SENATE—*Friday, August 1, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. THOMAS F. EAGLETON, a Senator from the State of Missouri.

PRAYER

The Reverend Truman E. Dollar, D.D., pastor, Kansas City Baptist Temple, Kansas City, Mo., offered the following prayer:

Eternal Father, whose blessings have been extended to us in the founding of this free Nation and who has sustained us through more than 200 years, we praise You for Your loving kindness and mercies to this great land.

Teach us that righteousness exalteth a nation but sin is a reproach to any people.

Teach us the blessing of national repentance and the strength of dependence on You.

Teach us the value of national faith and the joy of obeying your word.

Bless these people who labor here in the Senate for our well-being. Give wisdom, purity of heart, and a perception of our destiny that glorifies God.

Bless the President, Protect and guide him so that we may have peace to serve You.

Lord, protect our brothers held hostage until their safe release. Sustain their families and friends until You bring them together again.

Lord, bind up our national wounds. Bring healing to our land, and knit our hearts together in unity of purpose and Your perfect peace.

We ask it in His name who washed us from our sins. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., August 1, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable THOMAS F. EAGLETON, a Senator from the State of Missouri, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. EAGLETON thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. WILLIAMS, I yield myself such time as I may require, and I ask unanimous consent that I may speak out of order, notwithstanding the Pastore rule.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

POLITICAL FEVER FUELS THE RUMOR MILLS

Mr. ROBERT C. BYRD. Mr. President, I noted a very interesting headline in today's Washington Star: "Byrd Feels Snubbed by Carter Camp on Role at Convention."

Now I will read a few extracts from this story:

Senate Majority Leader Robert Byrd reportedly has been irked by the slowness of President Carter's aides and officials of the Democratic National Committee to offer him a role in the party's national convention in New York this month.

He also was reported yesterday to be put out that House Speaker Thomas P. O'Neill is the convention chairman.

Byrd would not comment, but a spokesman denied the reports.

Well, Mr. President, I was not personally asked to comment. I am very accessible to the press. Here I am. Here I am every day. I can walk through that door and talk to the press. I can go out this door and talk to the press. My office is just around the corner. I am available. I have my Saturday news conference. Quite an institution, these Saturday news conferences.

I, personally, have not been asked. I understand that a call came to my office late yesterday afternoon, and my press secretary asked me about it. I said, "Why, I have not been irked." I have not wanted to go. I still do not want to go. I have said for months that I was going to West Virginia, to speak in West Virginia during the convention.

I am not a delegate to the convention. I do not like political conventions. I watch them a little on television once in a while. But I would much rather be in the cool hills of West Virginia, carrying my fiddle with me, playing a tune here and there, speaking to my constituents.

But I am not "irked." I do not feel "snubbed." So far as Mr. O'NEILL is concerned, I do not believe a better man could have been chosen to be the convention chairman.

Well, this is the season when political fever is at its highest, and it is the season of rumor and speculation.

There is an axiom which states that the truth never, in fact, catches up with rumor. But I believe it is necessary to set the record straight this morning.

Generally, I believe that the news media have done a commendable job reporting this year's political happenings. Fortunately, most rumors are usually checked out thoroughly, and they never find their way into the newsprint or on the airwaves.

Such was the case recently when a call came to my office wanting to check out a rumor that I had been meeting secretly with Billy Carter in my office.

That was the situation when several calls came to my office wanting to verify a rumor that Speaker O'NEILL and I had met and were plotting a mission of utmost importance to the White House.

In both these instances, the erroneous accounts were checked out. They were scotched in their infancy, and they did not appear in print.

Unfortunately, however, as I have indicated, this was not the case in two other situations, one, to which I have alluded, as recently as this morning, and which is somewhat of a reprint of a similar bit of a story on yesterday. The story did carry denials from my office, through my press secretary, as well as from John White, the chairman of the Democratic National Committee.

Let me just say one final thing, and let me say it again: I consider Speaker O'NEILL to be an excellent choice as convention chairman. I would not have the job if it were offered to me. He will do a good job. He is much better equipped for that role than I am. It never entered my mind to seek that position or any other position, nor have I wanted any role at the convention.

As I have indicated, I was rather ambivalent about accepting any substantive position at the convention. As a second thought, I felt that I perhaps could play a constructive role in addressing the convention on Thursday night, after the nomination; and I tentatively agreed to this—tentatively agreed to it. I may not even do it. I may just smell the air wafting from the hills of home, where the streams are pure and the pressures and the tensions of conventions are unknown.

Well, that is the sum total of my

thoughts on this. I am not upset. I am not miffed. I am not irked. I have no reason to be.

Another minor story appeared last weekend in the Washington Post magazine. In one section, it was reported that I did not attend the recent White House signing of the synthetic fuels bill because I was upset with the administration.

The fact is that I had intended to attend the signing all day, but at the last moment, something happened on the floor. I had to help work out a time agreement, or something to that effect. The White House was going to hold up the signing for a few minutes, pending my arrival. Right at the last moment when it was time for the signing to begin I asked my secretary to call the White House to tell them to go ahead with the ceremony, that I could not come. I had to be on the floor of the Senate instead.

