other than in connection with the refinancing of an equipment obligation: Provided, That in no event shall the aggregate of all loans guaranteed by the Commission, including unpaid interest, exceed \$700,000,000, of which no more than \$150,000,000 may be loans for operating expenses and interest on existing obligations.

(3) Any such carrier may, prior to December 31, 1960, make application to the Commission, in such form as the Commission may prescribe, requesting guaranty by the Commission as herein authorized and setting forth the amount and term of the loan to be guaranteed; the purpose of the loan and the use to which the proceeds therefrom will be applied; the inability of the applicant to obtain such funds on reasonable terms without such guaranty; the character and value of the security; if any, that the applicant will pledge as collateral for the loan; and that the loan is necessary or appropriate to effectuate the purpose of this section. The application shall be accompanied by statements showing in detail such facts as the Commission may require with regard to the situation of the applicant. The Commission shall give preference to and expedite the consideration of any such application.

## (4) No guaranty shall be made under this section—

(A) unless the Commission is of the opinion that the proposed loan is necessary or appropriate to effectuate the purpose of this section;

(B) unless the Commission is of the opinion that without such guaranty the applicant carrier would be unable to obtain necessary funds, or reasonable terms, for the purposes for which the loan is sought;

(C) if the loan involved is at a rate of interest which, in the judgment of the Commission, is unreasonably high, or if the terms of such loan permit full repayment more than fifteen years after the date thereof;

(D) unless the Commission is of the opinion that the prospective earning power of the applicant carrier, together with the character and value of the security pledged, if any, furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor and reasonable protection to the United States;

(E) unless the Commission is of the opinion that the applicant carrier is not in need of reorganization of its capital structure;

(F) unless the applicant carrier agrees that it will declare no dividends on its capital stock as long as the loan remains unpaid.

(5) The Commission may consent to the modification of the provisions as to rate of interest, time of payment of interest or principal, security, if any, or other terms and conditions of any guaranty which it shall have entered into pursuant to this section, or the renewal or extension of any such guaranty, whenever the Commission shall determine it to be equitable to do so.

(6) Payments required to be made as a consequence of any guaranty by the Commission pursuant to the provisions of this section shall be made by the Secretary of the Treasury from funds hereby authorized to be appropriated in such amounts as may be necessary for the purpose of carrying out the provisions of this section.

(7) The Commission shall prescribe and collect a guaranty fee in connection with each loan guaranteed under this section. Such fees shall not exceed such amounts as the Commission estimates to be necessary to cover the administrative costs of carrying out the provisions of this section. Sums realized from such fees shall be deposited in the Treasury as miscellaneous receipts.

(8) (a) To permit it to make use of such expert advice and services as it may require in carrying out the provisions of this section, the Commission may use available services and facilities of departments and other agencies and instrumentalities of the Government, with their consent and on a reimbursable basis.

(b) Departments, agencies, and instrumentalities of the Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the objectives of this section.

(9) Administrative expenses under this section shall be paid from appropriations made to the Commission for administrative expenses.

(10) Except with respect to such applications as may then be pending, the authority granted by this section shall terminate at the close of December 31, 1960: Provided, That its provisions shall remain in effect thereafter for the purposes of guaranties made by the Commission.

\* \* \* \* \*

25a. (1) It is hereby declared to be the general policy of the Congress to promote and encourage, in the interest of national defense and public welfare, the construction, reconstruction, reconditioning, or acquisition of equipment and other property used in the transportation business by common carriers subject to the Interstate Commerce Act, and the retirement (in whole or in part) of debt incurred, after the effective date of this section, for such purposes. It is the purpose of this section to provide implementation of this general policy through the establishment by any such carrier of a construction reserve fund, with the privileges and subject to the limitations herein prescribed. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the provisions of this section and rules or regulations to be prescribed by the Interstate Commerce Commission and the Secretary of the Treasury and under the joint control of the carrier and the Commission. Such fund shall be maintained in a separate cash deposit or in obligations of the United States or any agency thereof.

(2) All earnings of the fund shall be deposited in the fund. Such earnings may be withdrawn by the carrier only for expenditures for the purposes established in paragraph (1) of this section and only after the expenditure for the purposes established in paragraph (1) of this section of the principal amount on which such earnings accrued. If such earnings are not expended for such purposes within five years from the date of deposit in the fund, 85 per centum of such earnings shall be paid to the United States as a tax, in lieu of any other tax which may be applicable to such earnings.

(3) In computing the taxable income under section 63 (a) of the Internal Revenue Code of 1954, as amended, of any common carrier subject to this Act there shall be allowed as a deduction, in addition to the deductions specified in that Code, the amounts deposited in the said construction reserve fund prior to the fifteenth day of the third month following the end of such common carrier's taxable year, without limitation except that the deduction allowed pursuant to this section shall not exceed in any one year an amount equal to the depreciation recorded in the operating expense accounts for such year under the provisions of the uniform system of accounts prescribed by the Interstate Commerce Commission.

(4) In computing the gross income under section 61 (a) of the Internal Revenue Code of 1954, as amended, of any common carrier subject to this Act there shall be included all principal amounts:

(a) withdrawn during the taxable year from the said construction reserve fund for purposes other than those specified in paragraph (1) of this section, and

(b) deposited in the reserve fund which shall be permitted to remain in such fund for five years after having been deposited therein shall be considered to have been so withdrawn from such fund on the first day following the expiration of such five-year period.

All such principal amounts shall be subject to tax at the rate or rates and shall be subject to the provisions of the Internal Revenue Code of 1954, as amended, applicable to the taxable year in which such amounts were deducted in computing taxable income pursuant to paragraph (3) of this section including the interest under section 6601 of such Code, as amended, as if a tax deficiency had existed for the year for which the deduction was taken, whether or not a tax deficiency would otherwise exist for such year. For the purpose of this section, any principal amounts expended or withdrawn from the reserve fund shall be applied against principal amounts deposited therein in order of the deposits.

(5) The regulations prescribed by the Interstate Commerce Commission and the Secretary of the Treasury, pursuant to paragraph (1) hereof, shall provide that no amounts may be withdrawn from the construction reserve fund except (a) for the uses prescribed in paragraph (1) hereof or (b) upon payment to the Secretary of the Treasury of the tax liability arising thereon as computed under paragraph (4) hereof.

(6) Amounts on deposit in a construction reserve fund shall not be considered an accumulation of earnings and profits for the purposes of part I, subchapter G, chapter I, of the Internal Revenue Code of 1954, as amended.

(7) The basis for determining gain or loss and for depreciation, for the purposes of Federal taxes, of any property constructed, reconstructed, reconditioned, or acquired by the taxpayer, in whole or in part, out of the construction reserve fund, shall be reduced by the amount from the construction reserve fund expended in the construction, reconstruction, reconditioning, or acquisition of such property, or expended to retire debt incurred for such purposes after the effective date hereof: Provided, That no expenditures shall be made from such fund for such purposes in excess of the then adjusted basis of the property to which such indebtedness relates.

(8) Qualifying expenditures under this section shall include only expenditures which are chargeable to the accounts prescribed and approved by the Interstate Commerce Commission to show the investment of a common carrier subject to this Act in property devoted to transportation service.

\* \* \* \* \*

203.

\* \* \* \* \*

(b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or

\* \* \* \* \*

(6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation [;]: Provided, That the words "property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" as used herein shall include property shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "Not exempt": Provided further, however, That notwithstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, or frozen vegetables and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish, when frozen or fresh.

\* \* \* \* \*

(c) Except as provided in section 202 (c) of this title, subsection (b) of this section, in the exception in subsection (a) (14) of this section, and in the second proviso in section 206 (a) (1) of this title, no person shall engage in any for-hire transportation business by motor vehicle, in interstate or foreign commerce, on any public highway or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such person a certificate or a permit issued by the Commission authorizing such transportation [.] nor shall any person in any other commercial enterprise transport property by motor vehicle in interstate or foreign commerce unless such transportation is incidental to, and in furtherance of a primary business enterprise (other than transportation) of such person.



The Transportation Act of 1958, sponsored by Sen. Smathers of Florida, has proved a bonanza for the railroads. Among other things it provided:

1. Government guarantees for private bank loans to railroads, which in some cases needed the money because of bad management.
2. The act also gave railroads greater leeway in rate making in competition with other carriers.
3. It also enabled railroads to restrict passenger service in some cases without authority from state public service commissions, simply by posting a 20-day notice and without justifying the reduction in passenger service. This reversed the whole theory of regulation of common carriers as a means of public convenience and necessity and was hotly protested by railway labor unions because of job losses resulting from cut-backs in train service.

The Railway Labor Executives Association which ~~xxxx~~ <sup>is</sup> the source for the above, ~~xxxx~~ <sup>copy</sup> is sending me a <sup>copy</sup> of a railroad tax relief bill also pushed by Smathers in 1958.

*Frank Theris told Kennedy in Kans he was a paid lobbyist of interest of his comp. funds*  
*He mentioned Smathers & said he had been concerned about complete interest cases in Senate*

There is ~~nothing in the~~ reports of the Senate Democratic Campaign Committee <sup>do not show</sup> ~~to indicate~~ that any contributions were earmarked for specific Senators, by the political contributors.

Neither do the <sup>separate reports of</sup> reports by individual Senators <sup>in any way</sup> indicate that the contributions they received through the Senate committee were specifically earmarked for them.

It is a well-known fact that the chairmen of Senate and House campaign committees exercise wide discretion in the distribution of campaign donations. They can favor certain Senators or Congressmen, or shut off funds from others they may not ~~like~~ like, ~~so as to bring about their defeat.~~

In the case of Senator Smathers, chairman of the Senate Democratic Campaign Committee, it appears that he made full use of these ~~discretionary~~ "discretionary" powers, on the high-handed theory that he didn't have to answer to anyone ~~concerning~~ regarding the disposition of committee funds.

If, as he contends, he received any earmarking requests from campaign donors -- or, in fact, carried out such requests -- he has managed to keep the transactions from showing up in the official records.

MORE

On the other hand, ~~nothing~~ there is nothing in the public record to indicate that he did not properly handle earmarked donations, if any.

In other words, since there is no official ~~public~~ record of such donations, we have to accept Smathers' own statement that he kept his word and did not divert any earmarked funds to the wrong people.

However, it appears that Smathers is guilty of not living up to the spirit, if not the letter of the law, in not rendering a precise book-keeping account to the American public of funds allegedly earmarked for specific ~~Democratic~~ Democratic candidates for the U.S. Senate.

*Interesting*  
Smathers' book-keeping is particularly ~~vague~~ *vague* in the case of Democratic Senator L. Allen Frear, Jr., of Delaware, who was defeated in the last election.

In fact, the whole story of Frear's financial ~~relations~~ relations with the Smathers committee is *quite* ~~rather~~ confusing -- so confusing, in fact, that a Merry-Go-Round reporter has been unable to ~~straighten~~ straighten it out after repeated examinations of conflicting figures in reports filed by Frear himself, with the Secretary of the Senate, and by Smathers' committee, with the Clerk of the House.

~~OO~~  
(MORE)

It is hoped that Senator Frear will file a supplemental report itemizing certain contributions from Smathers he neglected to mention in a post-election report (filed with the Secretary of the Senate) though the contributions were noted in a Smathers report to the Clerk of the House.

The Frear reports:

Senator Frear mailed a pre-election, financial report to the Secretary of the Senate on October 27, 1960, in which he stated that he had ~~received~~ <sup>received</sup> \$5,000 from ~~the~~ the Smathers committee up to that time. The \$5,000 donation, Frear reported, had been received on September 28, 1960.

The Frear post-election report, mailed to the Secretary of the Senate on November 15, 1960, lists this same \$5,000 donation from Smathers, dated September 28, 1960, plus a few minor contributions from others amounting to \$435 -- or \$5,435 in all.

Smathers, however, tells a different story.

In a report to the Clerk of the House, ~~which~~ filed on November 4, 1960, Smathers stated that his committee had contributed (there was no ~~mention~~ mention of earmarking) a total of \$25,100 to the Frear campaign.

MORE

Smathers broke down the Frear disbursements as follows:

\$5,200 to Friends for Frear, on ~~September~~ <sup>August</sup> 15, 1960; \$2,600 to various Frear committees, on ~~September~~ <sup>August</sup> 16, 1960; \$5,000 to the Frear for Senate Committee, on ~~October~~ <sup>September</sup> 15, 1960; \$5,000 to Friends for the Reelection of Allen J. Frear, Jr., on ~~October~~ <sup>September</sup> 19, 1960; \$5,000 to the Committee for the Reelection of Frear, on the same date; \$1,000 to the Frear for Victory Campaign Committee, on September 29, 1960; and \$1,300 to the Allen J. Frear, Jr., Campaign Committee, on October 21, 1960.

This adds up to \$25,100. Yet Frear's <sup>post-election</sup> official report says that Smathers' committee gave him only \$5,000. ~~Meanwhile, Smathers contends that at least part of the \$25,100 he allotted to Frear's campaign was earmarked by ~~unnamed~~ contributors. What contributors?~~

~~In the little State of Delaware there are no campaign angels except the ~~DuPont~~ duPonts, who have never made a practice of contributions ~~in~~ on squandering campaign ~~money~~ Democrats. So somebody is lying.~~



Part Two:

~~Smathers' contributions to Fear of Delaware should be \$26,700, instead of \$25,100, as reported in first memo.~~

You can prove that Smathers could not possibly have earmarked large campaign contributions to certain Democratic Senatorial candidates, because, during most of the campaign, the Smathers committee received no large individual contributions.

In other words, Smathers couldn't have earmarked what he didn't receive.

Here is what the record shows:

Smathers filed five financial reports with the Clerk of the House, covering ~~him~~ the contributions received and the disbursements made by the Senate Democratic Campaign Committee.

The first report was for the campaign period ending February 29, 1960, and shows contributions from individuals totaling \$7,527.33. These were all small contributions, the largest being \$426 from Galen J. Roush of Akron, Ohio. During this period the Smathers committee disbursed no money to any Senatorial candidate.

The second report was for the period ending June 10, 1960, and lists a total of \$5,003.16 in small contributions from individuals, the largest being \$500 from J.L. Burge of Grand Rapids, Michigan. Nonetheless, Smathers donated \$5,000 to Quentin Burdick of North Dakota and \$5,000 to Maurine Neuberger during this period.

MORE

Part Two -- Page 2

These donations to Burdick and Neuberger ~~cannot~~ couldn't possibly have been earmarked. Nor can Smathers contend that a number of the smaller ~~mm~~ individual contributions were earmarked, adding up to the \$5,000 sums he gave ~~mm~~ Burdick and Neuberger, since there were no individual contributions from North Dakota during this period and only one, for \$50, from Oregon, ~~during this period.~~

The third report filed by Smathers covered the campaign period ending September 30, 1960, during which the Smathers committee received a total of \$4,500 in smaller ~~mm~~ contributions from individuals, the largest being \$300 from Adrian ~~mm~~ Curtis of Denver, Colorado. The committee also received a \$196,250 from the Democratic Congressional Dinner Committee during this period, some of which could have been earmarked for specific Senate Democratic candidates.

But there is nothing in the report to show that any of the \$196,250 was so earmarked.

A number of Senate candidates, including Bartlett of Alaska, Frear of Delaware, Randolph of West Virginia, McNamara of Michigan, Kerr of Oklahoma and Cornier of Maine, received substantial ~~mm~~ donations from Smathers during this period. These will be totaled later.

MORE

Part Two -- Page 3

The ~~fourth~~<sup>to</sup> fourth Smathers report with the Clerk of the House was for the campaign period ending October 26, 1960. There were no "dinner" revenues during this period, but individual contributions to the Smathers committee totaled \$8,717, mostly in small amounts. There were only three sizable individual contributions -- \$2,500 from J.C. Windham of the Chicago Merchandise Mart, \$1,000 from Edward Acheson of Vienna, Va., and \$2,000 from W.B. MacDonald, Jr., of Bal Harbour, Fla.

Nonetheless, Smathers shelled out sizable disbursements to various candidates, including \$17,300 to Frear of Delaware alone, during ~~this~~ this period. Smathers ~~cannot~~ cannot truthfully say that the Frear money, for instance, was earmarked, because there were no individual contributions from Delaware -- not one penny -- to the Smathers committee during this period.

The fifth report by Smathers was for the campaign period ending November 4, 1960. This report listed total individual contributions of \$27,996, with no "dinner" receipts. There were some large individual contributions, including nine for \$500 each, one for \$1,000 from Thomas G. Corcoran, Washington, D.C., \$5,000 from David Dubinsky of New York, \$2,000 from J.L. Killion of San Francisco, \$1,500 from A. Schuman of San Francisco, and \$2,500 from I.H. Hermann of Burbank, California.

MORE

Part Two -- Page 4

Maurine Neuberger and Edward V. Long received the largest sums from the Smathers committee during this period -- \$2,500 each.

-- 00 --

Here is how the various Senate Democratic candidates fared in donations from Smathers during the 1960 campaign:

Frear of Delaware got \$25,100.

Quentin Burdick of North Dakota got \$7,500.

Maurine Neuberger of Oregon got \$10,000.

George McGovern of South Dakota got \$5,500.

Jennings Randolph got ~~\$17,550~~ \$17,550.

E.L. Bartlett of Alaska got ~~\$14,400~~ \$14,400.

Robert Knous got \$6,500.

Robert McLaughlin got \$6,250.

Hubert Humphrey got ~~\$13,500~~ \$13,500.

Pat McNamara got \$7,808.

Clinton Anderson got \$16,400.

Paul Douglas got \$5,000.

Bob Kerr got \$6,500. (He donated and raised a lot more.)

Willis Robertson got \$1,500.

MORE

Part Two -- Page 5

Lucia Cornier got \$2,750.

Ralph Rivers got \$1,000.

Raymond B. Whitaker got \$12,000.

Lee Metcalf got \$9,250.

Keen Johnson got \$4,500.

Thomas J. O'Connor got \$2,750.

Edward V. Long got \$5,500.

Claiborne Pell got \$10,000.

Lyndon Johnson got \$500.

Thorn Lord got \$250.

John Sparkman got \$1,050.

Frank Theis got \$3,000.

Robert got \$1,500.

Robert B. Conrad got \$1,500.

Mebbe u should havva look see into cases handled by Larry Walrath since he has been sitting as a member of the Interstate Commerce Commission. He is a close personal friend and politico of George Smathers and Smathers put him on the ICC a few years ago. Good luck and happy exposes!

# Smathers' Friendship With Kennedy Is Cooling

By DREW PEARSON

Washington, July 17—Ex-President Eisenhower promised President Kennedy recently that he would do his best to sell congressional Republicans on the foreign aid program.

True to his word, Gen. Eisenhower invited leading GOP congressmen to Gettysburg a week ago and spent considerable time talking to them about the importance of foreign aid in the present precarious cold war.

Before they left Gettysburg, Sen. Everett Dirksen of Illinois and Charles Halleck of Indiana, the two GOP leaders, promised they would climb aboard Mr. Kennedy's foreign aid program.

In view of this promised cooperation and in view of Republican support recently given the Kennedy bill to increase postal rates, it might be well to take a careful look at some of the key Democrats who helped elect Mr. Kennedy but don't support him.

One of the most interesting and closest to the President is the handsome and charming junior senator from Florida, George Smathers, an usher at the Kennedy wedding, a frequent golfing partner and breakfast guest. Whenever the President goes to Palm Beach, Smathers usually turns up in Florida at the same time, and drops in casually on his old friend.

Of late, however, this friendship appears to be cooling.

## Helps Law Business

One reason—at least on Mr. Kennedy's part—is not difficult to understand.

In somewhat the same manner that Mr. Eisenhower's golfing partner, George Allen, got himself in various profitable business deals as a result of close affinity with the White House, Smathers has been using his high position in the Senate to push legislation of interest to his law firm's clients.

Smathers is a partner in the firm of Smathers, Thompson, Maxwell and Dyer, one of the most important in Miami, with a long string of clients listed in the law directory of Martindale-Hubbell, including air lines, insurance companies, steamship companies, banks, hotels, and drydocks.

The first and foremost client listed by the Smathers firm in the 1960 directory is Pan American World Airways—obviously not in alphabetical order.

Some of the senator's activities as a member of the key Senate Interstate Commerce Committee, which writes the legislation for the airways and confirms members of the Civil Aeronautics Board, are important.

This column once reported

the manner in which ex-Senator John Bricker of Ohio used his place on the same committee to vote the interests of the railroads when his firm was retained by the Pennsylvania Railroad.

This column also reported on some of the votes for the oil and gas industry by bushy-maned Sen. Andrew Schoeppel of Kansas, also a key member of the same committee. His law firm represents four important oil and gas companies.

## Sought Tax Relief

Last month Smathers introduced an amendment to the tax bill eliminating \$300 million in tax revenue from the ten per cent tax on railroad, airplane, and bus travel. President Kennedy wanted the tax to remain in order to keep the budget from going deeper in the red, but Smathers' law firm happens to represent both the Seaboard Railway and Pan American Airways.

He fought hard for this tax amendment, and lost in the finance committee, of which he is third-ranking member, by the close vote of 10 to 7.

A month earlier, Smathers made an important speech in the Senate accusing the State Department of "failure to maintain a firm, established policy of awarding air routes and a failure to see that the legitimate economic interests of the U. S. airlines are properly protected."

"The consequence of the State Department's failures is a steady weakening of our international air transport industry," said Smathers.

Smathers went to great lengths to elaborate on this and to attack the State Department, though the policy of both Democratic and Republican Administrations has been to give landing privileges to foreign airlines when they give similar privileges to U. S. lines.

## Pushed Rail Act

Then there was another famous bill which Senator Smathers introduced and passed in 1958—the Transportation Act—a bonanza for the railroads. Unquestionably the railroads, suffering from truck and airplane competition, needed some relief.

However, the man who introduced and pushed that bill, from his vantage point inside the Interstate Commerce Committee, was not the man to do it. His firm represented an important railroad—Seaboard.

This is part of the record of the charming and delightful senator from Florida, close friend of the President—now not so close.—(©1961.)



AFTER 5 DAYS RETURN TO

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Mr. Drew Pearson, Columnist  
The "Washington Merry Go Round"  
Washington,  
D.C.



as per our conversation

FCS

P

# Smathers Raps Lack Of Action On Cuba

By JACK DETWEILER  
Tribune Staff Writer

WINTER HAVEN, June 20  
—The time is drawing near  
for the U.S. to either take



Cuba away from Castro by force or concede that it is abandoned to the communists. Sen. George Smathers declared here today.

Smathers said President Kennedy cannot stall indefinitely if he intends to make good his pledge to the Cuban people, made shortly following the ill-fated Cuban invasion, that this nation will not abandon them.

"How long can we wait—six months, a year, two years? Is that abandonment or is it not?" he asked 3,000 citrus growers attending Florida Citrus Mutual's 13th annual membership meeting here.

The junior Florida senator said the U.S. must take a stronger position with other Latin American nations—asking them to either stand solidly beside us or against us—if we are to keep communism out of the rest of the Western Hemisphere.

### No Policy Change

Sen. Smathers contended the Kennedy administration is following the policies of the Eisenhower administration in attempting to win the friendship of Latin American nations by trying to please everyone, even the pro-communists.

In answer to critics who have branded him a "war monger, jingoist, or flame-thrower," Smathers charged that it is the communists who have forced themselves upon the Cubans against their will.

The communists do not control Cuba as the result of any elections or any other Democratic will of the people, he asserted.

In our weak efforts to win the friendship of Latin American nations, he said, we are losing their respect. If we act decisively to command their respect, he continued, friendship will follow.