Mr. President, this statement is not intended to be a rebuke to any newspaper, particularly a newspaper which is a fine newspaper, but it is just a reminder to all that during a political season such as this, some pretty silly things find their way into print.

Mr. BAKER. Mr. President, will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Mr. President, I thank the majority leader for yielding.

I do not often give advice to the majority leader and I seldom claim to be an expert in any field, but this morning I wish to lay claim to being an expert on the pluses and minuses of speakers at national conventions.

I might say parenthetically that I attended the Republican National Convention not as a delegate and not in the role which I had first intended, but I attended and I brought home a prize. My prize was a lot of good photographs which were the net result for me of that convocation.

But I also was asked to speak on Thursday after the nominations and there was a request to me in formal tones of a request to speak on the theme of unity, to unify the divergent elements of our party, and I also can feel the pull and the lure of my mountains in east Tennessee and smell the sweet fragrance of those slopes.

Mr. ROBERT C. BYRD. Oh, how sweet it is!

Mr. BAKER. I must say to the majority leader I succumbed even against my best advice and intention and agreed to make that speech on Thursday night.

My advice to the majority leader is this: If he also succumbs and agrees to make a speech on Thursday night, nail down the time because my speech was 15 minutes before that convention convened, as far as I can tell, and just in advance of the time the television started and to a sea of empty seats and a few delegates who had arrived for lack of anything else to do who were absolutely astonished at the enthusiasm of my remarks.

So I do not claim to be an expert on many things, but this morning I presume to advise the majority leader on the basis of that recent experience. If he does it, nail down the time.

Mr. ROBERT C. BYRD. I thank my friend.

I tell the distinguished minority leader that I would have been irked if someone else had been invited to play the fiddle at the convention and I had not been asked, or I might even have been a little bit irked if the distinguished Senator from Tennessee (Mr. BAKER) had been asked to address my convention on Thursday night and I had not been asked.

I thank the Senator. We are off to a good day.

Mr. WILLIAMS has control of the time.

EXECUTIVE SESSION

NOMINATION OF DON ALAN ZIMMERMAN TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

The PRESIDING OFFICER (Mr. McGOVERN). Under the previous order the Senate will now proceed in executive session to consider the nomination of Mr. Don Alan Zimmerman to be a member of the National Labor Relations Board.

The nomination will be stated.

The legislative clerk read the nomination of Don Alan Zimmerman, of Maryland, to be a member of the National Labor Relations Board.

The Senate resumed consideration of the nomination.

Mr. WILLIAMS. Mr. President, earlier this week the Senate began debate on the nomination of Mr. Don Zimmerman to be a member of the National Labor Relations Board. Mr. Zimmerman is a highly qualified nominee whose nomination should be uncontroversial. I urge my colleague to vote to limit debate on this nomination so that we may proceed to confirm it without further delay.

As you know, Mr. Zimmerman served from 1974 to 1979 as minority counsel to the Committee on Labor and Human Resources on Senaor JAVITS' staff. And since 1979, he has served as special minority labor counsel to the committee.

Mr. Zimmerman has served Senator JAVITS and the committee with distinction.

It is rare that my committee has the opportunity to consider a Presidential nominee whose work we have observed at first hand over a period of years. In his work on the complex labor issues which have come before the committee, Mr. Zimmerman has consistently demonstrated a thorough understanding of the law, and an appreciation of the legitimate interests of both management and labor.

The committee, which knows him well and has observed his work firsthand, voted 12 to 0 to report this nomination favorably.

A question has been raised concerning the fact that Mr. Zimmerman is registered as an independent, and that his appointment will result in a Board membership which includes three Democrats, one Republican and one independent. It has been suggested that the appointment is in violation of a tradition under which the Board is composed of three members on one major party and two members of the other party, and that his appointment would therefore destroy the balance of the Board.

As I stated in earlier debate on this nomination, there is ample precedent for the appointment of independent board members.

In fact, the Board has only been divided between the two major parties since 1957. But President Eisenhower, who has been credited with having the idea of splitting the Board 3 to 2 between the two major parties, is also the best example of a President who has appointed independent board members in place of Board members from the party other than his own.

For example, in 1954, President Eisenhower replaced Democratic Board Chairman Paul Herzog with Independent Board Chairman Guy Farmer. At that time, the Board already had one independent member and two Republican members. Therefore, the Board composition became two Republicans, two independents, and one Democrat.

Then, when independent Guy Farmer left the Board, President Eisenhower replaced him with a Republican. This meant that there were three Republicans, one independent and one Democrat on the Board.

So, we can see that from 1954 to 1957 there was only one Democrat on the Board. Yet President Eisenhower certainly felt no necessity to appoint a second Democrat, and he did not do so in either of his two appointments during that period.

It seems to me that the Eisenhower administration cannot, under these circumstances, be cited as the fountainhead of a bipartisan National Labor Relations Board.

But there is another point that should be emphasized here—and that is that party label does not by any means determine a Board member's voting record on the National Labor Relations Board. In debate earlier this week, Senator HATCH stated that there are some persons who believe that the confirmation of Mr. Zimmerman would result in a 4-to-1 split on the Board.