Such programs as economic aid will take five, 10 or 20 years to bear fruit, he said. Smathers asserted we have only 18 months to two years in which to stop the spread of communism to another Latin American country.

### Condemns Protection

The senator also condemned the blanket of civil service protection for employes of the U.S. State Department.

He charged the department is filled with "career diplomats" who are the "architect of failure."

"There are 14,000 people in the State Department who are so protected by civil service," he said. "The President can appoint only about 100 State Department officials."

This accounts for our continued policy of appeasement despite changes in administrations, he maintained.

Smathers related that every Tuesday morning he gets a chance to express his views to Kennedy following a breakfast meeting of Democratic congressional leaders at the White House.

### "Nothing Happens"

"Sometimes I think that I am selling him," he said. "But then the days and weeks go by, and nothing happens."

He disclosed he had also advised the President while the Cuban rebel invasion was in progress that once he started something he should carry it through to victory.

Despite his personal friendship with Kennedy, Smathers said he has opposed most of his major legislation thus far. He mentioned the aid to depressed areas bill, the program to tax stock dividends and cut down expense account tax deductions, and the administration farm program.

All of these measures would be detrimental to Florida's economy, Smathers said.

*Smathers also condemned the blanket of civil service protection for employes of the U.S. State Department.*

*He charged the department is filled with "career diplomats" who are the "architect of failure."*

*"There are 14,000 people in the State Department who are so protected by civil service," he said.*

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*Despite his personal friendship with Kennedy, Smathers said he has opposed most of his major legislation thus far.*

D

Capitol Hill Senators are mystified  
by Swathens - goes to Breakfast  
goes down to Florida. attacks  
Pres - Boast about

no body would object except

Failed to mention Tax  
depreciation

Coy - Justus  
Knight - ~~arrived~~ ~~church~~ with Kennedy  
May 9

Martin Adams.

Guy Gore -  
Perry

John  
Helm Port  
Aug 25

Tampa Tribune - Jim Counsel - Publisher  
Coney (Birmingham  
his opponent) News)

at Sigma Delta chi. in 1965  
George made cracks against R.P.

Geo. Peters - run for gov. last Nov.  
pulled big vote - ~~1965~~

1965 - shot & moon

1965 - be friend from Tampa  
bad drinks betw Florida Texas

in March 1965  
went down line for  
Kennedy at meeting  
New Fla  
in

How can Senator Smathers be fair  
when he represents so many air carriers,  
particularly when they might appear before  
his Committee on Aviation. It is reported  
that he represents some of the non scheduled  
operators such as Peninsular.

*Bill  
Smathers*

Key Oil

McLessa + Robbins

Sunbeam Corp

Tropical Gas Co

~~Wm~~ Lovett Lewis Co

Am Sec Prods Co

Com Bank of Miami

Law Title Co

Mercantile Bank of Miami

Miami Herald ?

d. S. C.

W. Uni

L. W. A. A. de M.

Funda

Logos

US Am. Underwriters  
Gen Accident Fire & Life  
Home Ins Co.

San "

Reuben "

Summit State Fire Ins

Franklin Fire Ins.

Indiana City Fire & Marine Ins.

Bals.

Fla Nat Bldg & Tms

Bldg of South Minn.

Land Title Co.

applied to

W. H. B. Co.

Chas & Son.

## His Plight: No Flight

# He's Got Ticket to Nowhere

By RONALD YORK  
Herald Staff Writer

An airline ticket agency was accused Saturday of selling a ticket to a would-be passenger on an airline that went out of the passenger business two weeks ago.

Jack Delk, 1525 Biarritz Dr., Miami Beach, bought the ticket Tuesday from Atlantic Aircoach Agency, Inc., 328 E. Flagler St.

He paid \$42.90 for flight 507, Continental Charters, Inc., due to leave Miami from 20th St. Terminal for Chicago at 11 p.m. Friday.

Packed to go, Delk found Continental's airport counter shuttered. Personnel of other airlines told him Continental hadn't flown passengers for 10 days.

Back at Atlantic for a refund, Delk found the place closed. A sign said "Back in five minutes." But C. W. Anderson, assistant manager of American Express Agency next door, said there'd been no sign of life around Atlantic for days.

Atlantic's Miami phone didn't answer, and the one at their Miami Beach office, 842 Washington Ave., is disconnected.

Airport personnel said a man and wife also complained Friday night that they had bought tickets at a downtown agency on a flight by Regina Airlines, Inc. The agency wasn't identified.

A spokesman for the Civil Aeronautics Authority said both Regina and Continental have been out of the passenger business for nearly two weeks. Regina now carries only cargo, he said.

Continental Charters, which was supposed to fly Delk to Chicago, chartered its planes from Peninsular Air Transport, which was grounded by the Civil Aeronautics Board March 2.

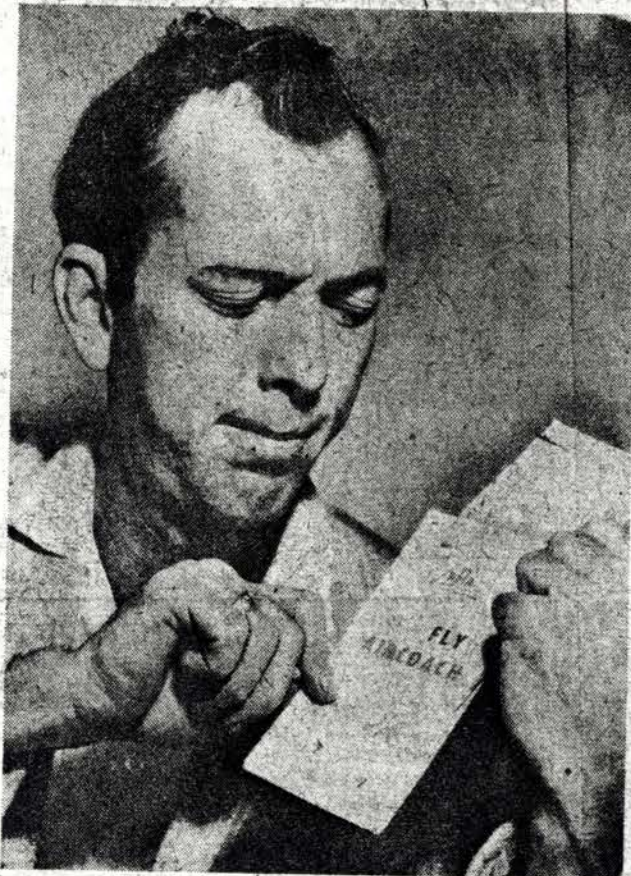
Peninsular was grounded, the CAA spokesman said, because it worked too closely with Southeast Airlines Agency, Inc., which changed its name to Atlantic Aircoach Agency, Inc., from whom Delk bought his ticket.

In October, Examiner John A. Cannon, of the CAB, charged both Southeast and Atlantic with failing to refund "a minimum of between \$10,000 and \$12,000 to passengers who bought tickets" but never flew.

Until operations were halted, Atlantic sold tickets on Continental flights, and Continental chartered craft from Peninsular.

This arrangement came to a dramatic end March 14. Some 30 Chicago passengers were left standing at the airport while Roy and H. B. Robinson, owners of Peninsular, scrapped with Continental general manager, William Newman. Newman and a Continental pilot filed charges against the Robinsons, key Continental personnel quit, and the combine hasn't flown passengers since.

Why Atlantic is still selling tickets on Continental planes is the question which interests the CAA. Officials of neither firm could be located Saturday.



—Herald Staff Photo by John Walther

### A \$42.90 Ticket to Where?

... Jack Delk is its unhappy owner

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Geo. M. Thompson (1875-1939).

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1938). *Member of Congress,* 1947-1950. U. S. Senator, 1951—. *Member:* Dade County Bar Association; The Florida Bar.

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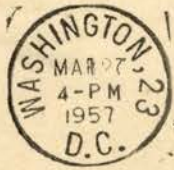
**ASSOCIATES**

Louis S. Bonsteel, born Decatur, Illinois, May 13, 1904; admitted to bar, 1930, Florida. Preparatory education, University of Florida (A.B.); legal education, University of Florida (J.D., 1930). *Fraternities:* Phi Alpha Delta; Phi Kappa Phi. *Member:* Dade County Bar Association; The Florida Bar.

David S. Batcheller, born Miami, Florida, May 28, 1928; admitted to bar, 1950, Florida. Preparatory education, University of Florida; legal education, University of Florida (LL.B., 1950). *Fraternity:* Phi Delta Phi. *Member:* Dade County Bar Association; The Florida Bar.

REPRESENTATIVE CLIENTS: Pan American World Airways, Inc.; Compania Cubana de Aviacion, S. A.; Transportes Aereos Nacionales, S. A.; Lineas Aereas de Nicaragua, S. A.; Lineas Aereas Constarricenses, S. A.; United States Aviation Underwriters; Lloyds of London; Marine Office of America; Chubb & Son; Appleton & Cox; W. H. McGee & Co.; The Home Insurance Co.; Sun Insurance Office, Ltd.; The Netherlands Insurance Co.; General Accident Fire & Life Assurance Co., Ltd.; W. J. Roberts & Co.; American National Fire Insurance Co.; Granite State Fire Insurance Co.; Franklin Fire Insurance Co.; Quaker City Fire & Marine Insurance Co.; Metal Products Corp.; Florida HUI York Corp.; Ludman Corp.; Florida National Bank & Trust Co. at Miami; The Bank of South Miami; Crowley Jones Camera Corp.; Berlitz Schools of Languages of America, Inc.; Land Title Co.; Golden Strand Hotel Co.; Fleetwood Hotel Co.; Dominican Republic Steamship Line; Gulf Atlantic Transportation Co.; Smith's Basin & Drydock Co.; Daytona Beach Boat Works.

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Martindale and Hubbell - 1950 list for law firm  
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George Smathers is a member, his father Frank being  
the partner)

The clients as follows:

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Sun Insurance Office Ltd

Chubb and Son

Appleton and Cox

W. H. McGee and Co

Metal Products Corp

Ena K Co Ltd

Florida Hill York Corp

Franklin Fire Insurance Co

Gulf Atlantic Transportation Co

Home Insurance Co

Palm Beach Marine Basin Inc

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Town of North Miami

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July 19, 1961

Mr. Drew Pearson  
1313 29th N.W. Georgetown  
Washington, D.C.

Dear Mr. Pearson:

I was very much interested and happy to see your column in the Miami Herald dealing with Senator George Smathers of Florida and his efforts on behalf of Pan-American World Airways and other clients of his law firm.

In line with your column you might find the attached photocopy from the current (July 10, 1961) issue of Aviation Week most interesting.

Perhaps the most important item in the story quoting Smathers is the sentence stating that he will seek cancellation of foreign air carrier permits held by carriers found to be cutting rates below IATA standards.

For many years Pan-American and Panagra on their routes in South America had been charging the highest air fares in the world averaging 10 cents per mile, even on their lowest class of fares.

This policy of charging abnormally high fares over a period of years meant that only the wealthier people and diplomatic personnel in the United States and Latin America could afford air travel. As a result there was a vacuum created in the field of low cost air travel which was filled by the emergence of privately owned, non-subsidized airlines in Latin America which offered tourist (economy) class transportation at fares which are within the reach of the masses in both United States and Latin America.

Among the air carriers in this category are Peruvian Airlines, Ecuatoriana de Aviación, TAN Airlines of Honduras and Panama Airways (APA). These airlines, which are the official international flag carriers of Perú, Ecuador, Honduras and Panama have for a number of years been charging fares of approximately 5 cents per mile. These fares are

Mr. Drew Pearson  
Washington, D.C.

-2-

July 19, 1961

up to 40% below fares charged by Panagra for tourist class service over the same routes and using the same (DC-6) equipment.

Recently IATA agreed to lower its fares on certain Latin American routes only because they were forced into doing so by the competition from the independent non-subsidized Latin carriers.

Yet Senator Smathers would have all foreign airlines bringing their rates up to IATA standards, thus cutting off low cost travel for the hundred of thousands of both Latins and U.S. citizens who have been able to afford trips between the United States and Central and South America only because of the economy fares which were initiated by the non-IATA Latin carriers.

Over the years Pan-American and Panagra have occasionally reduced the fares, as they are doing at present, only to raise them up to high levels once again after forcing a competitor out of business. In the U.S. Department of Justice Anti-Trust Suit (Civil Action No. 90-259 in U.S. District Court for the Southern District of New York), against Pan-American World Airways, W. R. Grace & Company and Pan-American Grace Airways, a copy of which brief I left with you, there is a reference on page 134 to these tactics as applied to Peruvian International Airways, which was forced out of business in February 1949. The Justice Department said in this brief:

"By January of 1948, Panagra recognized that its greatest competition on the west coast was being provided by PIA.

"After operating for less than two years PIA ran into financial difficulties. When Panagra became aware of this, it refused to increase its rates even though they were absurdly low because it was afraid that such an increase might result 'in bailing PIA out'".

There is a reference in this section of the brief to a letter written by Campbell of Panagra in Lima to Roig of Panagra, New York, on February 4, 1949, in which he tells of having had a conversation with Tom Braniff in Lima regarding the artificially low rate of exchange which both airlines were using in order to actually sell tickets at fares which were as low or lower than PIA. Campbell said in the letter with reference to Braniff:

"He then asked me if I did not think both Braniff and Panagra were foolish to continue that practice, and I replied that, while I agreed in principle, that was the case and while we might be willing to consider changing it in the event that PIA should die, we consider it advisable actually to see the corpse before seriously considering the matter...".

The Justice Department brief adds:

Mr. Drew Pearson  
Washington, D.C.

-3-

July 19, 1961

"PIA finally give up the ghost in February of 1949. One of the reasons it had failed was Panagra's willingness to lose money in order to drive this competitor from the field. The fact that Panagra did lose money in competing with PIA is set out in a letter from John Moore of the Grace Agency in Lima to Panagra in New York in which Moore advises:

' . . . Bearing in mind the currency loss we have suffered in fighting PIA. And the currency loss which other competition in other countries has forced us and still forces us to take. . .'".

These losses, of course, were paid by U.S. taxpayers through subsidies to Panagra.

President Kennedy, in his efforts to stop the outflow of gold from the U.S. has initiated the "visit the U.S.A." program. Statistics of the U.S. Immigration and Naturalization Service show that by far more Latins visit the United States each year than U.S. citizens visit in Latin America.

If Smathers' plan to force IATA fares on Latin airlines were successful it would mean that a great percentage of the Latins who now can afford to visit the U.S. by paying economy fares could no longer do so if these fares were raised to the IATA level.

It is interesting to note that among Latin airlines the IATA members almost without exception are those carriers which are either Government owned or Government subsidized, while the non-IATA Latin carriers are all privately owned and non-subsidized.

Sen. Smathers' suggestion is rather absurd in view of the fact that the bilateral agreements to which he refers make no mention of any requirement prohibiting an airline of the United States or a foreign country from charging fares of less than a certain amount.

In addition, IATA has no official governmental standing and is merely an organization of large international carriers which, for some reason, is permitted by our CAB to fix fares at high levels.

I might point out that IATA cannot even enforce its high fares among its own members, who have been guilty of the most flagrant type of rate cutting and unethical competition in Latin America. This is borne out by the following item in the July issue of Airlift Magazine (page 15):

"Rebates continue in South America. Latest IATA breeches action result in fines, some heavy, for almost every member carrier flying in and out of South America. This was despite earlier agreement by all airlines to stop rebating by one means or another. IATA's agents caught almost all of them willing to sell tickets at discount."

Mr. Drew Pearson  
Washington, D.C.

-4-

July 19, 1961

But even the official fares of IATA carriers are not consistent since certain IATA carriers are permitted to charge less than the agreed high IATA fares where it appears that by doing so they may be able to drive the independent, non-IATA carriers out of business.

For example, Panagra, LAN-Chile, and INI of Argentina are all IATA carriers. Peruvian Airlines is non-IATA. Until May 15, 1961, the fares charged by these four airlines for a round trip tourist class flight from Miami to Buenos Aires, Argentina were as follows: Panagra - \$780.40; LAN-Chile - \$519.00; INI Argentina - \$360.00; and Peruvian Airlines - \$360.00.

Since May 15, 1961, when new tariffs went into effect, the fares for this flight are as follows: Panagra and LAN-Chile - \$492.00; INI Argentina and Peruvian Airlines \$395.00.

The Peruvian Airlines fare prior to the entry of INI, and IATA member, was lower than any other airline linking Miami and Buenos Aires. But it was INI's rate cutting, with IATA blessings, that caused Peruvian Airlines to lower its fare from \$451.80 round trip to the uneconomical present fare of \$395.00.

I might point out that Peruvian Airlines and other non-IATA carriers were charging comparable low fares before INI went into business.

The story in Aviation Week mentions that Senator Smathers will invite CAB Chairman Alan S. Boyd to join him when he speaks to President Kennedy about his proposed new policy on international air transportation. It is interesting to note that it was Senator Smathers who sponsored Mr. Boyd, another Miami attorney, as a member of the CAB when President Eisenhower was in office.

After President Kennedy's election and at the urging of Senator Smathers, to whom President Kennedy was politically indebted at the time, one of the new administration's first appointments was the promotion of Mr. Boyd from CAB member to CAB chairman.

The story also refers to the alleged economic effect which airlines operating below IATA fares are having on U.S. flag carriers. Senator Smathers never gets around to mentioning that since 1949 Pan-American World Airways has received 308 million dollars in mail pay and direct subsidies from U.S. taxpayers and Panagra during the same period has received \$15,800,000 from the United States government.

Enclosed you will find a press release which refers to the petition which Panagra now has on file with the CAB for a subsidy of \$6,818,000 per year for future years. This would include not only a 12 per cent guaranteed annual profit of \$2,795,000 but also \$1,713,000 which they want U.S. taxpayers to pay them each year so that Panagra in turn can use this to pay the government its U.S. income taxes.

Mr. Drew Pearson  
Washington, D.C.

-5-

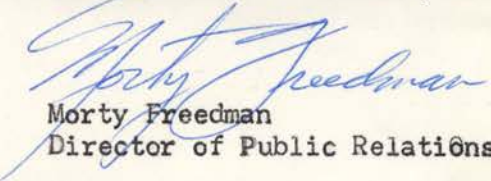
July 19, 1961

The press release also gives information dealing with the amount of stock which Pan American and Panagra own in Latin airlines in an effort to control their potential competition in Latin America.

Hoping you will find this material of some use and thanking for your attention, I am, with best personal regards,

Cordially,

CIA. SERVICIOS AEROVIAS, S.A.

  
Morty Freedman  
Director of Public Relations

MF:ci

## Smathers to Ask New Foreign Air Policy

**President Kennedy to be urged to take new approach involving CAB review of all foreign carrier permits.**

By L. L. Doty

Washington—President Kennedy will be asked to establish a new foreign policy on international air transportation which would involve a full-scale review by the Civil Aeronautics Board of current foreign air carrier permits.

Sen. George A. Smathers (D-Fla.), a leading opponent of State Department policy on air transportation, had arranged last week to meet with the President to propose the new policy. Sen. Smathers will invite CAB Chairman Alan S. Boyd and Federal Aviation Agency Administrator N. J. Halaby to join him in the White House conference. Sen. A. S. Mike Monroney (D-Okla.) also may be a member of the group.

Sen. Smathers told AVIATION WEEK he is now preparing a memorandum for President Kennedy in which major issues involved in the international air transport situation are outlined.

Sen. Smathers' proposed policy is

based on the principle that the President has full power to amend any or all air carrier permits now in effect and that the CAB has the responsibility for maintaining "constant surveillance" of foreign flag carrier operations to un-

cover any violations of bilateral air transport agreements that would require amendment of permits.

His basic concern is the dwindling U.S. share of traffic on international routes. What he wants is a formal presidential policy that would grant the CAB full authority to revise air carrier permits in such a way that U.S. flag carriers would be protected against inroads of foreign competition on overseas routes serving U.S. gateways. He also will seek cancellation of foreign air carrier permits held by carriers found to be cutting rates below IATA standards.

Sen. Smathers feels strongly that routes authorized in foreign air carrier permits exceed those, in many cases, intended in bilateral agreements and that immediate adjustments should be made. His "get-tough" approach to the bilateral issue stems from impatience with the manner in which the State Department has negotiated agreements with foreign governments and the way the agreements have been carried out.

### Rusck Resigning as SAS President

Oslo—Ake Rusck, president of the International Air Transport Assn., is resigning under pressure from his post as operating head of the financially-pressed Scandinavian Airlines System.

Rusck's resignation as SAS president, which becomes effective this week, was announced here in a brief statement following a regular session of the board of governors which said only that "according to an agreement at the meeting, Mr. Rusck will resign."

Swedish industrialist Curt Nicolin, president of ASEA, a major manufacturer of electrical equipment, will step in on a temporary basis as caretaker president of the airline. An SAS official said last week that the new president is "purely on a loan basis" until the board can name a permanent president, and Nicolin announced that he definitely intends to return to ASEA.

Rusck, president of SAS since Jan. 1, 1958, declined comment on any future plans, saying only that his first step will be a vacation. Prior to joining the airline, he had served as president of the Swedish Water Power Board.

His one-year term as IATA president was due to expire with the installation of new officers at the organization's annual meeting this fall. SAS spokesmen said they could not speculate as to the effect the resignation would have upon Rusck's status as IATA president. They added, however, that, to their knowledge, this marked the first time an IATA president has left his airline position during his active term of office with the organization. International Air Transport Assn. bylaws apparently do not provide for the unique situation. An IATA spokesman in Montreal said the agency would have no comment pending a policy study.

Rusck had been under fire in the Scandinavian press since SAS's financial plight became known earlier this year (AW Feb. 13, p. 47; Mar. 20, p. 34). Crippled by costly route expansions and the purchase of new medium- and long-range jet equipment and the necessary support facilities, the airline lost approximately \$16.8 million during its last fiscal year.

With prospects almost as bleak for the present year, SAS was forced to ask the three Scandinavian governments concerned for funds to double its basic capitalization, and the parliaments of Sweden, Denmark and Norway recently voted a total of \$40.9 million for this purpose (AW June 26, p. 39).

In an effort to cut back on expenditures, the airline already has severed most of its connections with Guest Aerovias de Mexico. S. A. Monetary and equipment loans to Guest to help the Mexican carrier establish a mid-Atlantic route to Europe had proved to be a heavy financial drain on SAS.

### Congressional Discussion

International air transportation problems have prompted an increasing amount of congressional floor discussion in recent weeks, but most observers feel that very little will develop from the present furor. There have been several resolutions and a bill introduced this year in Congress on the issue, but the Smathers move is the first tangible congressional action taken in response to pleas of U.S. flag carriers for government assistance in halting growing competition on international routes.

Although Sen. Norris Cotton (R.-N.H.) has introduced a resolution calling for an investigation of international aviation, hearings will not be scheduled at least during the current session of Congress. Later, Sen. Andrew F. Shoenkel (R.-Kan.) introduced a bill which would require that all international agreements be sent to the Senate for ratification as treaties.

Similar legislation has been introduced on several occasions in the past without drawing favorable action. However, because of the wide publicity attached to the international air transport issue in recent weeks, the Shoenkel bill is receiving strong Senate support.

Members of the Senate Commerce Committee, to which the bill has been referred, are optimistic over the prospects of it becoming law. In general, the airline industry is not expected to give the bill its support because of a sharply divided opinion as to whether

bilateral agreements should be handled in the Senate.

Airlines opposed to the bill feel that bilateral agreements would get short shrift in the Senate because air transport issues would normally be overshadowed by more compelling foreign policy matters. In addition, a number of airlines are satisfied with the present formula of executive approval of bilateral agreements.