I can honestly say that I am not sure who Senator HATCH or those persons believe the one person to be. It may in fact be that any attempt to align the Board members by their view of Board law would result in a crossing of party lines.

This possibility may be illustrated by reference to some well-known differences among Board members from the same party. For example, it is certainly true that Republican Board member Howard Jenkins, Jr. had a very different voting record from Republican Board member Peter Walther, with whom he served.

Likewise, Republican Board member Sam Zagoria could by no means be cast as someone who consistently voted like

his Republican colleagues and different from his Democratic colleagues.

And, in the very recent past, Democratic Board member Penello on several occasions voted with Republican Betty Murphy in disagreement with a 3-member majority composed of two Democrats and one Republican.

One good example of differences between Board members from the same party is provided from one of the earliest boards. Some may remember, as I do, that the Board's first Chairman, J. Warren Madden, was in sharp disagreement with his fellow Democratic Board member, William M. Leiserson, over the question of craft severance from a bargaining unit in an industrial plant.

In 1939, in the case of American Can Co., 14 NLRB No. 126, the Board issued one of its leading opinions in this area, which is still cited in cases dealing with craft severance from larger bargaining units. In that decision, Mr. Lieserson wrote the Board's opinion; but Board member Edwin S. Smith wrote a separate concurring opinion, and Board Chairman Madden wrote a dissenting opinion.

Here is the point of all of this: All were Democrats, and the fact that they had a political background of membership in the same party did not force them into any ideological mold where they all viewed these labor questions before the National Labor Relations Board with the same attitude. There were sharp divisions, and I think this is illustrative of why this emphasis in the opposition to the confirmation of Zimmerman has a false ring. It suggests that because Zimmerman is not a registered Republican that shuts him out somehow ideologically from any possibility of seeing issues as a Republican on the Board might see them. The issues are the issues, and the party background is not the determining factor on these National Labor Relations Board issues. The record is so absolutely clear in that regard.

Thus, on this very important issue, a Board composed of three Democrats as I indicated in this last example of American Can Co., split three ways.

And another early Democratic Board member, Gerard Reilly, who served from 1941 to 1946, not only disagreed on occasion with his fellow Democrats, but went on to become counsel to the Chamber of Commerce.

Yet another example of divisions within a Democratic Board may be seen in the late 1940's and early 1950's. I have in mind the difficult and controversial area of secondary boycotts in the construction industry. In one case involving the Denver Building and Construction Trades Council, for example, the five-member Board issued a decision which required three opinions—a three-member majority opinion signed by Chairman Herzog and members Houston and Murdock, a dissenting opinion signed by members Reynolds and Gray, and a partial dissent signed by members Houston and Murdock. (Building and Construction Trades Council, 25 IRRM 1169 (1949)).

The point of these references is that there is no basis for assuming that the political affiliation of any particular appointee will determine his actions on the Board. Board members are simply not that predictable by party label. If any group of people should know that, it is the Members of the U.S. Senate where we see divisions on either side of the aisle within the party all the time. I do not have to cite examples. We all live with that every day. The party label is not the determinant that you can rely on in getting to the results on any of the issues we face, the same way as with the National Labor Relations Board.

This makes it particularly inappropriate and unfortunate, it seems to me, to couch this debate in terms of party labels.

I yield the floor at this time, Mr. President.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, it is my unfortunate duty to challenge the nomination of Donald Zimmerman to the National Labor Relations Board. I do so with some reluctance because frankly, Don Zimmerman is a nice guy who has had a good career. But, on balance, his nomination has the potential for the many objective reasons I will talk about to seriously hurt the public confidence in the National Labor Relations Act. His nomination is filled with liabilities which will erode the credibility of the NLRB. It is not in the best interests of the public and the NLRB that he be confirmed.

By way of background information to my colleagues—the National Labor Relations Act guarantees the right of workers to organize and to bargain collectively with their employers, or to refrain from all such activity. To enable employees to exercise these rights and to prevent labor disputes which may impede interstate commerce, the act places certain limits on activities of employers and labor organizations.

The act generally applies to all employers engaged in interstate commerce. It does not apply to railroads and airlines which are covered by the Railway Labor Act.

The policy of the act is to prevent obstacles to the free flow of interstate commerce by encouraging collective bargaining and by protecting workers in their right to organize and in their selection of a bargaining representative; and to protect the rights of the public in connection with labor disputes.

Administration of the law rests primarily with the National Labor Relations Board, which has two principal functions under the act: First, to prevent and remedy unfair labor practices whether by labor organizations or by employers, and second, conduct secret ballot elections in which employees decide whether unions will represent them in collective bargaining.

Members of the Board are appointed by the President, with consent of the Senate, for terms of 5 years. The term of one Board member expires each year. The General Counsel is appointed by the President, with consent of the Senate, for a term of 4 years.

With this very general background of what the Taft-Hartley Act is all about, one might ask at this point why all the "fuss" about a single appointment. After all is he not just another Government staff lawyer—a cast of thousands here in Washington?

The answer is a "no" and a "yes." "Yes" in the sense that he is indeed one of a host of Government attorneys but a "no" in that he is one who is uniquely situated by the statute with enormous legal powers to shape the development of the national labor relations policy for this country.

The NLRB completely controls and administers the field of labor relations. It implements policy, rules, and regulations.

The Board has the authority to overturn decisions of numerous administrative law judges. In fact, even though a Board decision is appealable to courts, the Board does not always follow the directives of those courts. The Board is the only control over the General Counsel, the agent who acts as prosecutor.

I believe that it is important to digress a bit and consider the General Counsel's position. Just this year William Lubbers was confirmed over strenuous objection. The furor was over his relationship with Chairman Fanning and his prolabor leanings. Many others and I argued that the separation of powers between the Board and the General Counsel would be eroded. Nevertheless he was confirmed. The danger of his confirmation is still real.

The Congress deliberately structured the NLRA in 1947, by statutorily enacting section 3(D) to separate the two operating branches of the NLRB—the Office of the General Counsel and the five-member National Labor Relations Board which is called upon to decide the cases brought by him.

Before 1947, the General Counsel of the NLRB was subject to the authority and direction of NLRB. This led to criticism of the NLRB serving as prosecutor, judge, and jury in what was supposed to be an impartial hearing. In 1947, Taft-Hartley Act amendments responded to this criticism by creating an independent General Counsel, thereby separating the prosecutorial from the decisionmaking function. It was certainly the intent of the law that the General Counsel was to be a "public" prosecutor of labor law violations and that the Office of General Counsel must be entirely separate from and independent of, the five NLRB members or their staffs. Nonetheless, Lubbers was confirmed, which may portend a radical change in future labor relations in this country.

Now, some Senators are attempting to compound the destruction of the equilibrium between management and labor by the appointment of Don Zimmerman, a man who business fears has labor leanings. The seat he is to fill is a so-called management seat. This prolabor tilting labor relations in our country must stop.

Let us return to Lubbers' confirmation again. It is not exaggeration to say that Mr. Fanning of the NLRB has a markedly prounion record and it is clear that Mr. Lubbers helped write many of the decisions of Chairman Fanning. During

his confirmation hearing, Lubbers acknowledged this but elected to hide behind the attorney-client privilege when pressed by me to answer at least the number of decisions he participated in as a legal adviser. This is of significance since, with the addition of member John Truesdale, Chairman Fanning has been overruling NLRB precedents that went against unions, some of which had only been "on the books" for a year or so. With this background, the alliance of Lubbers as a permanent prosecutor and the Fanning court has the potential to harm and disrupt labor relations in this society.

It makes our former debate on the so-called "Labor Reform Act" a moot academic exercise because approving in a formal sense this relationship will immediately stack the deck in favor of the unions which the Senate was deliberately unwilling to do by refusing to enact that outrageous bill.

And now, we are asked to confirm Don Zimmerman to increase the appearance of labor strength on the Board. Not only does a labor advocate now control the prosecution of cases, but three of the remaining Board members are prolabor. Only one is promanagement. With the appointment of Zimmerman, labor could be given an addition boost as he leans in that direction.

What does this portend for the future of labor relations in our country? First, we can assume major revisions in labor policies for the future. We will see many of the Board's previously evenhanded decisions will be overturned.

Second, we can expect management to reject the Board's newer interpretations of the law and policy changes. If the Board is seen as the enemy and as controlled by labor, who knows what management will attempt in order to rid itself of the shackles of oppression and unfairness.

Third, we can expect economic war between labor and management outside the arena of labor laws.

Fourth, and sadly for our country, we can expect economic stagnation brought about by unhealthy competition and resentment rather than the cooperation needed in the field of labor relations.

It is we who are influencing the future of labor relations. We are weakening the American economy through ill-considered appointments and drastic political imbalances between labor and management. It is our duty to be fair. It is our duty to work for a healthy economy. Let us not so easily dismiss our obligations and appoint a man who takes us another step down the road to disharmony.

The foregoing reasons are the basis for my concern about this nomination. I wish to emphasize, however, that they are not a personal attack on Mr. Zimmerman but merely express my concern for upholding the integrity of what has been our workable collective-bargaining system which I believe to be in grave jeopardy should this nomination be confirmed.

I think most everything has been said about this that needs to be said. I put the basic arguments in the RECORD last Monday, and I think those arguments still stand.

We are talking about not any particular nominee. That is somewhat incidental. We are talking about stacking the Board through the ownership in toto by one special interest group of the independent general counsel and the Board itself, and we are talking about labor chaos. We are talking about the labor-management divisiveness that will hurt productivity, hurt economic development, hurt wage and price approaches and hurt almost every aspect of labor-management relations.

That is what is involved here. It is not an insignificant thing, and it really does not involve my good friend Don Zimmerman in the sense that he is disliked by anybody on this side. He is not. He is a nice person. But everybody knows or at least has strong proof and indication of the reasons for this nomination. So I will not belabor the point.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, is the time controlled?

The PRESIDING OFFICER. The time is under control.