Sen. Shoepfel's proposed bill is designed to put a "check" on giving "foreign airlines traffic rights which are many times more valuable than those obtained for U. S. air carriers." In effect, the bill provides that before the CAB could issue a foreign air carrier permit, it would have to determine that the permit is authorized by the previous agreement or by a treaty ratified by the Senate.

In essence, Sen. Smathers, who headed a special Commerce subcommittee in 1957 on international air agreements, supports the Bermuda principles, calls them "a logical, reasonable compromise of two opposing philosophies" that "provided a sound basis on which the airlines of two countries could operate in an orderly, effective manner and offer efficient service to the public."

Sen. Smathers feels, however, that the U. S. has failed to enforce the application of these principles to the day-to-day operations of foreign carriers flying over routes granted by the U. S. In a recent Senate speech, he said: "The consequences of this failure to uphold the principles has been the steady, alarming decline in the position of the American international carriers."

On this point, Board Chairman Boyd is not entirely in agreement. He is on record as stating that the Bermuda principles "are subject to serious criticism today, and it is questionable in our minds whether we can hold on to these principles."

Sen. Smathers' interest in taking action against rate-cutting lies in the economic effect of air carriers, operating in the Latin American area at fares below International Air Transport Assn. levels, is having on U. S. flag carriers. He contends that the President has full authority to cancel the rights of these airlines to operate into points in the U. S.

However, the Board, in its own words, says its power in international rate-making "is limited to passing on whether the [IATA] agreements are consistent with the public interest and, on those grounds, to either approve them or disapprove them." It adds, "by contrast, virtually all foreign nations exercise direct control over the rates of their own air carriers as well as carriers of other nations whom they have licensed to operate to and from their territories including U. S.-flag carriers."

## CAB Merger Policy Clarification Anticipated in N.Y.-Florida Case

Washington—Clarification of the Civil Aeronautics Board's long-range policy on airline mergers and competition is anticipated in the Board's handling of Northeast Airlines' request for renewed authority to operate its East Coast routes to Florida.

The New York-Florida renewal case, originally scheduled to concern only the issue of Northeast's authority to serve the New York-Florida market, has been made considerably more complex by a Board decision to include the question of whether the airline should be merged with a stronger carrier (AW June 19, p. 39).

As an initial step in this direction, CAB has asked all trunk airlines for detailed traffic and revenue projections for 1963, based on the assumption of a merger with Northeast.

Airlines hoping to enter the Florida market have primarily taken the direct course of filing formal applications for new routes from Boston or New York to Florida and requesting that they be consolidated as part of the renewal case. Little interest in a merger possibility was expressed by any of the carriers with the exception of Pan American World Airways, which emphasized that any such union should be conditioned on permitting Pan American to transfer Northeast's local service and New England routes to a local service airline.

### Route Competitors

Competitors of Northeast on the Florida routes made it clear that they intend to block any CAB approach that could lead to a merger for Northeast or renewal of its Florida authority, which they contend has diluted traffic and placed all three airlines serving the market in critical financial condition.

Their major line of attack will concern a detailed outline of the progress already made on a proposed merger between Trans World Airlines and Northeast, with particular emphasis on the current status of stock ownership between Northeast and the Atlas Corp., which controls the carrier, and on what optional stock benefits might be planned for officers of the two companies if a merger is contemplated.

Pan American, along with Pan American Grace Airways and Braniff Airways, justified its bid for the New York-Florida route on grounds of its importance in channeling traffic between New York and Latin America.

Renewing Northeast's authority or giving the route to another domestic carrier, Pan American said, would reduce the international support needed

to conduct a profitable operation at a time when more effective competition is needed against foreign competition.

CAB "side-stepped" this idea when it granted the route to Northeast in 1956, and has since failed to realize any of the progress on which it based the approval, the airline said.

Panagra, which was a participant in the original New York-Florida route proceeding, also filed for a New York-Miami route to permit it to make maximum use of its schedule of 12 weekly flights to South America and eliminate its current interchange agreement with National Airlines between Miami and New York.

"Severe foreign competition" was also cited by Braniff as the major reason for applying for a New York-Washington-Miami route, which it now serves under an interchange agreement with Eastern Air Lines. Access to New York from Florida is "vital" the airline said in emphasizing its need for more long-haul markets.

Trans World Airlines filed a short application asking for a Boston-New York-Miami route, making no comment on issues to be considered under Northeast's renewal proceeding. Northwest Airlines also has asked for the Florida route. American, United and Delta have asked to intervene in the case.

Eastern and National presented the strongest oppositions to Northeast's bid for renewal, with Eastern concentrating on disclosure of all financial dealings concluded between Northeast and the Atlas Corp. Requesting such information as a stock option list showing the amount of unissued stock which may be held in reserve for the possible benefit of executives of either company, Eastern wants an exchange of exhibits by Aug. 11 and a hearing by Sept. 5.

In a similar request, National reminded CAB that the Board has already stated its concern about Northeast's financial condition and expressed a determination "to avoid, if possible, being confronted with another situation like United and Capital."

National suggested that the scope of the renewal case be enlarged and all issues clarified. The Board should also examine the possibility of suspending Northeast's permanent operating authority and dividing its New England routes, with the Boston-Montreal non-stop route shifted to Eastern, New York-Boston transferred to Allegheny and the remaining routes going to Mohawk Airlines.

July 25 '56 - smoke bill pushed by PAA.

~~Jan 21 '57 -~~

Feb 23, 57 - Hector - pushed by Smithers

April 12, '57 - denies PAA subsidies

Aug 20, '57 last Day day maneuver

Sept 6, '58 Hollen vs Patten

Air division - May 28, '61

Miami, Florida  
July 14, 1961

FBI IMMEDIATE RELEASE

Three independent Latin airlines today refuted statement made yesterday by a spokesman for Pan American World Airways and Pan American Grace Airways (Panagra) regarding the U. S. carriers' stock in Latin airlines, U. S. subsidies and air fares.

The Pan American and Panagra statements were made in reply to charges made by Aerolineas Peruanas S. A. (Peruvian Airlines), Ecuatoriana de Aviacion and TAN Airlines, the international flag air carriers of Peru, Ecuador and Honduras, that Pan-Am and its subsidiaries are trying to create an air monopoly in Latin America by foreign Latin competitors out of business.

The Pan American spokesman had said that almost every statement by the Latin carriers was untrue.

Today a spokesman for the three non-subsidized Latin airlines came back with replies to the points made by Pan American.

Pan American said that the charge that they and Panagra try to buy control of Latin airlines when they appear to be growing into serious competitors was untrue. They said that Pan American helped organized some Latin airlines as long ago as 1930 by buying stock in them but has been disposing of its purchases and making no new investments for years.

"Less than eight months ago Pan American obtained 25 per cent of the stock in ALA-AUSTRAL, a new airline in Argentina formed through the merger of two independent companies which were about to be forced out of business. Pan American ownership of this stock is a matter of record.

"As recently as May 17, 1961 the Buenos Aires newspaper, Critica, quoted Argentine Congressman Carlos H. Perette as stating that he 'would question the merger of the privately owned airline, ALA-AUSTRAL with

Pan American, an organization which is monopolistic and has decided to destroy all the sovereign flag carriers of Latin American countries".

Records of the U. S. Civil Aeronautics Board", said the spokesman for the three Latin airlines", show as of January 1, 1961 that Pan American World Airways now owns 38.1% of Avianca, the Colombian international airline; 37.9% of Servicio Aereo de Honduras; 35% of Mexicana Airlines of Mexico; 33.3% of LACSA Airlines of Costa Rica; 33% of Compania Panamena de Aviacion of Panama; 30% of AVENSA Airlines of Venezuela; 14.4% of Aerotransportes Litoral of Argentina and 14% of LANICA Airlines of Nicaragua.

"In addition Panagra in turn owns 21.4% of Lloyd Aereo Boliviano of Bolivia and 19.1% of Faucett Airlines of Peru. This does not indicate that they are disposing of their interests in Latin Airlines."

In response to the charge that their methods of foreigning the Latin carriers out of business include addition of extra unprofitable flights, Pan American said the number of its flights to Latin countries are controlled by those countries and could not be changed by the airlines even if they desired.

"U. S. airlines operating in Latin America have taken the position for some time that officials of Latin countries do not have the authority to limit the number and frequency of their flights", said the Latin airlines.

"But even if they accept this authority it would be quite easy for them to receive permission to reduce the number of their flights".

Pan American and Panagra did not deny the statement of the Latin carriers that Pan American had received 230 million dollars in subsidies and mail pay from U. S. taxpayers since 1949 and that Panagra received 13.5 million dollars from the United States during the same period.

However, the Pan American spokesman said that neither Pan American nor Panagra have received any government subsidy since October 1956.

The spokesman for the Latin carriers commented:

"They do not tell the American public that Panagra now has pending before the U. S. Civil Aeronautics Board an official request for U. S. subsidy payments which was filed October 3, 1958 (CAB) docket 9905). In this petition Panagra asks a subsidy of \$6,818,000 per year for future years and, in fact even asks that the subsidy should include money which Panagra can use to pay its U. S. income taxes.

"In this request Panagra said that they need \$2,301,000 each year to reach the break-even point, plus \$1,713,000 for U. S. income taxes and \$2,795,000 which is the amount required to give it a guaranteed annual 12 per cent profit on its investment. Panagra noted in its petition that even though it was customary for the CAB to grant a guaranteed profit of 9 per cent a year or less to U. S. airlines, Panagra felt that 9% was inadequate in their case and asked for a 12 per cent annual profit.

"They also do not tell the public", said the spokesman for the non-subsidized Latin carriers, "that in 1958 Panagra applied to the CAB for an increase in its subsidy, which had previously been at the rate of \$2,502,000 a year, but unfortunately for Panagra, the CAB found upon investigation that instead of losing money as they had claimed Panagra actually showed a profit of \$4,179,000 during the period from January, 1955 to September, 1957. As a result, instead of increasing the Panagra subsidy as requested, the CAB reduced it.

"However the CAB notified Panagra on April 12, 1961 that its pending subsidy request would not be decided until the completion of the U. S. government's Anti-Trust Suit Against Pan American, Panagra and W. R. Grace and Company. This case was recently won by the government and there are indications that Panagra's subsidy will be acted upon shortly".

(CONFLICT OF INTEREST)

WASHINGTON--THE DEFENSE DEPARTMENT ISSUED NEW AND TIGHTER RESTRICTIONS TODAY TO GUARD AGAINST CONFLICT OF INTEREST BY ACTIVE AND RETIRED MILITARY OFFICERS AND EMPLOYEES OF THE DEPARTMENT.

ITS 3,000-WORD DIRECTIVE REPEATED EXISTING BANS AGAINST GRATUITIES, PRIVATE USE OF GOVERNMENT PROPERTY AND USE OF A PERSON'S POSITION OR TITLE FOR COMMERCIAL PURPOSES. DEFENSE SPOKESMEN SAID THE LANGUAGE HAD BEEN "TIGHTENED UP" WHEREVER POSSIBLE.

ONE NEW CLAUSE PROVIDES THAT A RETIRED MILITARY OFFICER WILL FORFEIT HIS RETIREMENT PAY IF HE SELLS MATERIALS TO THE DEFENSE DEPARTMENT WITHIN TWO YEARS AFTER RETURNING TO CIVILIAN LIFE. THE TWO-YEAR BAN IS ALREADY IN EFFECT BUT WITHOUT A SPECIFIC PENALTY.

ANOTHER NEW PROVISION WILL EXTEND TO THE ARMY AND NAVY A PRACTICE ALREADY ADOPTED BY THE AIR FORCE, UNDER WHICH RETIRED OFFICERS ARE REQUIRED TO REGISTER IF THEY SEEK TO SELL TO MILITARY SERVICES. THEY ARE PROHIBITED FROM SELLING TO THEIR OWN SERVICE FOR LIFE, BUT CAN SELL TO OTHER UNITS OF THE DEFENSE ESTABLISHMENT AFTER TWO YEARS.

THE REGULATIONS WERE BROADENED TO INCLUDE RESERVE OFFICERS WHO HAVE HAD EIGHT OR MORE YEARS OF ACTIVE DUTY, AND CIVILIANS EMPLOYED BY OR RETIRED FROM THE DEFENSE DEPARTMENT.

MORE STRINGENT RESTRICTIONS HAVE BEEN PROPOSED BY REPRESENTATIVE EMANUEL CELLER, D-N.Y., IN A BILL NOW BEFORE CONGRESS.

7/18-GE135P

UPI-116

(FEDERAL EMPLOYEES)

WASHINGTON--THE HOUSE JUDICIARY COMMITTEE TODAY UNANIMOUSLY APPROVED A BIPARTISAN PROPOSAL DESIGNED TO UPDATE THE LAWS GOVERNING PRIVATE ACTIVITIES BY PRESENT AND FORMER FEDERAL EMPLOYEES.

THE COMMITTEE APPROVED A CONFLICT-OF-INTEREST BILL WORKED OUT OVER A THREE-YEAR PERIOD THAT WOULD:

--PERMANENTLY BAR A FORMER FEDERAL EMPLOYEE FROM REPRESENTING A PRIVATE PARTY IN ANY CASE HE DIRECTLY DEALT WITH AS A GOVERNMENT OFFICIAL. AT PRESENT, FORMER U.S. EMPLOYEES ARE BARRED FOR TWO YEARS FROM HANDLING CLAIMS CASES THEY WORKED ON WHILE ON THE GOVERNMENT PAYROLL.

--BAR FORMER AGENCY CHIEFS OF OTHER POLICY-TYPE OFFICIALS FROM TAKING PART IN CASES RELATING TO THEIR FORMER FIELDS FOR TWO YEARS. BUT PERMIT FORMER EMPLOYEES WHO HAD NOTHING TO DO WITH A PARTICULAR CASE WHILE IN GOVERNMENT SERVICE TO TAKE PART IN IT ON BEHALF OF PRIVATE INTERESTS.

--BAR FULL TIME GOVERNMENT EMPLOYEES FROM ASSISTING PRIVATE PARTIES IN ANY KIND OF FEDERAL CASE. THE PROHIBITION NOW EXTENDS ONLY TO CLAIMS CASES.

--IMPOSE CRIMINAL PENALTIES ON PRIVATE PARTIES WHO PAY U.S. WORKERS FOR AID ON GOVERNMENT CASES. PENALTIES APPLY NOW ONLY TO THE OFFENDING EMPLOYEES.

--PERMIT GOVERNMENT EMPLOYEES TO DISCLOSE THEIR STOCK OR OTHER FINANCIAL HOLDINGS IN A COMPANY APPEARING BEFORE THEIR AGENCIES. HIS SUPERIOR WOULD DECIDE WHETHER THE WORKER SHOULD BE TAKEN OFF THE CASE. AT PRESENT, AN EMPLOYEE IS SUPPOSED TO DISQUALIFY HIMSELF FOR SUCH A CASE, NO MATTER HOW SMALL HIS HOLDINGS.

--ALLOW SPECIAL CONSULTANTS AND OTHER PART TIME U.S. EMPLOYEES TO TAKE PART IN CASES ON BEHALF OF PRIVATE INTERESTS IN CERTAIN GOVERNMENT CASES, BUT IN NO EVENT TO PARTICIPATE IN A CASE DIRECTLY RELATED TO HIS FEDERAL WORK.

--THE PRESIDENT CANCER GOVERNMENT CONTRACTS WHERE CONFLICT OF-INTEREST HAS BEEN SHOWN TO EXIST. THIS STEMS FROM THE DIXON-YATES CASE, WHERE THE GOVERNMENT'S RIGHT TO VOID A POWER CONTRACT WAS CHALLENGED.

THE BILL WAS SPONSORED BY CHAIRMAN EMANUEL CELLER, D-N.KY., OF THE JUDICIARY COMMITTEE AND RANKING REPUBLICAN REP. WILLIAM MCCULLOCH, OHIO. IT HAS ADMINISTRATION APPROVAL.

7/18--EG233PED

7-11-61  
phil

memo on Smathers voting record

*DS Admin*  
Area Redevelopment S. 1- Federal Aid to Depressed Areas, passed Senate 63 to 27 on March 15. Provides \$394 million in Federal aid to attract new industry and commerce to economically distressed areas -

Smathers voted against. He was one of 11 Democrats ~~to do so~~ to do so.

~~48%~~  
Forty-eight ~~of 81%~~ of the Democrats voted to support this Presidential recommendation. Six Democrats and 4 Republicans did not vote.

Smathers voted against Administration wish for passage.

Unemployment Compensation: extension -- extends the benefits up to 13 weeks for those persons who have exhausted theirs under State and Federal unemployment programs -

*9 Admin*  
Passed Senate Mar. 16 by 84 to 4.

Smathers voted for this Presidential recommendation.

55 ~~of 86%~~ of the Democrats voted for this as did 29 Republicans ~~of 41% of the Republicans~~. Democrats Byrd of Va. and Thurmond voted against it along with two Republicans. 8 Democrats and 4 Republicans did not vote.

Smathers voted for passage with the Administration

Minimum Wage - Fair Labor Standards Amendments - passed the Senate Apr. 20 by 65 to 28.

Smathers voted for it. Vote was 51 Democrats ~~of 81%~~ for and 14 Republicans ~~of 45%~~ against.

Bill would establish a \$1.15 an hour for first 2 years, then \$1.25 beginning 18 months after the

then \$1.25 beginning 18 months later after the effective date of the measure - would affect approximately 23.9 million workers.

Incidentally, Smathers offered an amendment to this bill. The Smathers amendment would exempt laundries and drycleaners from coverage under the bill on the grounds that laundries are ~~the~~ in the lowest income brackets with less than a 2% return on investment. This amendment was rejected 52 to 45 with Smathers naturally, voting for it. 42 Democrats ~~and~~ voted against it.

*4 Admin*

Smathers voted for passage with the Administration position

School Assistance Act - appropriates \$850 million annually for 3 years (total \$2.55 billion) - passed Senate May 25 by 49-34 with Smathers voting for it. 41 Democrats ~~and~~ voted for this Presidential recommendation as did 8 Republicans. Not voting 17 of which 12 were Democrats and 5 Republicans.

*4 Admin*

Smathers voted for passage with the Administration

Housing Act S. 1922- authorizes \$6.14 million- in most extensive program ever enacted by Congress - passed Senate 64 -25 on June 12 with Smathers voting for this Presidential recommendation, ~~as did~~ *For 52* ~~52 of the~~ Democrats and ~~12~~ 12 Republicans. Not voting 11 of which 5 were democrats and 6 Republicans.

*4 Admin*

Smathers voted for passage with the Administration

Federal Aid to Highways passed by voice vote in Senate on June 15.

Feed Grain Program ~~XXXX~~ - a 1-year emergency price support for the '61 corn crop at \$1.20 a bushel, etc.- passed Senate 52-26 on Mar. 10 Not voting 22 of which Smathers was one of the 16 Democrats and 6 Republicans to miss. Smathers was paired for. ~~84%~~ 41 Democrats supported the bill and ~~2x 62%~~ 18 of the Republicans voted against. Smathers paired for bill in line with Administration position.

*A*

SEC Reorganization: S Res. 148 disapproving Reorganization plan passed Senate June 21, 52-38. Smathers along with Javits voted for the resolution, dissapproving plan 1. Yeas found 18 Democrats ~~of~~ ~~the~~ voting with 34 Republicans ~~on 100% of the~~ Republicans. Smathers voted against the Administration position.  
Soci

*VS Admin*

Social Security Amendments HR 6027 increased benefits to 4.4 million persons totaling \$800 million in first year. passed Senate <sup>June 26</sup> 90-0 ✓ with Smathers voting for it as did 57 ~~or 100%~~ of the Democrats voting and 33 Republicans. Not voting 10, of which 7 were Democrats and 3 Republicans.

*4 Admin*

Smathers voted with the administration for passage.  
Federal

Federal Trade Commission Reorganization: S. Res. 147 disapproving plan 4 - Disapproval rejected yeas 31, nays 47, not voting 22.

Smathers was one of 4 Democrats to vote yes on disapproving the resolution. 27 Republicans also voted yes. 47 Democrats voted nay without a single republican joining them. 13 Democrats did not vote and 9 Republicans did not vote.

*VS Admin*

June 29.  
Smathers voted against the Administration position, in the Senate /

Nominations:

Charles Meriwether, director Export Import Bank.- confirmed 67 to 18 with 15 not voting. ~~xxxxxx~~ Smathers did not vote, but paired for the nomination ~~bill~~ which Administration wanted.

*4*

Howard Morgan confirmed June 13 57-27 with 16 not voting. Smathers was the only Democrat to vote against the Administration's nominee. as did 26 Republicans. Not voting 9 Democrats and 7 Republicans. 55 Democrats and 2 Republicans voted for Morgan confirmation.

*VS*

There was no tabulation of the Swidler nomination - only a voice vote.



7-11-61 Smathers memo -4

According to the above Smathers would be against the Administration 4 times and for it 7 times.

\* \* \*

George Allen, golfing partner of ex-President Eisenhower, used to boast that he was a director of forty corporations and on one occasion ~~sa~~ told a prospective law client that the President "doesn't tie his shoes in the morning without consulting me. "

George Smathers, the handsome senator from Florida hasn't and onetime golfing partner of ~~has~~ President Kennedy, been making any known public boasts, but his list of law clients which could almost rival the corporate connections of the golfing partner of Gen. Eisenhower.

Many of them ~~in~~ are ~~of~~ <sup>in types of</sup> ~~of~~ ~~the~~ ~~most~~ important in business easily effected by the ~~most~~ very important committees on which

This presents a <sup>1</sup>problem to Kennedy, and is one reason for the detectable coolness between the White House and the man who was an usher at the President's wedding.

Here are some of the clients listed by the Smathers's law firm in the law director Martindale-Hubbel:

Western Union- regulated by the Federal Communications Commission. Sen. Smathers sits on the Interstate Commerce committee which confirms FCC commissioners and ~~is~~ initiates legislation

*Advertising* | *Public Relations*

**INTER-AMERICAN ADVERTISING, INC.**

604 AINSLEY BUILDING • MIAMI 32, FLORIDA • FRANKLIN 3-7328

Miami, Florida  
July 5, 1961

Mr. Drew Pearson  
1313 29th N. W., Georgetown  
Washington, D. C.

Dear Mr. Pearson:

I want to take this opportunity to express my gratitude to you for the hospitality which you extended to me in having me to lunch at your home last week and for your interest in the material which I presented to you.

As your secretary probably told you I left some photostats with her of clippings from the Washington Star and the New York Times which clearly show that while George Smathers' law firm is receiving legal fees from Pan American World Airways and from the Seaboard Air Line Railroad, he has been serving as Chairman of the Senate Subcommittee on Transportation, has been making speeches on behalf of the interests of Pan American and Seaboard, and, in the case of Seaboard has even introduced and steered to passage legislation which is of great benefit to the clients of his law firm.

To further document this case of conflict of interests I think you might be interested in the complete text of a news story which appeared in the Miami News on May 16, 1961 and excerpts from an editorial in the Miami Herald of May 22, 1961.

The Miami News article did not carry any by-line or wire service credit, and I assume it was written by a staff reporter. The complete story read as follows:

**SMATHERS RAPS  
AVIATION POLICY**

Competition by foreign flag airlines which do not have comparable economic problems are responsible for severe losses to the U. S. aviation industry, Senator George Smathers said today.

The Florida junior senator pointed out that the latest "furloughing" of 250 Miami maintenance employees by Pan American World Airways in part resulted from competition.

Mr. Drew Pearson

July 5, 1961

He said he has previously protested to the State Department and CAB the making of "Bilateral Air Agreements".