Mr. JAVITS. Would the Senator yield to me?

Mr. WILLIAMS. Mr. President, a cloture vote will occur at 10 o'clock? Am I right?

The PRESIDING OFFICER. A live quorum will take place under the rule at 10 o'clock, followed by a cloture vote.

Mr. WILLIAMS. I yield whatever time the Senator needs.

Mr. JAVITS. I thank my colleague.

Mr. President, Don Zimmerman, who is the nominee we are considering, has been minority labor counsel on the Senate Committee on Labor and Human Resources and was chosen for that job by me, as ranking member of that committee, when I was the ranking member.

He has been in that job for 6 years, and has performed, in my judgment, to my complete satisfaction .

When I ceased being the ranking member and became ranking member of Foreign Relations in January 1979, he was continued because of his knowledge and skill as special labor counsel at my request.

He has served the whole minority, insofar as they called upon his services, and I have not heard any word uttered against him.

He has an excellent background, which has been described, having worked for the trustees of the Penn Central Railroad, as a senior associate at the National Manpower Institute, as a legislative analyst in the Office of Management and Budget, and as a foreign affairs officer with the Office of the Secretary of Defense. Certainly, there are very sober positions and very responsible positions.

I consider him an excellent lawyer on labor issues.

My experience with him is that, of course, he followed my instructions on legislative issues insofar as he was acting for me or working for me on developing positions and ideas I wanted developed.

But my feeling about him is that he is a very conservative man on labor issues. If there is going to be, in my judgment, any imbalance in his thinking, it would be for the established order. But I do not see any imbalance in his thinking.

He is a very high level professional of what I consider to be fine judicial temperament. I think he would make a splendid member of the NLRB. He should be completely satisfactory to any Republican or any Democrat who just wants to be fair about what the NLRB decides and wants to give labor and management equal opportunity to reach and persuade the worker, and if they cannot be persuaded, I am confident Mr. Zimmerman would not want to do anything about it further than that.

I think in every way I have had experience with him he would be an exemplary member of the NLRB. In my judgment, the President made an excellent appointment, an he should be confirmed.

He normally would be, as a matter of absolute routine. Unfortunately for him, we are in the political season. So all of these punctilios about whether a new President, if there is one—and as a Republican, I hope there is—should have this appointment, or whether there should be an appointment now.

The Board carries a heavy load. It can use this additional member very much. Indeed, he is urgently needed.

I cannot see how we can stop the Government because we have an election. Good men are hard to find and there are seasons when they shun Government employment. Maybe what we are seeing here is one of the reasons for those seasons, which come all too frequently now, if they have to be dragged through the difficulties which are created on a political level.

I am a politician and I believe in politics. But I believe also in the thoughtfulness which may not apply in every case. I think political considerations are being very seriously misapplied to this particular case.

At this time, one must be realistic. It is a Friday. Many Members are absent. I have no doubt that the result today will be failure of cloture and that the answer will be inconclusive.

But we will come back next week in the hopes of dealing with the matter.

I do not consider this particular issue to be earth shattering. But I consider it important as dealing with the professional life of a man who reaches by this appointment the summit of his career.

He is 40 years old, an excellent age from the point of view of a useful life on a board of this character. The very type man we want.

Mr. President, I hope very much that wise counsel will prevail and that Don Zimmerman may be confirmed by the

Senate next week as a member of the National Labor Relations Board. We thereby will get on with the business of Government and on with the business of encouraging, rather than discouraging, intelligent young professionals, fully equipped for the job and having as judicious an attitude toward the job as can be gotten, to take these posts.

Finally, Mr. President, I hope no one will identify Zimmerman's views with mine, whatever they may be. I am a Senator. I am fully responsible to the people. My constituents can vote me in or out. But every one of us has men like Zimmerman working for us, and we expect that they will carry out what we want, not what they want.

I hope very much, therefore, that the consideration of Zimmerman will be completely divorced from my view, pro or con, about my views on labor matters or on the work of the Board.

Mr. HATCH. Mr. President, I appreciate the remarks of my great colleague in the U.S. Senate.

CLOTURE MOTION

The PRESIDING OFFICER. One hour having passed since the Senate has convened, the clerk will state the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Don Alan Zimmerman, of Maryland, to be a member of the National Labor Relations Board.

Robert C. Byrd, Wendell H. Ford, Paul E. Tsongas, Spark M. Matsunaga, Donald W. Riegle Jr., Abraham Ribicoff, John A. Durkin, J. James Exon, Gaylord Nelson, Thomas F. Eagleton, Gary Hart, George J. Mitchell, Daniel Patrick Moynihan, Bill Bradley, Henry M. Jackson, Howard M. Metzenbaum, Alan Cranston, Jennings Randolph, and John Glenn.

CALL OF THE ROLL

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair now directs the clerk to call the roll to ascertain the presence of a quorum.

The assistant legislative clerk called the roll, and the following Senators answered to their names:

[Quorum No. 14 Ex.]

Armstrong	Durenberger	Kassebaum
Baker	Durkin	Laxalt
Baucus	Eagleton	Leahy
Bayh	Exon	Levin
Bentsen	Ford	Lugar
Biden	Garn	Magnuson
Boren	Glenn	Matsunaga
Boschwitz	Goldwater	McGovern
Bradley	Gravel	Melcher
Bumpers	Hart	Metzenbaum
Burdick	Hatch	Mitchell
Byrd, Harry F., Jr.	Hatfield	Morgan
Byrd, Robert C.	Hayakawa	Moynihan
Cannon	Heflin	Nunn
Chafee	Heinz	Packwood
Chiles	Helms	Pell
Cochran	Hollings	Pressler
Cohen	Huddleston	Proxmire
Danforth	Humphrey	Pryor
DeConcini	Jackson	Randolph
Dole	Javits	Ribicoff
Domenici	Jepsen	Riegle
	Johnston	Roth
Sarbanes	Stennis	Wallop
Sasser	Stevens	Warner
Schmitt	Stevenson	Weicker
Schweiker	Stone	Williams
Simpson	Thurmond	Young
Stafford	Tower	Zorinsky

The PRESIDING OFFICER. (Mr. BOREN). A quorum is present.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the nomination of Don Alan Zimmerman, of Maryland, to be a member of the National Labor Relations Board, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Wisconsin (Mr. NELSON), the Senator from Alabama (Mr. STEWART), the Senator from Georgia (Mr. TALMADGE), and the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

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

The yeas and nays resulted, yeas 51, nays 35, as follows:

[Rollcall Vote No. 338 Ex.]

YEAS—51

Baucus	Ford	Metzenbaum
Bayh	Glenn	Mitchell
Bentsen	Gravel	Moynihan
Biden	Hart	Packwood
Boren	Hatfield	Pell
Bradley	Heflin	Proxmire
Bumpers	Heinz	Pryor
Burdick	Huddleston	Randolph
Byrd, Robert C.	Jackson	Ribicoff
Chafee	Javits	Riegle
Cohen	Johnston	Sarbanes
Danforth	Leahy	Sasser
DeConcini	Levin	Schweiker
Durenberger	Magnuson	Stafford
Durkin	Matsunaga	Stennis
Eagleton	McGovern	Stevenson
Exon	Melcher	Williams

NAYS—35

Armstrong	Hatch	Roth
Baker	Hayakawa	Schmitt
Boschwitz	Helms	Simpson
Byrd, Harry F., Jr.	Hollings	Stevens
Cannon	Humphrey	Stone
Chiles	Jepsen	Thurmond
Cochran	Kassebaum	Tower
Dole	Laxalt	Wallop
Domenici	Lugar	Warner
Garn	Morgan	Weicker
Goldwater	Nunn	Young
	Pressler	Zorinsky

NOT VOTING—14

Bellmon	Kennedy	Percy
Church	Long	Stewart
Cranston	Mathias	Talmadge
Culver	McClure	Tsongas
Inouye	Nelson	

The PRESIDING OFFICER. On this vote the yeas are 51, the nays are 35. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Mr. Don Zimmerman, to be a member of the National Labor Relations Board.

Robert C. Byrd, Harrison A. Williams, Jr., Howard M. Metzenbaum, William Proxmire, George T. Mitchell, Gary Hart, Henry M. Jackson, Spark M. Matsunaga, Max Baucus, Robert T. Stafford, Claiborne Pell, Jacob K. Javits, Paul S. Sarbanes, John A. Durkin, Warren G. Magnuson, George McGovern, Adlai E. Stevenson, Dennis DeConcini, and Jennings Randolph.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

TONNAGE MEASUREMENT SIMPLIFICATION ACT

Mr. ROBERT C. BYRD. Mr. President, with the understanding that the Alaska lands bill will remain laid aside until the close of business today, I ask unanimous consent that the Senate proceed to the consideration of H.R. 1197, Calendar Order No. 937.

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

The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1197) to simplify the tonnage measurement of certain vessels.

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 1496

(Subsequently numbered 1959)

Mr. ROBERT C. BYRD. Mr. President, I send to the desk, on behalf of myself, Mr. WARNER, Mr. RANDOLPH, Mr. BOREN, and Mr. DOMENICI, an amendment to the bill and ask that it be stated by the clerk.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for himself, Mr. RANDOLPH, Mr. BOREN, Mr. WARNER, Mr. DOMENICI, and Mr. HARRY F. BYRD, JR.) proposes an unprinted amendment numbered 1496.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

At the end add a new section as follows:

SEC. . The Surface Mining Control and Reclamation Act of 1977 (97 Stat. 445) is hereby amended as follows:

(a) Sections 502(d) and 504(a) of the Surface Mining Control and Reclamation Act of 1977 (hereinafter referred to as "the Act") are amended as follows:

(1) in section 502(d) of the Act in the last sentence, strike the words "forty-two months" and substitute the words "fifty-eight months";

(2) in section 504(a) of the Act, strike the words "thirty-four months" and substitute the words "fifty months".

(b) Sections 503(a)(7) and 701(25) of the Act are amended as follows:

(1) in section 503(a)(7) of the Act, strike the phrase "regulations issued by the Secretary pursuant to";

(2) in section 701(25) of the Act, strike the phrase "and regulations issued by the Secretary pursuant to this Act".