Ranking member of the Senate Aviation Subcommittee, Smathers said in a May 3 speech on the senate floor: "American air carriers are operating under handicaps which are the outgrowth of failure by our State Department to maintain a firm, established policy awarding air routes, and failure to see that legitimate economic interest of U. S. airlines are probably protected".

He cited statistics showing that in 1948 U. S. lines carried 73 per cent of all air traffic on the North Atlantic. This volume had dropped to 53 per cent by 1955, and now stands at only 40 per cent.

Mr. Pearson, I am sure that you understand that there is nothing wrong with the bilateral air agreements since they provide for the same rights for U. S. airlines as for the airlines of the foreign country with whom the State Department has negotiated such an agreement. If there is anything wrong with them it is that Pan American did not anticipate that other nations would so quickly reach the point where they could afford privately and government owned international airlines which would eventually offer competition to Pan American. As for the statistics quoted by Smathers it is quite logical that the U. S. airlines carrying 73 per cent of the North Atlantic traffic in 1948 since this was just after world war II and most of the European nations were recovering from the war and in no position financially to operate or subsidize international airlines. Now that they have recovered they and almost every other nation with any feeling of national pride operate either government owned or subsidized lines or have designated privately owned airlines of their countries as their international air flag carrier. His reference to the "furloughing" of 250 Pan American maintenance employees in Miami was strictly a way of helping Pan American in its public relations in this area since no one likes to see large payrolls lost. Actually foreign competition had little to do with this matter. The employees were furloughed as a result of the change-over from a great number of piston aircraft to a much smaller number of new Jet planes.

The Miami Herald editorial of May 22, 1961, said in part:

(Smathers)

... "Told his colleagues the other day" increased foreign competition is the result of "peculiar handicaps" based on our airlines by our own government to the advantage of competitors.

"These handicaps," said the senator, "are the outgrowth and consequence of a failure on the part of our State Department to maintain a firm, established policy in awarding air routes and a failure to see that the legitimate economic interests of U. S. airlines are properly protected.

Mr. Drew Pearson

July 5, 1961

"The major reason for our decline in international air carriage", the senator stated, "can be found in the bilateral air agreements the State Department has negotiated with foreign governments and the way these agreements have been carried out. Our negotiators have disregarded principles of equity and reciprocity and have, in effect, offered to foreign carriers a silk purse in return for a sow's ear".

Just to give you an idea, Mr. Pearson of what a foreign airline is up against in trying to compete with Pan American or its subsidiaries, let me say one instance. Last Friday, June 30th, Jerrold Scutt, Jr. Washington attorney for Aerolineas Peruanas, S.A. (Peruvian Airlines) filed a complaint by Peruvian Airlines with the CAB charging Panagra with numerous violations of the bilateral air agreement between Peru and the United States. One of the interesting things about this complaint was that except for supporting statistics it was almost word for word the same complaint which Pan American World Airways recently filed against KIM, the royal dutch airline and SAS, the Scandinavian airline. In fact the Peruvian Airlines brief even quoted the same authorities as were quoted in the Pan American brief. |

When Mr. Scutt delivered the brief to the CAB Friday at 3.p.m. I immediately took copies of the brief plus an accompanying sheet of background information concerning the complaint, ownership and routes of both Peruvian airlines and Panagra and other pertinent data, to the Washington Bureaus of both Associated Press and United Press International as well as the Washington Post. As of this date I have not seen one word mentioning this serious charge in any newspaper. As a former newspaper man, and not as a public relations man, I am convinced that when a foreign airline charges the largest U. S. international airline with violations of an international agreement that such charges, especially when filed officially with an agency of the U. S. government, constitute a fairly decent business news story. Last Saturday and Sunday in the New York and Washington papers although there was no mention of this story there was a good size story on the fact that Pan American had joined the many other applicants who want the New York-Miami route of northeast airlines in the event that CAB does not renew northeast's permits on this route. While I grant that this is of interest to a lot of people it involves something which is very nebulous as compared to the Peruvian Airlines complaint.

I am trying to secure additional clippings and quotations wherein Smathers had something to say about U. S. international airlines or railroads.

Just to set down in writing the information which I gave you orally last week, the 1961 Mortindale-Hubbel Law Directory, volume I, page 596 lists George A. Smathers as one of the principals in the Miami law firm of Smathers, Thompson and Dyer. Listed as "representative clients" of the firm are:

Mr. Drew Pearson

July 5, 1961

Seaboard Air Line Railroad Company, Pan American World Airways, Inc., Lineas Aereas de Nicaragua (Lanica, the Nicaraguan international airline owned by the Somoza dictatorship), Western Union Telegraph Company, United States Aviation Underwriters, Lloyds of London, Gulf Oil Corporation and W. J. Roberts and Company. A total of eight living partners in the firm are listed and Smathers' name is second after that of John G. Thompson. On page 1221 of the same volume where biographical data is listed for the individual principals or partners in the largest law firms in each state the biography on George A. Smathers includes the notation: "Member of Congress 1947-1950. U. S. Senator 1951".

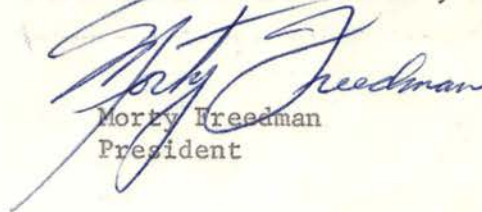
The report of Pan American World Airways, Inc., on salaries, bonuses and expenses for the year ending December 31, 1960 show a payment to Smathers, Thompson and Dyers for legal fees in the amount of \$12,423. The PanAm report for the year ending December 31, 1959 lists payment of legal fees to the same firm in the amount of \$25,780. PanAm listed payments to the firm in legal fees are \$12,547 for the year ending December 31, 1958. I believe that Smathers' firm took on the Pan American account in the later part of 1957. However, since the CAB reports only require listings fees paid during the excess of \$5,000 it is quite possible that they were paid something in 1957 although there is no listing of this in the report for the year ending December 31, 1957.

I am not aware as to whether or not the Inter-State Commerce Commission requires railroads to file similar reports. If they do, it will interesting to see how much this law firm has been paid in recent years by Seaboard Air Line Railroad Company.

Hoping that you will find it possible to use some of the material which I left with you concerning the great damage which is being done to our relations with Latin America due to the black jack methods of the State Department in many areas on behalf of Pan American, and thanking you again for your courtesies to me, I am with best regards,

Cordially,

INTER-AMERICAN ADVERTISING, INC.



Morty Freedman  
President

MF/avc

June 30, 1961

BACKGROUND INFORMATION

The attached Complaint by Aerolineas Peruanas, S. A. (Peruvian Airlines), charging Panagra with repeated violations of the Bilateral Air Transport Treaty between the United States and Peru was filed today with the Civil Aeronautics Board.

Peruvian Airlines is a privately-owned Peruvian company controlled by citizens of Peru. It has no connection with the Peruvian Government and has never received any type of subsidy payments from the Government of Peru.

The President of Peruvian Airlines is Dr. Maximo Cisneros of Lima, Peru, who is also President of the Peruvian National Bar Association.

Peruvian Airlines is Peru's only international-flag carrier airline.

Peruvian Airlines has two principal routes. One is from Buenos Aires, Argentina to Santiago, Chile; Lima, Peru, Panama City, Panama and Miami, Florida. The other route is from Lima, Peru to Tegucigalpa, Honduras and Mexico City, Mexico.

Despite the fact that it is non-subsidized and not affiliated with the Peruvian Government, Peruvian Airlines has from its inception offered tourist service which is identical with that offered by Panagra and other IATA carriers on its routes at fares of up to 40% less than such subsidized or Government-owned competitors.

Panagra is a United States airline in which 50% of the stock is owned by Pan American World Airways and 50% is owned by W. R. Grace and Co.

In the years since it began operation, Panagra has received many millions of dollars in direct subsidy from the United States Government. It now has on file with the Civil Aeronautics Board a request for additional annual subsidies which, if granted, would provide Panagra with guaranteed 12% annual return on its capital investment.

Panagra's principal routes serve the west coast of South America from Panama south to Argentina. Recently, Pan American World Airways filed Complaints with the Civil Aeronautics Board in which it charged that KLM, the Royal Dutch Airline, and SAS (Scandinavian Airlines System, Inc.) were in violation of existing Bilateral Air Transport Treaties between the United States and Holland

and the United States and the Scandinavian nations. Pan American World Airways said the basis of these violations was excessive business by KLM and SAS in third country (Fifth Freedom) Traffic. Pan American pointed out that under the Bilateral Treaties, the principal business of airlines of each country is transporting passengers to and from the two countries involved, and not principally engaging in traffic from one of the two countries involved to a third country.

The Complaint of Peruvian Airlines against Panagra is almost identical with that of Pan American against KLM and SAS, except that in this instance, it deals with excessive Fifth Freedom Traffic by a United States carrier in Latin America.

Information Submitted By:

MORTY FREEDMAN  
Director of Public Relations  
Peruvian Airlines

MEtropolitan 8-6989

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.

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In the Matter of the Complaint and :  
Motion of :  
 :  
 AEROLINEAS PERUANAS, S.A. :  
 :  
 against Pan American-Grace Airways, : Docket  
 Inc. under Sections 401(g) and 1002(a)-(c) :  
 of the Act. :  
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COMPLAINT AND MOTION OF  
AEROLINEAS PERUANAS, S.A.

LEAR AND SCOUTT  
412 Cafritz Building  
Washington 6, D. C.

Counsel for  
Aerolineas Peruanas, S.A.

June 30, 1961

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.

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In the Matter of the Complaint and :  
Motion of :  
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 :  
 AEROLINEAS PERUANAS, S.A. : Docket  
 :  
 against Pan American-Grace Airways, :  
 Inc., under Sections 401(g) and 1002(a)-(c) :  
 of the Act. :  
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COMPLAINT AND MOTION OF  
AEROLINEAS PERUANAS, S.A.

Aerolineas Peruanas, S.A. ("APSA"), acting pursuant to Sections 401(g) and 1002(a) of the Federal Aviation Act of 1958, respectfully requests relief hereinafter stated against Pan American-Grace Airways, Inc. ("Panagra"), and in support thereof, respectfully shows as follows:

1. APSA is the holder of a Temporary Foreign Air Carrier Permit issued by the Civil Aeronautics Board pursuant to Order No. E-15538, served July 14, 1960. The aforesaid Permit authorizes APSA to engage in the air transportation of persons, property and mail between points in Peru and Miami, Florida, by way of the intermediate points Guayaquil, Ecuador, Panama City, Panama, and Barranquilla, Colombia.

2. Panagra is the holder of a Certificate of Public Convenience and Necessity authorizing air transportation with respect to persons, property and mail between the Canal Zone and certain points in South America including points in Peru. This Certificate is necessarily subject to all applicable provisions of any treaty, convention or agreement affecting international air transportation to which United States and Peru shall be parties. The exercise of the privilege granted by the Certificate held by Panagra is also subject to such reasonable terms, conditions and limitations required by the public interest, as may from time to time be prescribed by the Board.

3. The Agreement to which this Certificate is subject, insofar as it authorizes transportation to and from Peru, is the United States-Peru Air

Transport Services Agreement, entered into force December 27, 1946, and hereinafter referred to as the "Bilateral". The Annex to the Bilateral provides in part as follows:

"It is agreed between the contracting parties:

"A. That the airlines of the two contracting parties operating on the routes described in this Annex shall enjoy fair and equal opportunity for the operation of the said routes.

"B. That the air transport capacity offered by the airlines of both countries shall bear a close relationship to traffic requirements.

"C. That in the operation of common sections of trunk routes the airlines of the contracting parties shall take into account their reciprocal interests so as not to affect unduly their respective services.

"D. That the services provided by a designated airline under this agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country, or points under its jurisdiction, of which such airline is a national and the country of ultimate destination of the traffic.

"E. That the right to embark and to disembark at points under the jurisdiction of the other country international traffic destined for or coming from third countries at a point or points hereinafter specified, shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity shall be related:

"1. To traffic requirements between the country of origin, or points under its jurisdiction, and the countries of destination.

"2. To the requirements of through airline operation, and

"3. To the traffic requirements of the area through which the airline passes after taking account of local and regional services.

"F. That the determination of rates to be charged by the airlines of either contracting party between points under the jurisdiction of the United States of America and points in the territory of the Republic of Peru on the routes specified in this Annex shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other carriers, as well as the characteristics of each service.

"G. That the appropriate aeronautical authorities of each of the contracting parties will consult from time to time, or at the request of one of the parties, to determine the extent to which the principles set forth in paragraphs A to F inclusive of this Annex are being followed by the airlines designated by the contracting parties. When these authorities agree on further measures necessary to give these principles practical application, the executive authorities of each of the contracting parties will use their best efforts under the powers available to them to put such measures into effect."

The stipulated routes to which these provisions apply in the case of Panagra are the following:

"United States and/or the Canal Zone to Talara, Chiclayo, Lima and Arequipa; and beyond Peru, to points in Chile and Bolivia or beyond".

4. The portions of the Annex of the Bilateral quoted in the preceding paragraph are not unique to this particular Air Transport Agreement. They are the outgrowth of the Bermuda Conference in 1946 and, as has been well stated by the Senate Committee on Interstate and Foreign Commerce, these provisions are "generally recognized as a sound statement of principles to guide the day-to-day determination of capacity offered in international air transportation." (Senate Report No. 1875, dated April 30, 1956, at p. 9).

It is pertinent to note what this Senate Committee has had to say as to the meaning of these provisions and of the right of the United States to enforce them:

"Briefly, the guiding principle as we see it is that routes should be granted and capacity regulated in relation to the flow of traffic between countries party to an agreement and the other countries on a given route, recognizing that primary sources of traffic are not always the same. There are two types of primary traffic to be considered. One is the traffic moving between the country of the airline's nationality and third countries intermediate to or beyond the other country.

"The opportunity to carry traffic between the other country and third countries is a secondary and restricted privilege. It is granted in order to serve the public convenience and to augment the economic support for long routes. It is restricted in order to prevent origin and destination traffic from being captured by the airlines of other nations which have no proper claim to it, within the legal basis universally accepted.

"As an illustration, with respect to traffic between New York and Paris, the airlines of the United States and France logically should have a predominant claim. Likewise, as to traffic between New York and Switzerland, for example, the airlines of the United States and Switzerland have the primary claim. With respect to traffic between France and Switzerland, the airlines of those two countries occupy the primary position.

"Under the principles now in force, the United States-flag line is given a secondary right to carry traffic between France and Switzerland. This is sound, but only as long as the carriage of traffic by the United States-flag line between France and Switzerland is subordinate to the primary purpose of serving traffic which has its origin or destination in the United States.

"This pattern exists throughout the world under the agreements to which the United States is a party. It is supposed to apply not just to the United States-flag lines but to the foreign-flag competitors." (p. 14)

"... no foreign-flag airline competitor to the United States-flag carriers should be allowed to prosper at the expense of the United States by engaging in traffic to which it does not have a primary entitlement. The United States has a legal and moral right to regulate competition of this variety, and such action cannot be considered as contrary to the general principle of liberality in international trade to which the United States properly adheres." (p. 24)

5. Panagra's past, present and announced future operations to and from Peru violate these governmentally agreed commitments and hence exceed the carrier's operating authority. These violations arise from Panagra's offer of air service in gross excess of the number of passengers and volume of cargo requiring transportation to and from the United States, which is the agreed primary objective of the authorized services. This violation is compounded by Panagra's carrying traffic between Peru and countries other than the United States which is far in excess of the "two day" or "fill-up" volume permitted by the inter-governmental agreement. Thus, Panagra enables itself to operate far more service to and from Peru than could be justified on the basis of the traffic if the airlines of the two countries are to have a fair and equal opportunity to attract under the Bilateral. This unlawful and inimical practice causes excessive and improper diversion of traffic from APSA and other Latin American-flag carriers.

6. The following facts reflect the seriousness of Panagra's violations.

A. While the U.S.-Peru air market is predominantly non-U.S. citizens, U.S. carriers have captured the bulk of the traffic. In the fiscal year 1960 there were 30,222 air passengers between the United States and Peru; of this total only 40% were U.S. citizens, yet 70% were carried by U.S. airlines

B. Despite the fact that Panagra already has a lion's share of this traffic, it is seeking even more. Its total available seat-miles in the first 4 months of 1961 were 16.5% greater than in the corresponding period of 1960.

C. Panagra's operation in Peru, and its neighbors to the south, is very largely geared to serve Fifth Freedom traffic. The following facts (based on the International Origin-Destination Survey of Airline Passenger Traffic for September 1959) demonstrate that Panagra's capacity does not have as its "primary objective" the service of Third and Fourth Freedom traffic.

(1) At Lima Panagra had a total of 2,776 passengers (in and out); yet only 50.8% of these were either destined for or originated at Balboa and/or points north. (For purposes of this Complaint such traffic is treated as Third and Fourth Freedom.)

(2) At Santiago Panagra had a total of 4,081 passengers; yet only 30.8% were Third and Fourth Freedom passengers. Of the total seats offered by Panagra, only 25.6% were required to serve this "primary objective" market.

(3) At La Paz Panagra had a total of 836 passengers, but only 18.7% were Third and Fourth Freedom. Only 9.7% of the offered capacity was required to serve this "primary objective" market.

(4) At Buenos Aires Panagra had a total of 3,397 passengers, and only 22.6% were Third and Fourth Freedom. Panagra provided a total of 5,989 seats to Buenos Aires on 96 flights--only 12.8% of the capacity was required for the traffic which, supposedly, is the "primary objective" of Panagra's authorization.

D. Panagra's Fifth Freedom traffic in APSA's primary markets (Third and Fourth Freedom traffic as to APSA) is considerably in excess of the volumes carried by APSA. In September 1960, for example, APSA carried only 275 passengers between Lima and Buenos Aires; Panagra's Fifth Freedom traffic at Buenos Aires was over 2,600 passengers in September 1959. Similarly, in September 1960, APSA carried only 274 passengers between Lima and Santiago; yet Panagra's Fifth Freedom traffic at Santiago was over 1,700 passengers in September 1959.

E. APSA alleges, upon information and belief, that all of the aforesaid capacity violations have been aggravated with the inauguration by Panagra of jet equipment in 1960.

7. Every public interest consideration demands that Panagra's violation of the intergovernmental agreement and of its certificate be stopped--and stopped immediately. An international air transport system (whether of the United States or Peru) can be maintained only when exchanges of route authorizations are based on "an equitable exchange of economic benefits" and when operations are conducted in accordance with agreed capacity principles. Panagra's excessive scheduling, supported by improper carriage of secondary traffic to third countries which accounted for a majority of all revenues earned

by Panagra from serving Peru, has deprived the Peruvian flag carrier of "fair and equal" opportunity to develop its primary markets. Markets which to it represent Third and Fourth Freedom traffic.

8. The Civil Aeronautics Board has ample power to deal with this situation. Panagra, by accepting a certificate, has submitted to the jurisdiction of the Board and has agreed to conduct its operations in accord with the terms, conditions and limitations of its permits and all laws and regulations applicable thereto. Clearly these have been violated. The Board may, therefore, take action against the carrier in one or more of the following ways:

a. The Board may at any time prescribe further terms, conditions and limitations, as provided by the Act.

b. The Board may enter an order for Compliance with the Bilateral under Section 1002(c).

c. The Board may alter, modify, amend, suspend, cancel or revoke the permit pursuant to Section 401(g).

APSA asks the Board to exercise any and all of these powers and such other powers as may be available to the Board. APSA urges that this be done promptly, including the grant of interim relief. Panagra's violation of the Bilateral is long-standing and is becoming more deliberate and extensive with every passing day. Relief pendente lite can clearly be accorded under the Board's rules (compare Rule 217). Only in this manner can irreparable injury be avoided to the Peruvian flag carrier competing with Panagra.

WHEREFORE, APSA respectfully prays the Board to

- a) institute a proceeding pursuant to Sections 401(g) and 1002(a)-(c) of the Act to do any or all of the following:
- (i) enforce the terms, conditions and limitations of the Bilateral with respect to Panagra's excessive capacity;
  - (ii) modify the terms, conditions and limitations of Panagra's certificate as may be required effectively to prevent future violations; (iii) suspend, cancel or revoke said certification for noncompliance;

- b) enter an order pendente lite prohibiting Panagra from increasing its frequencies and capacities to and from Peru above the level shown in its published schedules for March, 1960 with respect to any and all operations conducted pursuant to its certificate; and
- c) grant such other, further and different relief as the Board deems just and proper.

Respectfully submitted,

AEROLINEAS PERUANAS, S.A.

By /s/ Jerrold Scoutt, Jr.  
Jerrold Scoutt, Jr.  
Counsel

Dated: June 30, 1961

VERIFICATION

District of Columbia ) ss.

Jerrold Scoutt, Jr., Counsel for Aerolineas Peruanas, S.A.,  
being first duly sworn states that he has read the foregoing Complaint  
and Motion and knows the contents thereof and that the matters and  
things therein stated are true of his own knowledge, except such  
matters therein stated on information and belief, and as to such  
matters he believes them to be true.

/s/ Jerrold Scoutt, Jr.

---

Jerrold Scoutt, Jr.

Signed and sworn to before me this 30th day of June, 1961.

/s/ Dorothy E. Curley

(SEAL)

---

Notary Public

My commission expires October 15, 1961

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing  
Complaint and Motion upon Pan American-Grace Airways, Inc., by  
mailing copies thereof to the following attorney:

John Douglas, Esq.  
Union Trust Building  
Washington 5, D. C.

/s/ Jerrold Scoutt, Jr.

---

Jerrold Scoutt, Jr.

Dated: June 30, 1961

CLAUDE PEPPER LAW OFFICES

WASHINGTON FEDERAL BUILDING

1701 MERIDIAN AVENUE

MIAMI BEACH 39, FLORIDA

JEFFERSON 2-4853

CLAUDE PEPPER  
JAMES C. CLEMENTS (1896-1951)  
ALLEN CLEMENTS, JR.  
ALFRED I. HOPKINS  
ALBERT E. HARUM  
EDWARD F. MITCHELL  
ADELE T. WEAVER

OFFICES:  
WASHINGTON, D. C.  
TALLAHASSEE, FLORIDA  
CORAL GABLES, FLORIDA

November 29, 1960

Dear Drew:

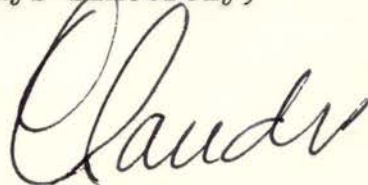
You will find herewith the material referred to in our telephone conversation and some additional material. I would like to have the clippings back but you may retain the copy of the Channel 10 Motion, if you would care to do so for your file.

I was on the platform with Lyndon Johnson and Smathers when Lyndon spoke in Tampa prior to Kennedy's coming down. I was introduced by the Chairman and got a great hand from the crowd. Johnson acknowledged my presence when he arose to speak. Smathers having heard that, I think, did not want me to be introduced any more where Kennedy was present and there was a big crowd so I was not introduced, although I was on the platform when Smathers introduced Kennedy in Tampa and Jacksonville. In both of these places, a lot of my friends have bitterly complained. You will note from these clippings, the Gainesville Sun article to which I referred and also a clipping from the Pensacola Journal, which says Smathers would not permit me to get any prominent place in the new administration.

There was a fine editorial in the Lakeland Ledger of November 13th, the clipping of which I ~~don't have before~~ *enclose* me, commenting on the prominence given me at the University of Florida Homecoming and pointing out that I had been outstanding in my advocacy of Kennedy at Los Angeles. The editor knew of this because he was at Los Angeles and knew of my activity for Kennedy.

It was good to talk to you.

Always sincerely,



Honorable Drew Pearson  
1313 Twenty-ninth Street, N. W.  
Georgetown  
Washington 7, D. C.

November 29, 1960

P.S. I am sending herewith a clippings file furnished me by Mr. Nat Ratner, a prominent Miami Beach citizen who strenuously opposed Dodge Island Port and has collected this information showing that this group has a financial interest in an island near Dodge Island Port which is being built with local and Federal funds. I promised this file back to Mr. Ratner.

C.P.

MEMO TO FILE

October 13, 1960

The attached note was handed to me by one of the newspaper men accompanying Senator Johnson after my speech calling on the Democratic nominees to be loyal to the Democratic National ticket at the luncheon at Orlando for Senator Johnson, on October 12, attended by 1200-1500 Democrats. Kilpatrick represented the Washington Post. I gave him a memorandum of what I said. On this occasion, I was instrumental in getting Farris Bryant, Democratic-nominee for Governor to come out for the ticket pretty strongly.

C.P.

Sen Pepper:

I was told that before  
we came up you chastized  
the Fla. Democrats who  
have not been working  
hard for the ticket.

Would you please  
write for me a few  
brief sentences of what  
you said. And would  
you give me your  
prediction of what the  
state will do now.

Carroll Kilpatrick

**Now He's High in Saddle**

# **Smathers Picked The 'Right Horse'**

By DAVID KRASLOW  
Of Our Washington Bureau

WASHINGTON — Sen. George Smathers has emerged as perhaps the most influential representative Florida has ever had in Washington.

And Sen. Spessard Holland may find it difficult getting the right time out of the Kennedy administration.

In private meetings in Washington many weeks ago, President-elect John Kennedy told Southern leaders he couldn't win without the South.

The returns proved him right. And the men who played a key role — in public



and behind the scenes — in securing what is widely recognized as a Southern victory for the Democratic ticket was George Smathers.

There were many who thought Kennedy would win the election but lose the South. It didn't happen that way. Kennedy needed the 87 electoral votes Smathers and Sen. Lyndon Johnson helped obtain for him in eight Southern states.

Smathers was Kennedy's deputy — the vice chairman of the Democratic National Committee in charge of the campaign in Dixie. Kennedy is indebted to him and the South.

Smathers, who backed Johnson's bid for the presidential nomination, put his political career on the line early in the game, right after Kennedy was nominated.

His endorsement of the Kennedy-Johnson ticket came when many, indeed most, of his colleagues (including Holland) were still grumbling out loud and indicating they wouldn't lift a finger for Kennedy.

But Smathers and Johnson embarked on a massive effort to "persuade" their colleagues that the South would be far better off with Kennedy than with Nixon.

Smathers damned the liberal Democratic platform which Southern leaders could not stomach, but praised the Democratic candidates. And when most of the Southern leaders finally agreed to stump for the ticket, this was the tone they adopted. It worked.

Whatever patronage will be coming to Florida through the Democratic administration will be cleared first with Smathers.

This probably will also be true to large extent on federal spending in Florida.

And Smathers can reasonably be expected to be a moderating influence on Kennedy on such matters as civil rights legislation, an issue which is certain to arise early in the Kennedy administration.

As for Holland, it was evident from talking to party officials at Democratic headquarters on election eve that his refusal to work for the ticket will not be forgotten.

The pleasure of winning most of the South and the election did not erase the disappointment over losing Florida. The blame, to a great degree is being placed on Holland.

And while party officials were grumbling about Holland on election eve, Smathers and Kennedy were in a long distance phone conversation.

"George," said Kennedy, "I want to see you very soon and talk over a few things."

"Jack," said Smathers, "I'm ready."

OCT 13 1960

# Lyndon Running Hard For No. 2 Position

By **ORMUND POWERS**  
Associate Editor

Something new in American politics, the picture of a man running hard for second place, was brought to Orlando yesterday.

There's no mistake about it: Lyndon Baines Johnson of Texas is fighting for the vice presidency of the U. S., a position he will get automatically if Sen. John F. Kennedy is elected.

And Lyndon is running Lyndon, not Jack, if yesterday was a sample of the Texas senator's campaign.

"I HOPE those who thought me well enough qualified in July to be president will think me well enough qualified in November to be vice president," said Sen. Johnson.

He looked tired as he

walked into the Egyptian Room of the Cherry Plaza waving his big hat and grabbing hands which were thrust out to him. The famous Johnson smile had a forced quality, as well it might. He made half a dozen public appearances and talks yesterday.

He didn't touch the steak, potatoes, peas and carrots put before him at the long luncheon table. He watched the crowd and the Florida congressional delegation, and when Sen. Spessard L. Holland was introduced—to introduce Johnson—Johnson stood up and applauded.

LADY BIRD Johnson was there too, looking trim, fresh and more rested than her husband. Both she and Lyndon appeared out to woo the Florida vote by stressing

their friendship and admiration for Congr. Syd. and Mary Alice Herlong, Spessard and Mary Holland, George and Rosemary Smathers.

Sen. Smathers, who is heading up the Democratic campaign in the Southeastern states, said he was amazed with the reception Jack Kennedy has received. Smathers, looking sunburned and fit, said Kennedy affected people "like a combination of F.D.R. and Elvis Presley."

THE SENTINEL came in for mild chiding from Bralley Odham of Sanford who tried to keep the luncheon alive for the hour or so before Lyndon Johnson could get there.

"We're not going to get much help from the news-

papers," Odham said. "At least not in this area."

He favored a letter-writing campaign to try to sell the Kennedy-Johnson ticket to Central Florida.

"WHEN YOU SEE a letter to the editor from supporters of the other candidate, sit down and write one for Jack and Lyndon."

Out front of the Cherry Plaza when Johnson arrived was David Bailey Liebman sitting on a park bench with a huge sign in his lap. In foot-high red letters it said "Judas."

In the Cherry Plaza pool, around which several hundred of those who couldn't get into the Egyptian Room, were some very attractive Johnson girls in black bikinis.

FOR A TIME AT the

luncheon it looked as though Lyndon Johnson's welcome would turn into a Herlong appreciation day.

Herlong was described by various speakers as "the best congressman in Florida," "the best congressman in the whole U. S.," "the

man who always gets things done in Washington . . ."

Builder Jack Demetree stood up from his place in the audience and shouted his praise of Herlong.

AFTER AN oratorical invocation in which he called upon God to help the citizens

of Florida attain religious tolerance, former Sen. Claude Pepper took a couple of pot shots at Florida office holders who have refused to back the Kennedy-Johnson ticket.

"Men who proudly wear the honor of the Democratic label should not try to escape its obligations," Pepper fairly shouted.

"The only thing we've got to do to win in Florida, is for the Democratic leaders to get behind and lead."

There was applause from the floor, but none of the Democrats who have heretofore publicly balked at swallowing the national Democratic platform, indicated Lyndon's visit to Orlando changed his mind.

liberal and closely associated with labor. For this reason, there was talk that the former Florida senator may be in for a top job in Washington—perhaps assistant secretary of labor.

Interviewed at the Blue Key banquet tonight, Pepper said he is very close to Kennedy and helped him during his campaign without "thought of anything for myself."

Asked about the possibility of appointment to a high government post, the former senator said he had not contemplated any such position.

#### Close Contact

"I have seen a lot of him (Kennedy) during the campaign. At the Los Angeles convention I conferred with him several times a day," Pepper said.

After the convention, he said, he kept in constant touch with Kennedy regarding campaign issues.

Asked if he would accept a government post, Pepper said "it all depends" on the nature of job offered.

"My heart has always been

Florida went for Nixon, Pepper said he did not believe Kennedy was "going to hold that against us."

He said Kennedy would give the country great leadership, in such things as development of harbors, roads and schools — which he said would help Florida as well as other states.

Pepper also predicted that Kennedy as president would solve many of Florida's problems.

Asked how, he explained that Kennedy's program would make the country more prosperous, which in turn would promote more tourist trade for Florida and provide greater markets for farm products and other goods.

He also said Kennedy would bring about lower interest rates on loans, which in turn would benefit development in Florida.

Eluding further direct questions regarding an appointment to a high post in the Kennedy administration, Pepper said his interest was in "the legislative side of government" and he was willing to render any type of public



**BIG LEAP** — Alpha Epsilon Pi Fraternity presented "One of the Lesser Known Tales of Uncle Remus" during the Gator Growl and here, one of the fraternity makes a big leap while acting out his part.

cause the senator was late in arriving for the opening ceremonies.

Governor-elect **Farris Bryant** was conspicuous by his absence.

The Florida Alligator, University of Florida student newspaper, said Bryant would not attend homecoming because of a minor illness.

#### Notes "Rest"

In a prepared text of his speech before the Blue Key banquet gathering tonight, University of Florida President **J. Wayne Reitz** said the governor-elect was not present because he and his family wanted to rest from the "rigors of the past several weeks" (before the election).

According to advance information, the John Marshall skits tomorrow will barb Bryant's strong stand against integration of races.

Politics will continue to play an important role in the two-day homecoming program which is packed with more entertainment (in a two-day period) than any event in the state, including the fabulous Gasparilla festival in Tampa.

#### 90-Unit Parade

The main opening event of homecoming was the parade, which featured more than 90 units.

Beautiful girls, jazzy bands, exciting floats and the usual lineup of dignitaries were featured in the parade.

Floats and pretty girls stole the show.

Shriner units in the parade brought the usual laughter from younger Gator fans as the fun cars and clowns performed their well-known zany antics.

#### Some Grumble

But parents and spectators grumbled as the Shriner motorcycle corps buzzed the edges of the parade crowds in circles.

One cyclist came within a few inches of running into the youngsters at curbstone when he lost control of the motorcycle and fell at the feet of spectators.

Among floats featured in the parade were entries by:

**Alpha Tau Omega**—Which

featured a large alligator wearing a Confederate cap. The gator floated on green waves (Tulane's football tag) to victory. This float won first prize in the Orange League fraternity division.

**Delta Sigma Phi**—All white float symbolizing Dixie. This float was decorated with gardenias and a butterfly. A girl in a swing depicted the message, "The swing is to Homecoming '60."

**Delta Upsilon** had a float entitled "Graves (Coach Ray Graves) Little Acre." This float featured two pretty girls burying a Tulane football player. It won first place in the Blue League fraternity division.

**Kappa Alpha**—Featured the theme, "Serving the best in Dixie."

#### "Old South" Girl

**Kappa Sigma**—Featured a girl dressed in the style of the Old South who stood behind "waves" pulled by a ski rope.

**Lambda Chi Alpha**—Entered a float which represented a coffin bearing the title "Gator Grave for Green Wave." A green hand protruded from the coffin, which a huge papier-mache Gator was "nailing" shut.

**Phi Gamma Delta**—Theme was "Song of the South" depicted by two large musical lyres.

#### Gator Skiing

**Phi Kappa Alpha**—A papier-mache Gator in an outboard motor boat towed a "alliga-

tor" skiing on a realistic "Green Wave."

**Sigma Alpha Epsilon**—Featured a float which showed a large "Gator" flushing a toilet containing a Tulane player.

**Tau Kappa Epsilon**—A golden chariot pulled by Tulane football players carried out a Ben-Hur theme. Two sorority girls admired a "Florida man" at the helm of the chariot.

#### Dream Girl

**Theta Chi**—Featured the dream girl of Theta Chi, standing in an abstract sea shell.

Among the sorority floats were:

**Alpha Delta Pi**—Featuring a football field decorated by lovely members of the sorority.

**Chi Omega**—This float displayed a 10-foot owl making predictions that history will repeat itself regarding the outcome of the Tulane game. It won the sorority division.

#### Neptune Theme

**Kappa Delta**—Float theme was Neptune, ruler of the waves. Neptune was presented in the form of an alligator and four blonde girls were featured as mermaids.

**Sigma Kappa**—A simulated motor boat float piloted by sorority members, with the theme "Gators Ski to Victory Over Green Wave."

Winning the first place prize for the general campus organizations division was the student builders and contractors float.

## Ex-Sen. Pepper Center Of Florida U. Parade

By SAM MASE

Tribune Staff Writer

GAINESVILLE, Nov. 11—Florida's biggest show—the University of Florida's Homecoming—got under way here.

And, in the midst of it all, speculation developed over the prominence given former U.S. Senator Claude Pepper in the Homecoming parade, staged this afternoon.



Pepper

Many parade spectators

noted that Pepper was in the lead car of a parade section which presented prominent state officials, including cabinet members.

Gov. LeRoy Collins was not in the parade, and did not attend the Blue Key banquet and the Gator Growl tonight.

It was reported that Governor Collins had a previous commitment (nature of which was not disclosed) which prevented him from being present here today.

He will be on hand tomorrow to officiate at the groundbreaking ceremony for a new law school wing and other events, including the home-

(Continued on Page 8, Col. 1)

## Ex-Sen. Pepper Plays Lead Part in Florida U. Parade

(Continued from Page 1)

coming football game between Florida and Tulane.

In the meantime, Pepper took the limelight.

There was speculation that the prominent position given him in the parade may be symbolic of his future role in the federal government.

Some political observers said Pepper stands high in the John F. Kennedy camp, being among the first Southern political leaders to advocate the Massachusetts senator for the presidency.

### Long Time Liberal

Pepper is a long-standing liberal and closely associated with labor. For this reason, there was talk that the former Florida senator may be in for a top job in Washington—perhaps assistant secretary of labor.

Interviewed at the Blue Key banquet tonight, Pepper said he is very close to Kennedy and helped him during his campaign without "thought of anything for myself."

Asked about the possibility of appointment to a high government post, the former senator said he had not contemplated any such position.

### Close Contact

"I have seen a lot of him (Kennedy) during the campaign. At the Los Angeles convention I conferred with him several times a day," Pepper said.

After the convention, he said, he kept in constant touch with Kennedy regarding campaign issues.

Asked if he would accept a government post, Pepper said "it all depends" on the nature of job offered.

"My heart has always been

for public service, if I can serve my country and my state in any honorable way, I will do so," Pepper said.

Pepper lauded Kennedy as a man who would "do a lot for Florida."

"I hardly think that Florida could have a better friend than John F. Kennedy, because of his close association with this state over the years," Pepper continued.

He said that Kennedy's family had maintained a winter home in Palm Beach for over 30 years.

### Notes Vote

Regarding the fact that Florida went for Nixon, Pepper said he did not believe Kennedy was "going to hold that against us."

He said Kennedy would give the country great leadership, in such things as development of harbors, roads and schools—which he said would help Florida as well as other states.

Pepper also predicted that Kennedy as president would solve many of Florida's problems.

Asked how, he explained that Kennedy's program would make the country more prosperous, which in turn would promote more tourist trade for Florida and provide greater markets for farm products and other goods.

He also said Kennedy would bring about lower interest rates on loans, which in turn would benefit development in Florida.

Eluding further direct questions regarding an appointment to a high post in the Kennedy administration, Pepper said his interest was in "the legislative side of government" and he was willing to render any type of public

service for the benefit of the nation.

During the interview Pepper said he knew Joseph P. Kennedy, father of the president-elect well.

### Friends For Years

"We have been friends through the years," he said with a smile.

Pepper did not sit with the dignitaries at the Blue Key banquet.

Sen. George Smathers followed Pepper in the parade lineup today. Homecoming officials said this was because the senator was late in arriving for the opening ceremonies.

Governor-elect Farris Bryant was conspicuous by his absence.

The Florida Alligator, University of Florida student newspaper, said Bryant would not attend homecoming because of a minor illness.

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Miami Times  
Ancestral  
Miami

695 D OCT 5 - 1960



**LA VISITA DE KENNEDY A MIAMI.**—En la visita de Robert Kennedy, hermano del Senador John Kennedy candidato presidencial del Partido Demócrata, fué tomada esta foto mientras conferenciaba con dos dirigentes demócratas de la Florida: el exsenador Claude Pepper y el Representante Dante Fascell. El joven Kennedy, coordinador de la campaña de su hermano, causó muy buena impresión en Miami donde fué calurosamente aplaudido. El lunes, siguiendo su itinerario en el estado, Bobby Kennedy habló en Fort Lauderdale ante un numeroso público que acudió al aeropuerto para saludarlo.—(Foto Gort).

Lakeland Ledger

E-18,383

5-19,009

## Pepper On Parade

Florida's former U. S. Senator Claude Pepper was at the head of the parade of liberals during the Franklin D. Roosevelt presidential administration.

On Friday in Gainesville, the former Senator was at the head of a unit of the University of Florida homecoming parade.

Is Pepper about to shine again in Washington?

He and President-elect Kennedy are good friends. They conferred often during the Democratic convention in Los Angeles last summer. From the start of the convention, Pepper was predicting to all who cared to ask that Kennedy would get the nomination.

Stung by loss of his Senate seat to George Smathers, as any incumbent would be, Pepper unquestionably has a chance to rise and shine again.

Florida's senior Senator Holland made very clear from the start that he had no enthusiasm for the Kennedy-

Johnson ticket and the liberal Democratic platform. He gave ticket and platform only token support.

Florida's Senator Smathers announced before the convention that he favored Lyndon Johnson over Kennedy for the presidential nomination. He continued his support of Johnson right through the convention.

Several of the House members of Florida's congressional delegation made no effort to conceal their disappointment over ticket and platform.

So, as the President-elect now relaxes at Palm Beach and looks out over the state, Pepper is one of the Floridians uppermost in his mind as a friend.

It would naturally be a great satisfaction to Pepper to be able to have a key role once more in Washington.

And it seems to follow logically that he is destined for such a role—and in an area in which he can give vigorous expression to his philosophy of liberalism.

STAR ON RISE?

# Pepper's parade spot stirs fuss

Former U. S. Senator Claude Pepper's prominent place in the University of Florida's Homecoming parade has triggered a rash of speculation that his political star is again on the rise.

Parade spectators noted Friday that Pepper was in a lead car of a parade unit carrying leading state dignitaries, including cabinet members.

Rumors flew over the weekend that the long-standing liberal, who reportedly stands high in the Kennedy camp, is in line for a top Washington post.

Supporters of Senator George Smathers, who defeated Pepper in one of the state's roughest political campaigns, moved behind the scenes to quash the speculation. They said playing up Pepper as a prominent figure would "hurt" Kennedy. They didn't say how.

### Smathers 'Miffed'

Smathers reportedly was "miffed" that a Florida newspaper played up Pepper's role at Homecoming. Smathers, keynote speaker at the politically top-heavy Blue Key banquet, followed Pepper in the parade lineup as he was late arriving.

## Editors hit UN freedom pact

MIAMI (AP)—American newspaper editors are not willing to countenance a United Nations pact on freedom of information until the UN's various countries agree on what freedom is.

Pepper did not sit with any dignitaries at the banquet. At one point in the program, the atmosphere tensed somewhat as toastmaster Phil O'Connell made humorous reference to Smathers having conducted a "vicious" campaign against Pepper.

Pepper has been closely associated with labor, and there was talk that he may be in for the assistant secretary of labor post.

### Said He Was Close To Kennedy

Pepper told an interviewer that he is very close to Kennedy, and had helped with his campaign without any thought of personal gain.

Asked if he would accept a government post, he replied it would depend on the job offered, adding later that he would be willing to serve "in any honorable way."

Neither Governor LeRoy Collins nor Governor-elect Farris Bryant were on hand for the parade, Blue Key banquet or Gator Growl. Collins had an undisclosed previous commitment, and Bryant reportedly was home either because of a minor illness or for a needed rest.

There also was speculation that Pepper would run for Congress out of a new district in Dade County which is being created as a result of the recent census.



Hi Folks!  
For  
FAST

## Scars of Smathers-Pepper Get Irritated Once More

BY DON MEIKLEJOHN

TALLAHASSEE—An incident last week at the University of Florida homecoming indicates that the old political scars from the bitter Smathers-Pepper Senate campaign a few years back are far from healed.

The trigger that got the old feud out in the open again was a newspaper story which attributed great political significance to Pepper riding in the head car of the homecoming parade and Smathers being a car behind.

From this base, the story went on to speculate that Pepper was going to be a big shot in the Kennedy administration, and Pepper didn't try to mortify the impression.

The incident really irked the Smathers people . . . especially since Smathers was one of the key men in Kennedy's fine showing in the South.

AMONG THE interesting quotes was one attributed to Pepper in which he said that

during the LA convention, he conferred with Kennedy a couple of times a day.

Without questioning the statement, we can only say that we must of missed something. Pepper without doubt was the loneliest man in town.

And if he was conferring with Jack with that kind of regularity, he should have tried to get a little better seat.

Pepper who was an alternate on the "Smathers Favorite Son" slate had a seat so close to the ceiling, he was almost lost in the smoke.

About the only way he could get on the convention floor was to borrow a badge.

THE OUTLOOK for Pepper is that he will probably try for the new seat in Congress which will probably be created in Dade County, but unless he has a stick of political dynamite in his pocket, he won't be in line for any big job in the Kennedy administration.

Smathers wouldn't stand for it.

## Kennedy Faces Huge Burden In Shaping Next Cabinet

# Pepper Hits At Religious Issue in Race

By GEORGE BUTLER  
Tribune Staff Writer

MULBERRY, Oct. 30—Claude Pepper, former U.S. senator from Florida, today said it

would be a "profound tragedy" for Americans to vote against Sen. John Kennedy "because he had a religion they might not like."

Speaking at a Democratic rally here sponsored by International Chemical Workers Union, District 1, Pepper



said ministers who speak from the pulpit against Catholicism are "committing the sin they denounce in others (intolerance)."

Citing Kennedy's war record, in which he was decorated for risking his life to save a friend, Pepper said "that is Christianity to me."

### Recalls Another Quaker

He said the present religious issue, with Kennedy a Catholic and Nixon a Quaker, had a parallel in the Al Smith-Herbert Hoover campaign.

"We've had no experience with what a Catholic would do to America, but we know what a Quaker has done," he said.

On the "experience" issue, Pepper said that Franklin D. Roosevelt, when he was elected in 1932, had far less experience than Hoover, who had served four years as president and had also been in the cabinet.

"Experience of the people counts too," Pepper shouted, "and I say we've had too much experience with these Republicans, that's why we don't want any more."

### Sees Doctors' Lobby

Regarding the medical care program through social security for the aged, Pepper said Kennedy was fighting for it and the Republicans are fighting against it. The GOP is being aided, he said "by the doctors' lobby, which has mobilized millions of dollars, as they have in the past to fight any form of socialized medicine."