(c) Section 523(a) of the Act is amended by striking the words "and implement" in the first sentence thereof, and by adding at the end of the subsection a new sentence as follows: "subject to the provision of section 523(c), implementation of a Federal lands program shall occur and coincide with the implementation of a State program pursuant to section 503 or a Federal program pursuant to section 504, as appropriate.".

(d) Section 502 of the Act is amended by adding a new subsection "(g)" as follows:

"(g) Notwithstanding any other provision of this section, each State shall, to the greatest extent possible, have principal responsibility for the inspection of mines during the period of time prior to the submittal of State plans for approval. Such responsibility shall remain with each State until such time as the Secretary disapproves the State plan. The Secretary shall furnish personnel assistance to the States in carrying out this responsibility upon request of the State regulatory agency."

REASONABLE REGULATION OF SURFACE MINING

Mr. ROBERT C. BYRD. Mr. President, on September 11, 1979, the Senate passed S. 1403, a bill to amend the Surface Mining and Reclamation Act of 1977, by an overwhelming 68 to 26 vote.

The purpose of that bill is to allow each State in which surface mining occurs to take the lead in establishing its own regulatory system. The Surface Mining Act itself provides for that precise purpose. Section 101 of the act states that:

The primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining operations . . . should rest with the States.

The integrity of the Surface Mining Act is upheld by the bill the Senate passed last year. The amendment I am offering today on behalf of myself, Mr. WARNER, Mr. RANDOLPH, and others, accomplishes the same purpose. Arbitrary regulations which distort the intended balance of the Surface Mining Act will be reduced, and States will be able to form reclamation plans based on their own unique circumstances under this amendment.

S. 1403 has the support of a broad range of Senators, including many who are not from coal-producing States. The provisions of this amendment, in the form of S. 1403, have been mired in the other body for 10 months. It is time for a clear signal to be given once again to the House on this matter. The large group of Senators from both parties who have expressed support for reasonable surface mining regulation shows the importance of this measure.

I would also like to mention that this amendment builds on a proposal advanced last year by the Governor of the State of West Virginia, the Honorable Jay Rockefeller. His contribution to this legislation has been an important one.

The distinguished Senator from Kentucky (Mr. FORD) and the distinguished Senator from Oregon (Mr. HATFIELD) sponsored S. 1403 in the Energy Committee last year, and have fought hard for realistic mining regulations.

Mr. RANDOLPH, my senior colleague, has been a leader in this fight. I commend all of these Senators for their participation in this matter.

As I mentioned a moment ago, my colleague (Mr. RANDOLPH) has long been a leading exponent of the use of coal, and he has supported the effort to rationalize the operations of the surface mining.

Mr. President, I hope the Senate will adopt the amendment.

Mr. WARNER. Mr. President, I am privileged to join with the distinguished majority leader and my distinguished colleague (Mr. RANDOLPH) of West Virginia as a cosponsor on this legislation.

Every day that goes by, more and more people, particularly in the Appalachian part of our United States, are being put out of business in the coal industry, when this country needs every single ton of coal that we can mine.

This amendment, which I was privileged to introduce once before, but then withdrew on the assurance of the majority leader and other distinguished colleagues here that we would again mount this effort, sends a clear signal to the other Chamber that the Senate is solidly behind the provisions in this bill and the need to get on with the mining of coal in our country.

I have discussed it with a number of colleagues on this side. To the best of my knowledge, we are prepared to go forward with this matter as expeditiously as possible this morning.

Mr. MELCHER. Mr. President, this amendment is the same as S. 1403, which passed the Senate on September 11, 1979. It would:

First. Prevent creation of uniform national minimum standards which could penalize States that wish to provide greater protection for lands within their border.

This is a very far-reaching amendment to the Surface Mining Control and Reclamation Act that was passed and signed into law in 1977.

Second. This amendment would assure expensive litigation over varying interpretations of the law.

Third. It would result in the courts "writing regulations" by a series of decisions.

Fourth. Create uncertainty for the coal industry at the very time that stability is needed as a basis for expansion.

Fifth. It would delay the approval of the State reclamation programs. Without this approval the States' share of the reclamation fund will not be available to reclaim orphan land.

Mr. President, the Committee on Energy and Natural Resources held oversight hearings on the implementation of the Surface Mining Control and Reclamation Act of 1977 on June 19 and 21, 1979. During these hearings the administration witness announced that Secretary Andrus had decided to recommend the extension of the deadline for submittal of State programs to him for review until March 3, 1980.

On June 26, 1979, Senator JACKSON introduced S. 1403, which would have extended this deadline as recommended by the administration.

At the time he indicated that no additional amendment would be added to the simple extension in the interest of obtaining quick passage.

The deadline for submission of State programs was August 3, 1979. Secretary Andrus' letter accompanying the administration's bill stated that "any substantial changes to the proposed amendments or any changes to other aspects of the Act will not be acceptable to the Administration."