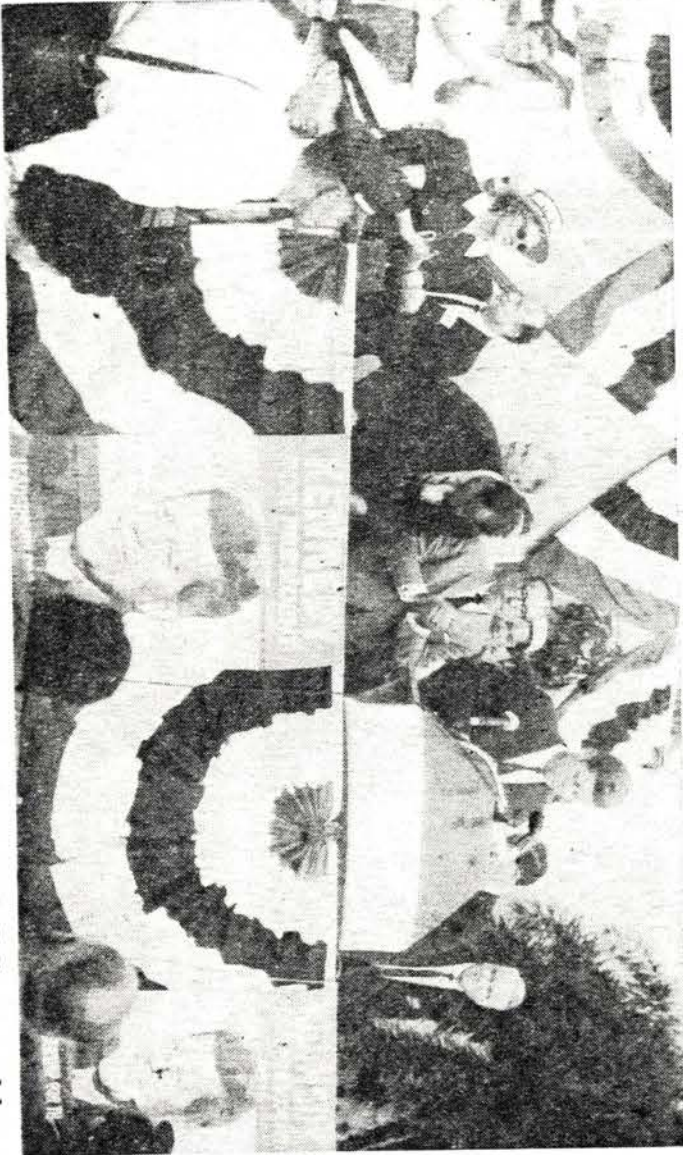
To the chemical workers, the speaker said the Republicans "have stacked the National Labor Relations Board against you . . . to defeat your elections." Spiteful anti-labor legislation has been passed in Congress, he added, "with the help of some Republicans, right here in Florida, who call themselves Democrats."

On the subject of communism, Pepper said "Something is wrong in Washington when we see communism advance in all parts of the world."

He asserted that the people of Latin America, having seen communism gain a foothold in Cuba, "have lost confidence in the Eisenhower administration."

Pepper said "Things will be better under a Democratic administration . . . both for the

FROM  
FLORIDA  
CLIPPING SERVICE, TAMPA  
Southern Labor Journal  
(Tampa)  
DATE



AT TAMPA Sen. John F. Kennedy speaks before enthusiastic crowd of 15,000 including several hundred labor union representatives, who interrupted their Orlando convention to hear the Democratic nominee. Immediately to the left of Kennedy is former U. S. Sen. Claude Pepper, next to U. S. Sen. George Smathers, who introduced the speaker.

Frank brother

Bro & Geo were trustees

were co-executors of

estate of L.B. Wilson  
\$90,000 fee.

Lowry  
Looney Wall

Brothers  
(all male letters)

owner

1st Nat Bldg of Miami Beach.

Chanel 10 - Brothers in contact  
with Fee.

temporarily  
gave away to L.B. Wilson Co

with airline trustees this out in  
its brief - before c of appeals for  
stay

L.B. Wilson - TV station in Ohio also.

of Frank

C.G. Petross - owns island with Brothers  
went to parties with Nixon.  
island near Miami port  
near MacArthur causeway.

In news plane.

" men skeptical about Snodgrass making any real effort.

Came down with K

" " " John

Made few speeches at end

Coopering its course not the constituency

1916 Johna speech by Hughes

Liberal discharges by Snodgrass part 4

met when Pepper sat on platform Tampa  
& Jacksonville. ~~not introduced~~ Snodgrass introduced Kenney  
each case.

1 to 3 rd Shopping center. Snodgrass

Snodgrass - another at Anheim. Claude Pepper

Gannillo

W of Fla Shopping - Pepper first protest  
place in parade with Treas of student body.

Tampa Tribune wrote it up (Nov. 12) 2 col cut.

4- Pe Pepper center of Fla U Parade. Snodgrass

Protested about giving such prominence  
Gannillo seen Nov 13

show annoyance over province  
tries to play Pepper down.

Smiths support chiefly among Reps  
" playing his own game

At LA. Kennedy was unhappy because  
Smiths partly forborne Fla delay to switch to  
Kennedy <sup>initially</sup> after 1st ballot.

"I can't do anything with him."

Joe K. a fake? contributes  
to Smiths campaign  
stood up with Kennedy at wedding

"Smiths Johnson can neither be nominated or elected"  
1 yr ago - Miami News.  
was then for Seymour

at LA switched to Johnson

LBT - "I use Smiths as my messenger to  
southern wing of party."

W. J. Roberts & Co.  
P. Phillips & Connell -

Jan 1950 <sup>Corey bitterest</sup> He made <sup>most</sup> most vicious campaign  
in history of ~~state~~ - state. <sup>as change will come</sup> But he won.

Smother's quite philisophy: "el bibe to be"

" Thompson Dyer - Seaboard RR  
Pan Am Wares Airlines - night of the blue Cooper  
Cubana. Lanica (New York)

Western Union

U S Growth Insurance

Lloyds

Maine Office of America

Chubb & Son

Oppenheimer & Coy

W H Mc Gee & Co

Am Int'l Marine Agency

Wardens Co.

Union Marine & Gen Ins

Gen Accident Fire & Life

W. J. Roberts & Co.

Atlantic Mutual Ins

Ins Co of N America

Public Service Television  
WPST-TV Channel 10  
Miami, Florida

Draw —  
See p. 18  
if sep.

FOR RELEASE FRIDAY NOON, AUG. 12, 1960

Public Service Television, Inc., asked the U.S. Court of Appeals in Washington Friday to throw out a Federal Communications Commission order taking away its license to operate Miami's Channel 10 television station, WPST.

At the same time, Public Service petitioned the FCC to stay the Sept. 15 effective date of its order, pending outcome of the court appeal.

The FCC order would remove WPST's license to operate Channel 10 and award the channel to L. B. Wilson, Inc. of Cincinnati, Ohio, on a temporary basis.

In its brief to the court Public Service contended the FCC had no jurisdiction to issue its July 14 final order in the case, that the order constitutes a violation of due process, and that no conclusion should be reached in the controversial case without the U. S. court having a chance to review the evidence presented to the FCC Special Examiner in the case.

In filing its order with the appeals court, the FCC did not file the transcript of testimony taken by the special examiner, Judge Horace Stern, retired chief justice of the Pennsylvania Supreme Court.

WPST said that the U. S. Court of Appeals, in remanding the Channel 10 case to the FCC for further consideration in 1958, ordered the FCC to make recommendations -- but did not authorize the federal agency to take final action on pending applications to operate the channel.

Since the FCC "had no jurisdiction to enter such an order," while the matter was still in the hands of the court, the WPST brief contended, the final order is void "ab initio" -- from the start.

"At no time did the Commission give notice that it proposed to enter a final order making a new award of the authority at issue in this proceeding...The FCC's decision of July 14 thus violated the most elementary requisite of a fair hearing," the brief said.

(more)

Public Service said that if the original FCC order awarding it the Channel 10 license "is to be set aside or modified or superseded in any way, it can only be done by order of this court..."

As a result of the FCC failing to file a transcript of the special examiner's hearing with the appeals court, WPST said, "evidence pertinent to this court's consideration of the Commission's action has not yet been made available for the court's consideration."

"When the record made on the remanded issues is filed with the court, it will be apparent that if the Commission had applied to L. B. Wilson, Inc., the same standard that it applied to the other applicants in this proceeding, Wilson would also have been disqualified," the brief said.

The brief said that under the procedure which the Commission now proposes, "the public will not only lose this valuable existing service but it will suffer from the disruption of service caused by a changeover from Public Service to Wilson, and a subsequent changeover to a third holder of temporary authority, all before this court is given the opportunity to hear and decide these appeals," WPST said.

The brief pointed out that no criticism has been leveled at Public Service for its operation of the station since it was awarded the license, and that Justice Stern found that WPST should not be disqualified as an applicant.

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UNITED STATES COURT OF APPEALS  
For the District of Columbia Circuit

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WKAT, Inc.,	)	
Appellant,	)	
v.	)	
Federal Communications Commission,	)	Nos. 13, 718, 14, 021 and 14, 170
Appellee,	)	
Public Service Television, Inc.,	)	
Intervenor	)	
	)	
Eastern Air Lines, Inc.,	)	
Appellant,	)	
v.	)	
Federal Communications Commission,	)	No. 13, 725
Appellee,	)	
Public Service Television, Inc.,	)	
Intervenor	)	

MOTION TO DIRECT FCC TO VACATE ITS PURPORTED ORDER OF  
JULY 14, 1960, AND TRANSMIT RECORD MADE ON REMANDED ISSUES  
AND TO DIRECT THE PARTIES TO FILE SUPPLEMENTAL BRIEFS

Public Service Television, Inc., respectfully moves the Court:

(1) to direct the Federal Communications Commission to vacate its purported order of July 14, 1960, and transmit to this Court forthwith the record of its hearing on the supplemental issues remanded by this Court's order of April 17, 1958; and (2) to direct the parties to file supplemental briefs addressed to these supplemental issues within a specified time. In support of this motion Public Service shows the Court as follows:

PRELIMINARY STATEMENT

This matter is before this Court on appeal from the Federal Communications Commission's order of February 7, 1957, granting a construction permit to Public Service to establish a television station utilizing Channel 10 in Miami, Florida. After briefs had been filed by

all parties to this appeal, the Commission filed a motion bringing to the Court's attention certain charges made during a Congressional investigation concerning improprieties alleged to have occurred during the course of the Commission's consideration of certain television cases, including this case. The Commission could not state in what way, if any, its order under appeal was affected by these disclosures because the allegations before the Congressional Committee had not been substantiated or even presented to it. Nor was the Commission at that time "in a position to advise the Court of the exact nature of the proceedings which may . . . . prove to be required or appropriate." It accordingly requested this Court "to issue an order in the above-entitled cases remanding them to the Commission to take such action as may be appropriate to reconsider its decision of February 7, 1957 . . . ." <sup>1/</sup>

After considering briefs and oral argument submitted by the Commission, by the appellant WKAT, and by this intervenor, the Court issued its order of April 17, 1958. In that order, the Court remanded the cases to the Commission "to hold an evidentiary hearing concerning the possibility that the award heretofore made may be void ab initio and that a party or various parties may be disqualified by reason of misconduct to receive" such award. The Commission was instructed "to report its findings to this Court and recommend to this Court such disposition of these appeals as seems to it necessary or desirable in view of its findings of fact . . . ." "Pending receipt of the[se] findings and report of the Commission" the Court expressly retained jurisdiction over this appeal.

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<sup>1/</sup> FCC's Motion to Remand, page 2, filed herein on March 15, 1958.

In a Petition for Clarification of this order which it filed herein on April 30, 1958, the Commission interpreted this order as authorizing it "in the light of such basic findings as it might make, to reach ultimate findings or conclusions, subject to judicial review," on the remanded issues. The Commission requested that the order be amended so as to provide that the remand would not "preclude the Commission, on the basis of the findings of fact it makes in the evidentiary hearing, from setting aside the basic grant" if it resolved these questions in the affirmative. (Id. p. 4.)

In its order of May 12, 1958, this Court denied the Commission's motion refusing to make any further amendment or modification of its order of April 17, 1958. The Court did, however, sustain the Commission's interpretation of its order as requiring that in addition to reporting its findings on the evidence adduced, the Commission also report what order it proposed to issue on the basis of these findings and "make recommendations to the court with respect to the disposition of the present appeal in the light of its findings and of its proposed order or orders." (Emphasis supplied.)

On May 28, 1958, the Commission convened a hearing before a specially appointed Examiner to take testimony on the four specific issues set forth in this Court's remand order of April 17, 1958.<sup>2/</sup> On July 14, 1960, the Commission issued a decision on the remanded issues which purported to adopt the findings and conclusions of its Examiner, Judge Horace Stern. But instead of following the Examiner's recommendation that the original award be set aside, and that thereafter a comparative

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<sup>2/</sup> Commission's Report of Progress filed herein on May 29, 1958.

hearing be held in which the conduct of the parties disclosed by this record would reflect adversely on them, the Commission has presented this Court with what it describes as "a final order granting one and denying other broadcast applications."<sup>3/</sup>

In its Final Report and Recommendation to this Court filed on July 22, 1960, the Commission now suggests to this Court that this decision granting Channel 10, Miami, the channel under consideration in this appeal, to a different applicant, constitutes a new final order reviewable only upon a new appeal. Instead of filing the transcript of the testimony which Judge Stern took pursuant to this Court's order of April 17, 1958, which would enable this Court to decide this appeal and determine whether it should approve the Commission's recommendation or adopt Judge Stern's recommendation or to decide for itself what legal consequences flow from the facts adduced, the Commission recommends that "the instant appeals be held in abeyance . . . ."

In the discussion which follows, we shall show:

1. That in view of its own prior rulings and decisions governing the hearing of the remanded issues, the telescoped procedure now recommended by the Commission constitutes a violation of due process;
2. That under the terms of this Court's remand the Commission had no jurisdiction to enter any final order setting aside or superseding the authority under review;
3. That instead of curtailing appellate review as the Commission recommends in this case, the nature of the issues themselves and the

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<sup>3/</sup> FCC's Final Report and Recommendation filed herein on July 22, 1960, page 2.

Commission's own role in the improprieties disclosed, requires that the Commission's supplemental findings and conclusions be promptly reviewed by this Court in the light of the augmented record.

**I. THIS COURT SHOULD DIRECT THE FCC TO VACATE ITS PURPORTED FINAL ORDER OF JULY 14, 1960**

**A. In View Of Its Own Prior Rulings And Decisions Governing The Hearing Of The Remanded Issues, The Telescoped Procedure Now Recommended By The Commission Constitutes A Violation Of Due Process**

The Commission's attempt to telescope this proceeding and make a new award of Channel 10 before this Court has approved the Commission's recommendation to set aside the existing award, is contrary to its own construction of the Court's remand order and the notice upon which this hearing was held. From the date of the Commission's original motion to remand this case up until the issuance of its decision of July 14, 1960, all parties proceeded in reliance upon the clear understanding that the Commission could not and would not award the channel to a different applicant until after it had reported back to this Court and until this Court had decided whether to affirm or reverse the various Commission orders under review in this appeal.

When the original Congressional charges regarding FCC proceedings were first brought to this Court's attention, the appellant, WKAT, asked the Court to reverse the decision below forthwith and remand the case with instructions to the Commission to make a new award to one of the other existing applicants.<sup>4/</sup> The Commission opposed this request.

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<sup>4/</sup> WKAT's Reply to Motion to Remand and Countermotion to Reverse and for other relief.

In its Reply and Answer to this Motion the Commission pointed out to the Court that prior to the Court's final determination of the appeals before it, the Court would not be in a position to determine whether subsequent proceedings looking toward a new award should be confined to the original record or whether the public interest required the admission of new applicants.<sup>5/</sup> Accordingly, on April 18, 1958, this Court denied WKAT's Motion.

The hearing before the Examiner was confined to the four issues sent to the Commission by this Court in its remand order of April 17, 1958, and restated by the Commission's order of May 28, 1958, giving notice of that hearing.<sup>6/</sup> This notice did not put in issue the disposition of Channel 10, Miami, in the event the Commission should recommend that its award to Public Service be set aside.

At the conclusion of the hearing before Judge Stern, however, one of the applicants, North Dade Video, Inc., petitioned the Commission to make a final disposition of the four pending applications at the same time that it considered the issues on which testimony had been taken pursuant to this Court's remand order. In its opposition to this petition the Commission's General Counsel observed that "the primary reason advanced by North Dade for its request is that by such an amended procedure two steps now necessary before the Commission to ultimately conclude this proceeding can be telescoped into one . . . ." The FCC's counsel opposed this suggestion because the Court "neither contemplated

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<sup>5/</sup> Reply and Answer of FCC filed herein April 11, 1958, p. 11.

<sup>6/</sup> A copy of that order is attached to the FCC's Report of Progress, filed herein on May 29, 1958.

nor authorized the Commission to perform the telescoping function which North Dade now seeks to accomplish by Commission action." He went on to explain that "the court in retaining jurisdiction of the appeals and asking for the Commission's recommendation as to their disposition was obviously deferring consideration of the question raised in argument before it as to the extent to which it might be appropriate for the court to exercise its powers under §402(h) of the Act to authorize the Commission . . . to reopen the comparative proceeding for consideration of new evidence concerning any of the existing applicants or for reception of new applications."<sup>7/</sup>

After consideration of the foregoing argument of its General Counsel and the briefs submitted by the other parties to the proceeding,<sup>8/</sup> the Commission denied the North Dade motion, holding as follows:

"In our judgment the remand order of the Court of Appeals does not authorize an expansion of this proceeding beyond the issues set forth therein, i. e. (1) 'whether the prior award in this proceeding may be void ab initio or voidable,' and (2) 'whether a party, or various parties, may be disqualified by reason of misconduct to receive an award . . . ' The court specifically retained jurisdiction of the appeals from the Commission's decision in this proceeding and directed the Commission to 'report

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<sup>7/</sup> Opposition of FCC General Counsel to Petition of North Dade for Modifying Procedures, etc., filed with the Commission Jan. 5, 1959, p. 3.

<sup>8/</sup> See also, Opposition of the United States, filed with the Commission on Jan. 5, 1959, in which the Attorney General stated his understanding that the Court's remand order "simply directs the Commission to hold hearings on very limited issues" and that the Commission report its findings and recommendations to this Court. The Court directed the Commission to decide only whether any Commissioner or applicant should be disqualified and whether the grant made should be voided. "Not envisioned at this stage of the proceeding, was any reevaluation of the comparative qualifications of applicants not disqualified." (p. 3)

its findings . . . and recommend to [the] court such disposition of these appeals as seems to it necessary or desirable in view of its findings of fact.' While the court approved the Commission's interpretation of the above language set forth in its Petition for Clarification as authorizing the Commission, 'in the light of such basic findings as it might make, to reach ultimate findings or conclusions, subject to judicial review, as to whether the grant should be set aside . . . and also as to whether one or more of the parties should be disqualified from further comparative participation in the proceeding . . . ' we find no indication that the court intended to authorize the Commission to take final action on the pending applications in this proceeding at the same time that it considers the issues set forth in the remand order."<sup>9/</sup> (Emphasis supplied.)

In keeping with the above understanding of the Court's remand order, the Commission also denied a petition filed by one Elzey Roberts for leave to file an application for Channel 10 and to intervene in the remand proceeding. In a motion to strike that petition, counsel for L. B. Wilson, Inc., the beneficiary of the Commission's purported award of July 14th, stated its own understanding as to the scope of the matter pending before the Commission on remand as follows: "The only proceeding pending before the FCC is a limited one, to be held under the supervision of the court, and for the sole purpose of answering four questions, not for the purpose of making any grant of a construction permit."<sup>10/</sup> Having thus avoided comparative consideration with a new applicant Wilson may not now be heard to say that the proceeding was held for the purpose of making such an award.

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<sup>9/</sup> Memorandum Opinion and Order of the FCC dated Mar. 4, 1959. A copy of the order is attached hereto as Appendix A.

<sup>10/</sup> Motion of L. B. Wilson, Inc., to strike petition of Elzey Roberts filed with the Commission December 11, 1958, page 2.

In view of the foregoing decisions of the Commission, and the positions taken by its counsel, by the Attorney General, and by L. B. Wilson, Inc., it is clear that there was no misconception as to the limited purpose of the remanded hearing. The efforts of WKAT and North Dade to have the Commission broaden the scope of that proceeding so as to make a final order setting aside Public Service's authority and granting it to another applicant was unequivocally rejected by the Commission. At no time did the Commission give notice that it proposed to enter a final order making a new award of the authority at issue in this proceeding.

The FCC's decision of July 14th thus violated the most elementary requisite of a fair hearing. "The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposite party . . . Those who are brought into contest with the Government in a quasijudicial proceeding . . . are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command." <sup>11/</sup>

If the Commission's decision of July 14, 1960, were an effective final order as a matter of law, it would clearly be reversible error; but since, as is demonstrated in the succeeding section, the Commission had no jurisdiction to enter such an order in the first instance so long as this appeal was pending, its purported final order is void ab initio.

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<sup>11/</sup> Morgan v. United States, 304 U. S. 1, 18. Cf. L. B. Wilson, Inc. v. FCC, 170 F. 2d 793 (D. C. Cir. 1948). See also Administration Procedure Act §5, 5 U. S. C. §1005.

B. Pending The Determination Of This Appeal The Commission Had No Jurisdiction To Set Aside Or Supersede The Order Under Review And Its "Final Order" Of July 14, 1960, To That Effect Is, Therefore, Void Ab Initio

Notwithstanding its own prior construction of this Court's order of April 17, 1958, as "not intended to authorize the Commission to take final action on the pending applications in this proceeding" the Commission has now undertaken to enter such a final order. In so doing, the Commission proceeds as though the Court no longer had jurisdiction in this appeal and as though it had already authorized the Commission to set aside its original grant and make a new award reviewable in a new appeal. While this was the nature of the remand order in all of the cases on which the Commission relies in its Report of July 22, 1960, it was not the procedure which this Court ordered in this case.

If this Court had in fact vacated the decision under review or reversed it and remanded the matter to the Commission for further proceedings as it did in the Shotwell<sup>12/</sup> and Southland<sup>13/</sup> cases there would be no question but that the Commission's decision would be a final order from which a new appeal could be taken. If the Court had followed the procedure in Ford v. NLRB<sup>14/</sup> and remanded the case with directions to the Commission itself to set aside the order under review and proceed to a reconsideration of the case, there would be no question that the same consequences would ensue. But this Court did not vacate, did not reverse,

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<sup>12/</sup> U. S. v. Shotwell Mfg. Co., 355 U. S. 233.

<sup>13/</sup> Southland Television Co. v. FCC, 266 F. 2d 686 (D. C. Cir. 1959).

<sup>14/</sup> Ford v. NLRB, 305 U. S. 364.

and did not direct that the Commission set aside the order here under review.

Similarly, if this Court had adopted the procedure which it followed in the Fleming case and remanded the entire matter under appeal to the Commission, this appeal would have been terminated and this Court's jurisdiction over further proceedings in the case would have ended. The review of any subsequent action by the Commission in such a context would have required a new appeal. In the Fleming case, the Court explicitly remanded the case to the Commission with directions to reopen the record to the extent necessary to determine the effect of appellant's death "and with authority to revise its decision on appeal here."<sup>15/</sup> No report or recommendation to the Court was ordered by the Court and the Court's jurisdiction over the appeal ended with the remand.

In the case at bar, the Court did none of those things. Cognizant of the fact that it was the propriety of the Commission's own conduct and that of its individual members that was at the heart of the remanded issues, this Court did not give the Commission the same broad authority in the determination of these issues as it would have done in the routine case. It therefore, adopted the special procedure whereby it remanded to the Commission the function of taking testimony and reporting its findings and conclusions thereupon, but with ultimate jurisdiction over the disposition of the matter on appeal remaining with the Court.

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<sup>15/</sup> Fleming v. FCC, 225 F. 2d 523, 526 (D. C. Cir. 1955). See also Footnote 5 of that opinion.

Ordinarily, where an appellate court remands a case, with or without a decision on the merits, the entire case goes back to the tribunal from which the appeal was taken and the appellate proceeding is closed. In the event that review is sought of the lower court's subsequent action, a new appeal lies. The case at bar, however, is different from the ordinary remand in that this Court retained jurisdiction over the case and merely remanded the matter for the Commission's findings, conclusions and recommendations on certain supplemental issues.

Unlike the remand in the Fleming case, no authority was given the Commission to set aside or supersede its decision while it was under consideration in this appeal. Such authority would have been inconsistent with this Court's retention of jurisdiction and the Commission's request for a modification to that effect was denied by the Court's order of May 12, 1958.<sup>16/</sup> Hence, none of the cases relied on by the Commission's Report and Recommendation is in point.

In the present posture of this case, the Commission is in the same position as the NLRB found itself in Ford v. NLRB, 305 U. S. 364, prior to the termination of that appeal. That case involved an appeal by

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<sup>16/</sup> The Commission seeks justification for its attempt to oust this appeal by arguing that since it was not acting as a "special master" on the remand, it had authority to make a final order independently appealable as though it were not intended to supersede an earlier order still pending on appeal before this Court. The Commission itself created the straw man of the special master and its dissipation of that straw man proves nothing. Certainly the tribunal which rendered the decision under review cannot be described as a special master when the appellate court remands certain issues for the taking of further evidence and making of proposed findings and conclusions thereupon. But it does not follow from this negative premise that the Commission was given the same scope and authority under this Court's remand order as it would have had absent the continued pendency of the appeal.

Ford from an order of the National Labor Relations Board and a petition by the Board for enforcement of the same order. After the appeal and petition were filed, the Supreme Court's decision in Morgan v. United States, 304 U.S. 1 was handed down, making it clear that the hearing conducted by the Board was defective for failure of the Board to issue Proposed Findings and that its decision was, therefore, reversible error.

Accordingly, on May 2, 1938, the Board moved for, and was granted leave to withdraw its Petition for Enforcement and the transcript of the record on appeal. Thereafter, the Board served notice on Ford of its intention to vacate its findings and order under review and purported to withdraw its Petition for Enforcement. Finally, on June 10, 1938, the Court of Appeals entered an order remanding the case to the Board "for the purpose of setting aside its findings and order of December 22, 1937, and issuing proposed findings, and making its decision and order upon a reconsideration of the entire case." 305 U.S. 364, 367.

On certiorari, the Supreme Court held that so long as the appeal was pending, the Court of Appeals "was possessed of exclusive jurisdiction of the administrative proceeding 'and of the question determined therein' . . . . and thus of the power of 'enforcing, modifying and enforcing as so modified or setting aside in whole or in part the order of the Board'." 305 U.S. 364, 371. The Court went on to hold that from the time that jurisdiction attached upon the filing of the record on appeal, until it was terminated upon the Court's remand order, the Board had no power to enter any order affecting the case. It held that "neither the

order of May 5th granting the Board permission to withdraw its petition, nor the attempt of the Board on May 6th to resume control of the administrative proceeding, nor the Board's withdrawal of its petition on June 2nd, accomplished anything of substance, as the Board, in the presence of the Court's continued and exclusive jurisdiction, remained without authority to deal with its order." 305 U.S. 364, 372.<sup>17/</sup>

Thereafter the entire case being remanded with specific instructions to set aside the order under appeal, and jurisdiction over further proceedings not being reserved by the Court of Appeals, the Board had complete authority to enter a new final order. It was under no duty to report back to the Court of Appeals and any new order that it entered was subject to a new appeal.

Under the remand in the case at bar, however, this Court did retain jurisdiction and the Commission, "in the presence of the Court's continued and exclusive jurisdiction, remained without authority to deal with its order." If the order under appeal is to be set aside or modified or superseded in any way, it can only be done by order of this Court made in this appeal.

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<sup>17/</sup> See also Berman v. United States, 302 U.S. 211; Keyser v. Farr, 105 U.S. 265, and Draper v. Davis, 102 U.S. 370.

II. THIS COURT SHOULD MOVE FORWARD WITH THE  
PENDING APPEALS

- A. Instead Of Curtailing Appellate Review As The Commission Recommends, The Nature Of The Remanded Issues Themselves And The Commission's Own Role In The Improprieties Disclosed, Requires That The Commission's Supplemental Findings And Conclusions Be Promptly Reviewed By This Court

Unlike the routine appeal from an administrative agency which reaches this Court, the issue here is not merely whether the decision was correct as a matter of law as applied to the facts of the case. The issues remanded by this Court's order of April 17, 1958, require the Commission to inquire into the integrity of its own processes. The first question remanded was whether the award on appeal was void ab initio because it was rendered by a tribunal whose judicial integrity had been compromised. Significantly, the Commission does not address itself to this question, let alone answer it. It has managed to avoid consideration of the propriety of the conduct of its own members by considering only what the applicants attempted rather than what the Commission did or did not do. Accordingly, its decision does not consider the extent to which the Commission itself was responsible for the deterioration of administrative standards disclosed by this record or the extent to which any of its members may have been influenced by the allegedly improper conduct of the applicants.

The Commission adopted for the most part Judge Stern's findings, but in disqualifying three out of the four applicants in this proceeding, it rejected his conclusion. Judge Stern held that the award to Public Service was voidable and should be set aside because of a

Commissioner's failure to disqualify himself and because "under such circumstances his influence in turn upon the other members of the Commission cannot be measured and determined." Judge Stern, accordingly, recommended that the grant to Public Service should be set aside and that the case be set down for a further comparative hearing in which the improper conduct of all the parties to this proceeding disclosed by this record would "reflect adversely upon such applicants from a comparative standpoint, and, accordingly . . . be considered by the Commission along with all other relevant factors, as weighing against them, to the extent determined as to each such applicant, in connection with any award of the construction permit that may hereafter be made." Unlike the Commission, however, Judge Stern held that in such hearing, "none of the applicants in these proceedings is automatically disqualified to receive a grant of its application."<sup>18/</sup>

Judge Stern, the former Chief Justice of the Supreme Court of Pennsylvania, who heard the testimony, was presumably selected for this important assignment not only because he was a distinguished jurist, but because he was not a participant in the events reported. As a disinterested outsider, Judge Stern was able to bring to this case a detachment which the Commission itself, and its staff, did not and could not possess.

As the trier of fact not only in this case but in the numerous other proceedings involving the same kind of improprieties during the same period, Judge Stern was undoubtedly aware of the fact that the

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<sup>18/</sup> Initial Decision of Hearing Examiner Horace Stern, p. 21. A copy of that decision has been filed herein with the FCC's Final Report and Recommendation of July 22, 1960.

ex parte conduct disclosed by this record was not an isolated phenomenon involving a single applicant in a single proceeding. <sup>19/</sup> Indeed, as this Court is well aware, the frequency which which these ex parte approaches were made in the major cases pending before the Commission during the period in question established a "pattern of influence" <sup>20/</sup> which affected the entire fabric of the Commission's adjudicatory process.

Judge Stern recognized that "if the case were one of ordinary litigation," the litigant would be estopped to obtain judicial relief. <sup>21/</sup> But where practice is so prevalent as to form a pattern and where no remedial action is taken by the Commission, <sup>22/</sup> the same considerations do not apply. Under such circumstances, to disqualify everybody who played the game under the former ground rules would serve no real

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<sup>19/</sup> Cf. WOKO v. FCC, 329 U.S. 223, and the other cases cited in Footnote 1 of the Commission's Decision of July 14, 1960.

<sup>20/</sup> FCC's Decision of July 14, 1960, In re WHDH, et al. (20 RR 395, 404), on remand in Massachusetts Bay v. FCC, 261 F.2d 55. See also hearings on these same ex parte issues in proceedings pursuant to this Court's remand in Sangamon Valley Television Corp. v. FCC, 269 F.2d 2217; WORZ v. FCC, 268 F.2d 889; WIRL v. FCC, 274 F.2d 83; In re Biscayne Television Corp., 18 RR 339; and the FCC decision of July 29, 1960, reopening the Jacksonville Channel 12 proceeding (FCC Dockets 10833-5) for hearing on these same issues.

<sup>21/</sup> Initial Decision, p. 16.

<sup>22/</sup> By absolutely disqualifying three out of four applicants, the Commission now seeks retroactively to vindicate its own failure to prevent or remedy these abuses in the first instance. If the Commission had exposed ex parte representations like these at the time they occurred, if it had adopted rules clearly defining the areas in which informal contacts with members of the Commission were improper and if it had put applicants before it on notice of the consequences that would attach to such actions, its present embarrassment could have been prevented. Cf., Ex Parte Contacts with the Federal Communications Commission, 73 Harv. L. R. 1178, 1187, 1193. In the absence of Commission action, Congress is dealing with the subject. Ibid., footnote 52, p. 1186.

therapeutic purpose and, as Judge Stern realized, the ultimate losers would be the American public. As stated in his initial decision:

"Here, however, the situation is different in that there is a paramount public interest involved, and where that is the case, the clean hands doctrine does not necessarily repel the wrongdoer to the extent of making him an absolute pariah in all subsequent proceedings but may, and in proper cases should, be relaxed if it be concluded that the public interest is better served thereby." 23/

We respectfully submit that the Commission's rejection of Judge Stern's considered judgment warrants close review.

**B. Unless A Transcript Of The Commission's Hearing On The Remanded Issues Is Transmitted To This Court, It Cannot Decide The Important Questions Presented By These Appeals.**

With its Report and Recommendation of July 22, 1960, the Commission filed with this Court a copy of Judge Stern's Initial Decision and its own decision of July 14, 1960. It did not file a transcript of the testimony taken before Judge Stern on the remanded issues. As a result, evidence pertinent to this Court's consideration of the Commission's action has not yet been made available for the Court's consideration. When the record made on the remanded issues is filed with the Court, it will be apparent that if the Commission had applied to L. B. Wilson, Inc., the same standard that it applied to the other applicants in this proceeding, Wilson would also have been disqualified.

Although this record shows that on at least two occasions a United States Senator, acting on behalf of L. B. Wilson, Inc., discussed this case off the record with Commissioner Mack, the Commission has held

23/ Initial Decision, p. 16.

that the evidence "does not compel a finding or conclusion that the approach of Senator Smathers, as executor of L. B. Wilson's will was improper . . . ." <sup>24/</sup>

The only distinction between the ex parte contacts involving Wilson and those attributed to the other Channel 10 applicants is that the Senator, as Executor of L. B. Wilson's estate, was acting as principal rather than as agent. As the United States Senator who "had sponsored Mr. Mack for his appointment to the Federal Communications Commission," <sup>25/</sup> the Executor had no need to retain anyone else to approach the Commissioner on behalf of the Wilson estate.

Although Wilson's counsel in this proceeding filed no exceptions to Judge Stern's decision, Senator Smathers wrote a letter dated January 20, 1959, to the Chairman of the Commission, taking exception to what he termed "a finding of fact that I exerted improper influence in behalf of an applicant." <sup>26/</sup> What Senator Smathers apparently referred to was Judge Stern's statement that "one would have to be quite naive to accept as a fact that [he] urged him [Commissioner Mack] only to decide the case on the merits -- a request that would properly have merited resentment as implying a lack of confidence in his judicial integrity. Mack certainly knew what was being asked of him." <sup>27/</sup>

<sup>24/</sup> Ruling on Public Service's Exception No. 8, FCC Decision of July 14, 1960, p. 3. See also letter of March 5, 1958, from Senator George Smathers to Hon. Oren Harris, and letter of January 20, 1959, from Senator Smathers to Chairman Doerfer of the Federal Communications Commission. Copies of these letters are attached hereto as Appendix B.

<sup>25/</sup> Initial Decision, p. 5.

<sup>26/</sup> Senator Smathers' letter to the Chairman of the FCC referred to at Footnote 24, supra.

<sup>27/</sup> Initial Decision, p. 6.

When a United States Senator has a pecuniary interest in a matter pending adjudication he is not immune from the rules governing participants in a judicial proceeding. Senator Smathers had notice that his conduct was under scrutiny in these remand proceedings and he could have testified as a witness. Instead he chose to defend his conduct by an unsworn letter to the Chairman of the Commission. <sup>28/</sup>

By making an exception for Senator Smathers' intercession on Wilson's behalf, the Commission is establishing a dangerous precedent whereby applicants with influential government officials as stockholders or officers are exempted from the law governing applicants who lack such highly placed principals.

A comparison of the Commission's decision of July 14, 1960, in this case and its WHDH decision of the same day (supra, footnote 20) does not provide any consistent standard of eligibility. All that can be distilled from these decisions is that when applicants attempt to influence the Commission's decision by the intercession of agents, they are absolutely disqualified from further consideration. When they attempt such influence by ex parte approaches made by their own officers or principal stockholders, they are comparatively penalized, and not absolutely disqualified. <sup>29/</sup> But when the person making the ex parte approach is both

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<sup>28/</sup> Copies of the letter were sent belatedly to all other parties and this was clearly not the kind of ex parte approach to the Commission made by Senator Smathers and others in the course of the original proceeding. However, it was an extra-judicial effort by Senator Smathers to lay certain facts before the Commission without subjecting himself to cross-examination. Moreover, the letter was written at a time when Judge Stern's Decision was under consideration by the Commission and was clearly intended to influence the Commission's action on Judge Stern's decision.

<sup>29/</sup> FCC decision of July 14th in re WHDH, footnote 20, supra.

a principal in the applicant and an influential government official, the applicant is neither penalized nor disqualified; he gets the award.

Without the record of the remanded proceedings at its disposal, it is impossible for the Court to consider whether the Commission applied the same standard of conduct to all applicants in this proceeding. Without that record, it is impossible for this Court to decide even the underlying question which necessitated its remand, i. e. , whether the Commission's award to Public Service should be affirmed or set aside. <sup>30/</sup>  
The Commission should be directed to transmit that record forthwith.

C. In Its Effort To Vindicate Its Own Reputation, The Commission Would Award This Channel By Default To The Weakest Existing Applicant, Without Affording Any Opportunity For Consideration Of The Qualifications Of New Applicants.

In its haste to award the channel involved in these appeals to L. B. Wilson, Inc. , the Commission has arrived at the very result which Judge Stern had warned against. In no way can the Commission's purported

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<sup>30/</sup> Consideration of the record made on remand will show that Public Service was awarded its permit for Channel 10 on the merits of its application in instructions issued by the Commission to its Opinions and Review staff at a meeting at which Commissioner Mack was not present and did not participate. In view of the fact that the decision had already been made without Mack's vote, does his participation in the subsequent order adopting this decision without modification require that it now be set aside? The only criticism of Public Service's qualifications in the Commission's decision is based on its unsuccessful attempt to retain Whiteside. The Examiner found no actual agency relationship between Public Service and Whiteside and he held that Public Service did not know of the financial relationship between Whiteside and Mack. (Initial Decision, p. 12.) Whether this tenuous connection on Public Service's part with the misconduct of Commissioner Mack justifies setting aside its grant is another substantial issue to be decided on this appeal. Under the Commission's recommended procedure, it would never be heard by this Court.

award to L. B. Wilson, Inc., be reconciled with the public interest. L. B. Wilson, Inc., was admittedly the least qualified of the four applicants in this proceeding.

In its original decision of February 8, 1957, the Commission found Wilson to be "competitively weak in several significant elements of comparison and . . . not equal comparatively to the other applicants." (R. 7783.)<sup>31/</sup> This conclusion was made on the basis of a record which is now six years old and there is nothing in that record which would support any inference that Wilson is any better qualified today. The only expression of more recent date with regard to Wilson's ability to operate a television station is Senator Smathers' remark that since the application "was inextricably bound up . . . in the personality and ability" of L. B. Wilson, who had since died, this application would "fall of its own weight."<sup>32/</sup>

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<sup>31/</sup> Examiner Sharfman, whom no one has accused of improper conduct, recommended against a grant to Wilson and Wilson had been able to persuade only one Commissioner, Hyde, that this recommendation should be ignored. It is significant that Commissioner Hyde is the only one of the Commissioners voting to award the channel to Wilson who was a member of the Commission when the orders at issue here were made. If the other members voting for Wilson had any knowledge of the reasons which impelled the other Commissioners to vote against Commissioner Hyde's original position, it was clearly not obtained from any consideration of the arguments made on the exceptions to Examiner Sharfman's Initial Decision. These Commissioners, Ford and Cross, did not even hear those arguments. The only remaining Commissioner, Lee, who did participate in the original proceeding, disagreed with Commissioner Hyde as to the propriety of the award to Wilson. This disagreement emphatically underscores the need for a fresh consideration of the comparative merits of applicants before an award of this valuable public resource is made to any applicant.

<sup>32/</sup> Letter dated March 5, 1958, from Senator Smathers to Hon. Oren Harris, supra, footnote 24.

L. B. Wilson, Inc. , itself did not have enough faith in the record it made at the comparative hearing to file an appeal from the Commission's decision of February 8, 1957. Yet this is the applicant to which the Commission has assigned the responsibility of providing television service for the Miami area.

The Commission recognizes the infirmity of its own decision. It admits the dubious validity of its award to Wilson by this "type of award by default" and it therefore suggests that it may make another award after four months of operation by Wilson.

The Department of Justice previously recommended that in the event the Commission disqualified three out of four applicants in this proceeding, "it would be appropriate for the Commission to make timely application to the Court of Appeals for an order pursuant to §402(h) of the Communications Act that additional parties be permitted to file applications for Channel 10 in Miami. <sup>33/</sup> However, instead of applying to this Court for authority to set aside its existing grant and to reopen the record so as to admit new applicants, the Commission purports to award the channel ipse dixit by the simple process of elimination of existing applicants.

Nowhere in its decision of July 14 or its Report to this Court does the Commission disclose its intentions with regard to Channel 10 at the expiration of Wilson's four-month license. The Commission does

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<sup>33/</sup> Opposition of the United States to Petition of North Dade Video, Inc. , for Modifying of Procedures and Other Relief. See also FCC's denial of Elzey Roberts' Application for Leave to Intervene in this proceeding on the ground that such application was premature until the Commission reported back to this Court and until this Court made the necessary determination under §402(h). Supra, p. 8.

not state whether or not it intends to open the channel for a comparative hearing of new applications at that time. Considering the importance of its decision and its impact upon the matter at issue in this appeal, "the Commission's utterances in support of its action are indeed laconic."<sup>34/</sup> Its silence on this point is particularly surprising in view of this Court's decision in the Community Broadcasting case, supra, in which the Court held, as recently as February 8th of this year, that "the grant of temporary authority to one of several competing applicants before there has been any hearing is pregnant with danger to truly comparative consideration" because such a grant "has an inevitable tendency to discourage competitors for construction permits."<sup>35/</sup>

The Court recognized in its opinion in that case that where a community stands to lose an existing service, the public interest may in some circumstances overbalance these disadvantages. But in this case no criticism has been heard on the quality of Public Service's existing operation. In fact, the Commission has previously pointed out to this Court that Public Service's television station "has been built and put into operation at considerable expense and, more important, the public is presently enjoying a valuable television service from this operating station." It recognized that "it would clearly be unfortunate . . . to require the precipitate termination of this valuable existing service."<sup>36/</sup> Yet the Commission now purports to order this existing service off the air

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<sup>34/</sup> Community Broadcasting Co., Inc. v. FCC, 274 F. 2d 753 (Nos. 15313 and 15314 in this Court, decided Feb. 8, 1960.)

<sup>35/</sup> 274 F. 2d 753, 758.

<sup>36/</sup> Reply and Answer of Federal Communications Commission re Motion to Remand filed herein on April 11, 1958, pp. 9-10.

on September 15, 1960, before this Court may consider the propriety of the Commission's Order.

Under the procedure which the Commission now proposes, the public will not only lose this valuable existing service but it will suffer from the disruption of service caused by a changeover from Public Service to Wilson, and a subsequent changeover to a third holder of temporary authority, all before this Court is given the opportunity to hear and decide these appeals.

#### CONCLUSION

The Commission's purported action removing Public Service from the air before this Court can determine whether its authority should be set aside cannot be reconciled either with due process or the public interest. Short-cutting or obliterating constitutional and statutory requirements does not restore public confidence in the Federal Communications Commission's processes but merely compounds the original defect in its procedures which necessitated this remand. Public Service therefore respectfully requests that this Court (1) direct the Federal Communications Commission to vacate its purported final order of July 14, 1960, and to transmit to this Court forthwith the record of its hearings on the supplemental issues remanded by this Court's order of April 17, 1958; and (2) direct the parties to file supplemental briefs addressed to these supplemental issues within a specified time.

Respectfully submitted,

PUBLIC SERVICE TELEVISION, INC.

By       /s/ Norman E. Jorgensen        
Norman E. Jorgensen

By       /s/ William I. Denning        
William I. Denning

Attorneys for Public Service  
Television, Inc.

Dated: August 12, 1960

CERTIFICATE OF SERVICE

I, Norman E. Jorgensen, hereby certify that on this 12th day of August, 1960, I mailed true copies of the foregoing Motion to the following:

Paul A. Porter, Esq.  
1229 19th Street, N. W.  
Washington, D. C.  
Counsel for WKAT, Inc.

Harold L. Russell, Esq.  
825 Citizens & Southern Bank Building  
Atlanta 3, Georgia  
Counsel for Eastern Air Lines, Inc.

Paul M. Segal, Esq.  
816 Connecticut Avenue, N. W.  
Washington, D. C.  
Counsel for L. B. Wilson, Inc.

Daniel R. Ohlbaum, Esq.  
Department of Justice  
Washington, D. C.  
Attorney for the United States

A. Harry Becker, Esq.  
Pennsylvania Building  
Washington 4, D. C.  
Counsel for North Dade Video, Inc.

John L. FitzGerald, Esq., and  
Max D. Paglin, Esq.  
Federal Communications Commission  
Washington, D. C.

/s/ Norman E. Jorgensen  
Norman E. Jorgensen

Before the  
 FEDERAL COMMUNICATIONS COMMISSION  
 Washington 25, D. C.

FCC 59-184

69947

In re Applications	)	
	)	
WKAT, INC.	)	DOCKET NO. 9321
Miami Beach, Florida	)	File No. BPCT-399
	)	
L. B. WILSON, INC.	)	DOCKET NO. 10825
Miami, Florida	)	File No. BPCT-1645
	)	
NORTH DADE VIDEO, INC.	)	DOCKET NO. 10826
Miami, Florida	)	File No. BPCT-1685
	)	
PUBLIC SERVICE TELEVISION, INC.	)	DOCKET NO. 10827
Miami, Florida	)	File No. BPCT-1792
	)	
For Television Construction	)	
Permits (Channel 10)	)	

MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Lee absent; Commissioner Craven not participating.

1. The Commission has before it for consideration a Petition for Modifying of Procedures and Other Relief filed December 24, 1958 by North Dade Video, Inc. (North Dade); a response thereto filed December 31, 1958 by WKAT, Inc.; oppositions to the North Dade petition filed by the Commission's Office of the General Counsel (General Counsel), the Attorney General of the United States (Attorney General) and Public Service Television, Inc. (Public Service); a reply filed January 9, 1959 by North Dade to the oppositions of the General Counsel, the Attorney General and Public Service, and comments of L. B. Wilson, Inc. filed January 12, 1959.

2. This proceeding was initiated pursuant to an Order of the Court of Appeals for the District of Columbia Circuit issued April 17, 1958 granting a Motion to Remand filed by the Commission. The Order directed the Commission to proceed "forthwith" to hold an evidentiary hearing "concerning [the] possibility that the award heretofore [made] may be void ab initio or voidable and that a party, or various parties, may be disqualified by reason of misconduct to receive an award of a television construction permit . . . ." and "report its findings of fact to this court and recommend to this court such disposition of these appeals as seem to it necessary or desirable in view of its findings of fact." <sup>1/</sup> The Court's order provided that ". . . in connection with that

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<sup>1/</sup> WKAT, Inc. appealed from the Commission's decision and the Commission's order denying petitions for reconsideration filed by North Dade Video, Inc. and L. B. Wilson, Inc. (Continued on next page.)

hearing the Commission shall make, at least in part, but not limited to, findings of fact . . ." on such issues. On May 28, 1958 the Commission issued its Order setting the matter for hearing on the issues set forth in the Court's remand order. The Examiner's Initial Decision was issued on December 1, 1958, exceptions to the Initial Decision have been filed and the matter is now scheduled for Oral Argument before the Commission en banc on April 23, 1959.

3. The North Dade petition urges the Commission to make a final disposition of the four pending applications in this proceeding at the same time that it considers the issues included in the further hearing pursuant to the order of remand issued by the Court of Appeals. It argues that "assuming, and we must, that the grant to Public Service would be set aside, . . ." it will be necessary for the Commission to make a final disposition of this proceeding at some future date unless the procedure which it suggests is adopted; that no matter what conclusions the Commission may ultimately reach in the final resolution of this case, no interest can be adversely affected by having that conclusion adopted at the same time as the issues in this further hearing are resolved and that all of the parties will benefit and the public interest will be best served by resolving the question raised in this proceeding as expeditiously as possible. The Attorney General and the General Counsel take the position that there may be a serious question whether the remand order of the Court of Appeals authorizes the Commission to go beyond precise issues there designated and that, apart from the question as to the Commission's power to broaden the issues, the North Dade proposal would unnecessarily delay the promptness of decision on remand issues which the remand order, as well as the public interest, demand. Public Service opposes the petition on the ground that while the Commission was not limited to issues suggested to it by the court it nevertheless limited the hearing to the minimum issues contained in the court's remand order and, accordingly, in the absence of a timely request for modification or enlargement of the issues, the only proceeding pending before the Commission is limited thereby and that the questions propounded by the court must be answered and the pending court appeals resolved before any further proceeding may commence looking toward the possible award of a construction permit for Channel 10. In reply North Dade claims that its request is not inconsistent with the court's order; that the arguments of the General Counsel overlook the fact that the court's order provided that "in connection with the hearing the Commission shall make, at least in part but not limited to, findings of fact" on such issues and that this language and the court's subsequent order on the Commission's petition for clarification<sup>2/</sup> were intended to leave the Commission free to adopt such procedures as it might deem appropriate for the disposition of the comparative proceeding.

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1/ Continued - Eastern Airlines, Inc. has filed an appeal from the Commission's order denying in part its petition to intervene in this proceeding.

2/ A Petition for Clarification was filed by the Commission on April 30, 1958 and was denied by the Court on May 12, 1958 on the grounds that the petition indicated a correct understanding of the procedures contemplated by the Court.

5. In our judgment the remand order of the Court of Appeals does not authorize an expansion of this proceeding beyond the issues set forth therein, i. e. (1) "whether the prior award in this proceeding "may be void ab initio or voidable," and (2) "whether a party, or various parties, may be disqualified by reason of misconduct to receive an award . . .". The court specifically retained jurisdiction of the appeals from the Commission's decision in this proceeding and directed the Commission to "report its findings . . . and recommend to [the] court such disposition of these appeals as seems to it necessary or desirable in view of its findings of fact." While the court approved the Commission's interpretation of the above language, set forth in its Petition for Clarification, ". . . as authorizing the Commission, in the light of such basic findings as it might make, to reach ultimate findings or conclusions, subject to judicial review, as to whether the grant should be set aside . . . and also as to whether one or more of the parties should be disqualified from further comparative participation in the proceeding . . ." we find no indication that the court intended to authorize the Commission to take final action on the pending applications in this proceeding at the same time that it considers the issues set forth in the remand order.

6. However, even assuming that the Commission has authority to adopt the procedure suggested by North Dade we believe that such a procedure would unnecessarily delay a prompt resolution of the remand issues required by the court's remand order. In our view the determination as to the further procedures to be followed in this proceeding and, ultimately, the final disposition of the pending applications will be expedited by limiting this proceeding to the issues set forth in the court's remand order. Consideration of the comparative qualifications of the applicants at this stage would unnecessarily complicate the proceedings and would delay rather than expedite an ultimate conclusion to this proceeding.

In view of the foregoing **IT IS ORDERED**, That the above-described petition of North Dade Video, Inc. **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

(SEAL)

Mary Jane Morris  
Secretary

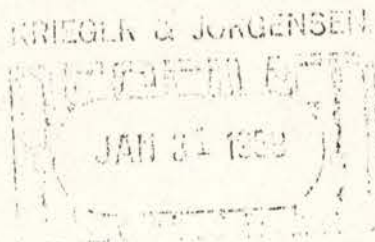
Adopted: March 4, 1959

Released: March 5, 1959

## COPY

January 20, 1959

Mr. John C. Doerfer,  
Chairman  
Federal Communications Commission  
Washington, D. C.



Dear Mr. Chairman:

I feel impelled to bring to your attention, and that of your colleagues, a palpable error contained in the Examiner's Report on the Greater Miami Area Channel 10 case.

I refer specifically to a finding of fact that I exerted improper influence in behalf of an applicant. This erroneous conclusion with respect to my conduct is unjustified, and is not supported by the record nor the evidence.

As you know, I have previously disclosed my full activities in connection with the Channel 10 matter in a statement which I submitted to the Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce. I am attaching hereto a copy of this statement for your convenience.

This matter was never discussed by me in any manner with any member of your Commission now sitting, and you Commissioners are in the best position to know the truth of this assertion. Nor can it be inferred by any reasonable or disinterested person that the two casual conversations which I had with former Commissioner Mack (as fully recounted in the statement which I submitted to the House Subcommittee) had even the remotest effect of exerting or attempting to exert any influence on him in behalf of any applicant in the Channel 10 case. There is no testimony on the part of former Commissioner Mack that the conversations I had with him were designed to accomplish such a purpose.

Judge Horace Stern's finding with respect to me is based solely upon conjecture and suspicion. Your attention is invited to Page 6 of the report where he states:

# COPY

"One would have to be quite naive to accept as a fact that they urged him only to decide the case on the merits, \*\*\*\*\*".

Insofar as this statement refers to me, I respectfully submit that it is an unwarranted, unsupported and patently erroneous conclusion on his part. It is based (by his own words) upon his assumption.

It is an elementary but salutary principle of law that mere suspicion as to what may be, or may not be, in the mind of another cannot be made a substitute for evidence upon which to predicate finding of fact. It appears obvious to me that Judge Stern unfortunately, unconsciously and unwittingly departed from this sound judicial concept, and in so doing improperly reflects upon my conduct.

I submit that Judge Stern's finding with respect to my activities is wholly unjustified, and I sincerely trust that you and the members of your Commission, upon consideration of all the facts and circumstances, will correct the record accordingly.

A copy of this letter, together with a copy of the statement which I submitted to the Subcommittee, is being transmitted to other members of the Commission.

Sincerely yours,

George Smathers, USS

GS:jo:L  
Encl.

March 5, 1958

APPENDIX B  
Page 3 of 10

Honorable Oren Harris, Chairman  
Committee on Interstate and Foreign Commerce,  
House of Representatives,  
Washington, D.C.

Dear Mr. Chairman:

In the light of the fact that my name, among others, has been injected by certain witnesses who appeared before your Committee in connection with hearings being held relating to alleged irregularities in Federal regulatory agencies, I am taking this opportunity to inform your Committee of all pertinent facts within my knowledge relating to the award of Channel 10 in Miami to a subsidiary of National Airlines.

First, let me discuss my connection with the L. B. Wilson estate. I became acquainted with Mr. L. B. Wilson shortly after he moved from Ohio and took up residence at Miami Beach, Florida, where he bought a home on North Bay Road and became active in community affairs. One day, the date of which I cannot recall, he came to me and asked if I would agree to serve as Executor of his estate. He told me that, under the provisions of his existing will, the late Senator Robert Taft was named as Executor of his estate. He said further that he had an affection for and high estimation of me and was anxious, therefore, that the will be redrafted and that I be named as Executor. I advised Mr. Wilson that I would undertake this assignment with the understanding that he get a bank to act as co-Executor, since, in the event of his death, I would not be able to give sufficient time to the details involved in the administration of the estate. I further advised Mr. Wilson that it was my judgment that he would out-live me by at least ten years, because at the time he was a vigorous 62 years of age, and that actually I should be making him Executor of my estate, for undoubtedly he would outlive me.

The will was drawn and executed on September 23, 1953, and I was named co-Executor, along with his regular bank, the Miami Beach First National Bank.

Approximately five months thereafter I learned that Mr. Wilson was an applicant before the Federal Communications Commission for a television license at Miami. Upon learning this I wrote to Mr. Wilson, a copy of which letter is attached, stating that in the light of his becoming an applicant in a matter before the Federal Communications Commission I thought it best that he re-draw his will and drop me as an Executor. I had no further contact with Mr. Wilson until I learned of his sudden death in October, 1954, at which time I discovered he had not changed his will and that I was, in fact, a co-Executor of his estate.

Mr. Wilson was an attractive, dynamic and able individual. He had made a great success of his various business enterprises. It was clear to me that any consideration given to his application for a television license at Miami was inextricably bound up in his own personality and ability. Now that he was deceased it was my personal opinion that his application would fall of its own weight. I so advised the beneficiaries of Mr. Wilson's estate since as co-Executor I was desirous of promptly winding up the affairs of the estate. However, it was felt by the beneficiaries that in the orderly administration of the estate it would be better to allow the matter to proceed to final adjudication. I took no part whatsoever in any of the proceedings before the Federal Communications Commission, nor(next page)

did I contact any of the Commissioners nor anyone connected with the Commission with respect to this matter, except as follows:

(1) In the fall of 1955 at the University of Florida Homecoming festivities held at Gainesville, Florida, I happened to meet Commissioner Mack at a large party given by a mutual friend. I had a conversation with him and my best recollection is that he told me of the extreme complexities of the problems with which he was confronted as a new Federal Communications Commissioner. During this casual discussion the situation involving Channel 10 came up. Frankly, I do not remember whether he brought it up or if it was I who mentioned it, but in any event I definitely got the impression from Commissioner Mack that he was not going to participate in the decision on Channel 10.

(2) The only other time the matter was raised was when I was invited by Mr. Mack to visit his office, which I had not previously done. His invitation was strictly of a social nature and I accepted. To the best of my recollection I went over to his office in the late fall of 1956. In the course of our conversation, I stated to Commissioner Mack that I hoped a decision could be made in the Channel 10 case in the very near future because we were anxious to close up the L.B. Wilson estate, and that was one of the matters that had to be disposed of before the estate could be closed. My best recollection is that he told me it would be decided very shortly and that his vote would be one which would not be pleasing to me. Exactly what his words were I have no specific recollection, but that was the general impression conveyed to me at that time.

The above two instances were the only times that the matter of Channel 10 was discussed by me with anyone connected with the Federal Communications Commission in any manner whatsoever.

## II.

I would now like to clarify the record with respect to my connection with the appointment of Mr. Mack to the Federal Communications Commission.

While I have known Mr. Richard Mack for approximately 25 years, I have never had any close personal association with him. He was appointed to fill a vacancy on the Florida Public Utilities Commission in 1947 by the then Governor Millard Caldwell, and thereafter he was elected by the people of Florida in his own right to succeed himself on two occasions.

Mr. Mack was first called to my attention as a prospective Federal official in 1951 by Mr. Arthur Milam of Jacksonville, one of Florida's most respected and able attorneys in a letter he wrote to Senator Holland and me. On the strength of that letter and other endorsements in his behalf, one of which came from the Southeast Association of Public Utility Commissioners, I joined in letters to the then President recommending Mr. Mack for appointment to the ICC, FCC or FPC. Mr. Mack, as well as his wife, came from highly respected Florida families.

I heard nothing more about Mr. Mack until my return from a trip to South America in November, 1954, when I was told that Governor Sherman Adams had called me and wanted me to call him at the White House. I returned this call and Governor Adams asked me about my position with respect to Mr. Mack, whom he stated the President was considering for nomination as a member of the Federal Communications Commission. I told Mr. Adams that everything I

knew of Mr. Mack was good and that I would join in the endorsement of him for the appointment if the President desired to nominate him. As your Committee well knows, all Presidential appointments are subject to an F.B.I. character investigation. I would assume that such an investigation disclosed nothing of an unfavorable nature as to Mr. Mack's character since the President saw fit to send his nomination to the Senate on May 25, 1955. Subsequently, on June 16, 1955, Mr. Mack appeared before the Senate Interstate and Foreign Commerce Committee, of which I am a member, to make an appearance and statement. At that time, I introduced him to the Committee and gave him my full endorsement, as did my colleague, Senator Holland. It is my understanding that the statements that both Senator Holland and I made at that time are already a part of the record of your hearings. This is the extent of my activities in connection with the consideration and appointment of Mr. Mack for membership on the Federal Communication Commission.

### III.

In addition to the foregoing there have been what I consider to be reckless and irresponsible allegations made with respect to my activities in connection with Channel 10. In the interest of truth and justice these should be dispelled.

(A) In an affidavit signed by Mr. Frank Katzentine and also in his oral testimony, it is stated that I called Mr. Katzentine on the telephone and told him I thought he and his group were better qualified to receive the Channel 10 grant than was National Airlines, and that I told him he ought to find out where Commissioner Mack stood. Mr. Katzentine further stated that he asked me who were Mr. Mack's friends and that I then gave him the names of Mr. Perrine Palmer, Mr. Thurman Whiteside and Mr. William Gaither.

I did have a telephone conversation with Mr. Frank Katzentine. My best recollection is that Mr. Katzentine called me when I was out of the office and that I was returning his call. I have no distinct remembrance of having told him that I thought he was more qualified than National Airlines, although it is entirely possible that I said then, as I believed then and believe now, that an airline recently off Federal subsidy, regulated by one agency of the Federal government, had no business operating a television station, which is also a quasi-public utility and subject to the regulation of a different Federal agency. It is too difficult to determine when an airline subsidy might be used for the operation of a television station, and it put Federal regulatory agencies in conflict with each other. So it might well have been that, for this reason, I did state to Mr. Katzentine that I felt his application should receive consideration over that of National Airlines.

I do recall that during the course of our conversation the question of Mr. Mack's friends came up. I remember telling Mr. Katzentine that I thought Mr. Perrine Palmer was a good friend of Mr. Mack's. I also mentioned Mr. William Gaither. But I am certain that I did not mention the name of Mr. Thurman Whiteside, because until this investigation got underway, I, frankly, did not know that Mr. Whiteside and Mr. Mack were close personal friends.

(B) With respect to the unsupported accusations of Mr. Baker:

(1) On page 5 he stated that Mr. Katzentine visited me in my office in May of 1953.

I am certain that at no time have I talked to Mr. Katzentine in my office since the question of Channel 10 television license has been in existence. I am advised that Mr. Katzentine came by my office when I was out and that he visited with Mr. John J. O'Keefe, my Legislative Assistant.

Mr. O'Keefe advised me of the conversation he had with Mr. Katzentine and stated that Mr. Katzentine wanted help to insure that the Channel 10 matter be decided on its merits. No action was taken by me as a result of what Mr. O'Keefe stated to me.

(2) On Page 8, in the fourth paragraph of Mr. Baker's statement, he says that I "admitted" to National Airlines that Captain Rickenbacker had talked to me about the National Airlines application for Channel 10. Mr. Alexander Hardy of National Airlines also testified before this Committee that I told him of a conversation which I had with Captain Rickenbacker about the same matter. Both of these statements are completely without foundation and totally false.

Mr. Baker's statement in his original letter to your Committee that I had some personal interest in this matter other than as co-Executor of the L.B. Wilson estate, is without foundation and completely false.

(3) With respect to Mr. Baker's statement that "there can be no question that Senator Smathers was actively working to influence the decision adverse to National \*\*\*", I state that such charge is without foundation and completely false.

Mr. Baker has further charged in the same paragraph of his statement that I have exercised undue influence with the Civil Aeronautics Board against National Airlines in the past.

I presume this allegation arises from the following:

(a) Mr. Baker has had a stormy career with his airline. Late in 1948 and the early part of 1949, his pilots were out on a long strike which was not settled for almost a year. At that time I was a member of the House of Representatives. My District included the cities of Miami, Miami Beach and Key West, all points served by the National Airlines. I was importuned by the citizens of my District, who were most anxious to have flights back in operation before the winter tourist season began, to assist them in getting this service reactivated. The Airline Pilots Association also asked me to intercede in this matter in efforts to get the controversy mediated by the National Mediation Board. (Labor relations on the airlines are governed by the Railway Labor Act and mediation is the essential feature of that law as distinguished from the National Labor Relations Act.) This I did, as a Representative of this District, and over Mr. Baker's strenuous objection. The strike was finally settled only after much bitterness and much economic loss to the community by reason of the lack of operation of the airline during the tourist season.

(b) Another instance occurred in 1954, at which time the County Commission of Monroe County, wherein the city of Key West is located, endeavored to expand its airport facilities. The Commission sought to help finance the expansion by increasing the landing fees. As a result of this action, Mr. Baker stopped all flights to Key West and refused to meet or talk with the Commissioners for quite some time.

March 5, 1958

The Commissioners eventually appealed to me. The action of National Airlines had a particularly harmful effect upon Key West for the reason that they had no railroad service and continued airline service was essential for the tourist business. I endeavored to get Mr. Baker and the Commissioners together in an effort to settle the dispute.

A meeting was held in my office at which Mr. Baker and Mr. Hardy were present. The meeting, frankly, was without success. The attitude of Mr. Baker was so overbearing and abusive that I invited him to leave my office on a permanent basis. Finally, after some time during which the people of Key West continued to suffer lack of service, I appealed to the Civil Aeronautics Board for relief on the ground that a certificated airline could not summarily cease all certificated operations just because of a dispute with a local County Commission. I was given no assistance there.

I then appealed to the Post Office Department on the ground that, a certificated airline could not summarily breach its contract to deliver the mail without prior notice. The Post Office Department undertook an examination of the matter - and on March 22, 1954, wrote a letter to Mr. Baker advising him that he must resume his flights or suffer government penalty. Eventually a written "modus operandi" was worked out and flights were resumed but Mr. Baker continued to bitterly resent my efforts to be of assistance to my constituents in Monroe County.

(c) The third instance that comes to mind where Mr. Baker resented my efforts, occurred this last fall. Once again Mr. Baker's airline came to a stop because of a strike with his ticket agents. In October I was at a meeting of the representatives of Key West and Monroe County when it was called to my attention that these areas were again suffering by reason of the lack of airline service. Naval personnel at the Key West Naval base were greatly inconvenienced and the tourist season, which is of such importance to the economy in that area, was suffering. The only transportation available was by car or bus over the overseas highways.

When these pleas for assistance were made to me I called the Civil Aeronautics Board offices in Washington. I talked with Commissioner Louis Hector. I asked him if there were any procedures where a community such as Key West which is completely isolated and without adequate transportation could be served by another airline when the certificated airline designated to serve the city either refused to fly or was not able to fly because of a prolonged strike. I was advised that there was such a procedure and that if the officials of Key West and Monroe County would draw up a temporary emergency petition to the Civil Aeronautics Board stating the case and the necessity for immediate air service, the Civil Aeronautics Board would take the matter under consideration. This was done and shortly thereafter the Civil Aeronautics Board granted to Mackey Airlines a temporary certificate to fly from Miami to Key West during the time the National Airlines planes were grounded as a result of the strike.

Mr. Baker learned about my participation in this matter and I was informed that he was resentful about it. My position has been, and will be, not to allow Mr. Baker and his personal interests to deter me from my duty to serve the public of the State of Florida

Page Six

(4) Mr. Baker, in his statement on Page 9, makes reference to a "secret meeting" between Senator Magnuson, as Chairman of the Interstate and Foreign Commerce Committee of the Senate, and members of the Federal Communications Commission, at which time letters to the Federal Communications Commission members from Florida's two Senators, Holland and Smathers, in opposition to the grant of Channel 10 to the Public Service Television were read. I never wrote such a letter. My best recollection of the situation is that early in 1957, members of the Federal Communications Commission were called before the Senate Interstate and Foreign Commerce Committee in connection with another matter. After the public hearing was concluded Senator Magnuson invited the members to confer with him and other members of the Committee in Executive Session with respect to this policy question, at which time Senator Magnuson told the Federal Communications Commission members present of his concern over the policy of allowing an airline to run a television station. He asked that they get the views of the Civil Aeronautics Board before deciding the case. That was all that was said and the meeting quickly broke up.

However, I would like to state that it has been my belief all along that an airline, qualified to receive Federal subsidy, regulated by one Federal agency, should not own a television station regulated by another government agency. Such dual ownership of quasi-public utilities would place one airline in an unfair competitive advantage over another. In addition it would be difficult to ascertain to what extent subsidy payments to the airline would be utilized in connection with the operation of such television or radio station.

This is a complete explanation of my interest and participation in the Channel 10 matter.

Mr. Baker's many unsupported statements based, not on his own knowledge, but on rumors and suspicions are reckless, irresponsible and generally false.

Mr. Baker, in my judgment, is a desperate and troubled man, and while anxiously trying to hang on to some of his possessions, he is regrettably willing to smear and besmirch without regard for fact, truth or conscience.

If I can be of any further assistance to you, or your Committee, I will be more than pleased to do so.

With kind regards, I am

Sincerely yours,

George Smathers, U.S. Senator

COPY

APPENDIX B  
Page 9 of 10

February 16, 1954

(Dictated February 12)

Mr. L. B. Wilson  
5900 North Bay Road  
Miami Beach 40, Florida

Dear Mr. Wilson:

While in Miami this past weekend I wanted to discuss with you a problem of mutual concern. However, I had to leave sooner than I expected to go to Tampa and thereby missed the opportunity of visiting with you; hence this letter.

Very frankly, I feel highly honored that after the untimely passing of Senator Taft, who was the executor of your will, you came to me and asked me to take his place as executor of your will. Indeed, I very much appreciate an opportunity to try and step into the shoes of a man of Senator Taft's caliber, and of course it was a source of pleasure and pride for me to have the confidence of a man of your ability and accomplishments.

You will recall that at the time you asked me to serve, I asked you specifically if there was anything that you had in mind my doing as a Senator, which could prove embarrassing either to you or to me. You responded that there was absolutely nothing that you wanted from me as a Senator. I assured you that it had been my practice during eight years in the Congress to keep business and politics completely separated, that I had never used my Congressional office to promote business or opportunity for myself, nor for anyone with whom I was connected in a business way. I am pleased that since these conversations with you, you have neither called me nor written me about interceding in anything in which you had an interest. For that I am indeed grateful.

While in Miami last weekend, it came to my attention that you were an applicant for a television station on a channel for which there are several other applicants. I have learned from past experience that United States Senators are called upon from time to time by various applicants to intercede in their behalf when their cases finally come before the Federal Communications Commission. However, it has been in the past and will continue to be my policy to take no part whatsoever in any such contests since the law invests in the Federal Communications Commission - a quasi-judicial body - not only the right and duty but the sole responsibility to determine which applicant can best serve public need and necessity. In view of the fact that you are one of the applicants for Channel 10, and because I am anxious not to subject you or me to any criticism, I deem it wise to withdraw as executor of your will.

After this contest has been completely settled, if you are still of the opinion that you would like to have me serve as your executor, I can assure you that nothing would give me greater pleasure.

With all good wishes,

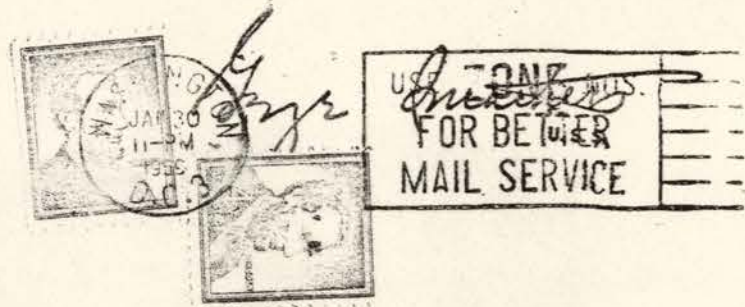
Sincerely,

/s/ George Smathers

United States Senate

COMMITTEE ON FINANCE

FREE



Mr. Norman E. Jorgensen,  
514 Wyatt Building  
Washington, D. C.