Unfortunately, the Senate Energy Committee chose to ignore the Secretary's statement in reporting a bill which makes changes in both the administration's amendment and other aspects of the law.

This current amendment, which is the same as S. 1403 which, Mr. President, I have earlier stated was passed by the Senate on September 11, 1979, like the Senate action of last September, would enable the Secretary to delay the deadline of submittal of State programs by 16 months. This is not necessary. The States involved with coal strip mining, which number about 24, are far along in the development of their programs. By September 3 half or more, probably 12 to 14, of those States will have had their State programs approved.

Mr. President, I ask unanimous consent to have printed in the RECORD the exact standing of where the Office of Surface Mining is and the Secretary of Interior on the approval of State programs.

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

STANDING

STATE PROGRAM APPROVAL

Two States have had their programs approved. Although the Montana program has extensive variations from Federal law and regulations, it was approved in April 1, 1980. The Texas program was approved on February 27, 1980.

PROPOSED STATE PROGRAMS UTILIZING THE "STATE WINDOW"

Nine State programs include one or more "State Window" proposals. Three other States are expected to include some type of "State Window" proposals in their programs.

STATE LAWS

Twenty-one States have enacted laws; three States have partially completed work on their laws.

STATES REGULATIONS

Fourteen States have promulgated regulations; ten States have partially completed work on regulations.

VARIATIONS

Only 6 States programs have few or no variations from the Federal regulations; ten State programs have numerous variations from the Federal regulations; and nine State programs still have extensive variations from the Federal regulations.

Alabama. Law: Drafted. Expect enactment at special session planned for October.

Regulations: Drafted. Will be finalized after enactment of legislation.

Variations: Small number of differences from Federal regulations. No "State window."

Arkansas. Law: Enacted.

Regulations: Promulgated.

Variations: Two "State windows" proposed; extensive differences to regulations.

Colorado. Law: Enacted.

Regulations: In final form, approved by appropriate State officials, but not yet formally promulgated.

Variations: 18 "State window" proposals, two in statute; remainder in regulations, plus numerous other differences.

Illinois. Law: Enacted.

Regulations: Drafted.

Variations: Numerous differences from Federal regulations. No "State window."

Indiana. Law: Enacted.

Regulations: Drafted.

Variations: Numerous differences from Federal regulations. No "State window."

Iowa. Law: Enacted.

Regulations: Proposed, scheduled for promulgation in September or October.

Variations: Six "State windows" proposed; extensive variations in regulations.

Kansas. Law: Enacted.

Regulations: Initial draft complete; being revised for submission in September.

Variations: No "State window" or other differences.

Kentucky. Law: Enacted.

Regulations: Promulgated, but some revisions needed.

Variations: Large number of variations from Federal regulations; no "State windows" per se.

Louisiana. Law: Enacted.

Regulations: Promulgated.

Variations: One "State window," plus over two hundred other minor differenced from Federal regulations. (This is a relatively small number when compared to States which have made extensive changes.)

Maryland. Law: Enacted.

Regulations: Promulgated.

Variations: Eleven "State windows" proposed, plus extensive differences to both Federal law and regulations.

Mississippi. Law: Enacted.

Regulations: Promulgated.

Variations: No "State window" or other differences.

Missouri. Law: Enacted.

Regulations: Promulgated.

Variations: Extensive differences to regulations.

Montana. Law: Enacted.

Regulations: Promulgated.

Variations: One "State window" approved, plus extensive other differences to Federal law and regulations.

Program Approved: April 1, 1980.

New Mexico. Law: Enacted.

Regulations: Promulgated.

Variations: Numerous differences from Federal regulations, including ten major differences of "State window" type.

North Dakota. Law: Enacted.

Regulations: Promulgated.

Variations: Numerous differences to regulations.

Ohio. Law: Being considered by State legislature. Passed Senate, in House committee.

Regulations: Drafted.

Variations: Numerous to regulations; one "State window" proposal may be submitted.

Oklahoma. Law: Enacted.

Regulations: Proposed; final publication and filing only steps required to complete action.

Variations: One "State window" proposed, plus numerous differences to regulations.

Pennsylvania. Law: Pending in Legislature.

Regulations: Drafted, awaiting completion of legislative action on law.

Variations: Extensive variations expected, including several "State windows."

Tennessee. Law: Enacted.

Regulations: Drafted; State preparing to promulgate shortly.

Variations: Small number of changes from Federal regulations.

Texas. Law: Enacted.

Regulations: Promulgated.

Variations: Small number.

Program Approved: February 27, 1980.

Utah. Law: Enacted.

Regulations: Promulgated, but several changes are being made and will be promulgated August 20.

Variations: Two "State windows" proposed plus numerous other changes in regulations.

Virginia. Law: Enacted.

Regulations: Promulgated.

Variations: Eight "State windows" proposed, plus extensive other changes.

West Virginia. Law: Enacted.

Regulations: Being drafted.

Variations: Extensive variations being included in regulations.

Wyoming. Law: Enacted.

Regulations: Promulgated.

Variations: Very extensive differences from Federal regulations; fifteen "State windows."

Mr. MELCHER. A second effect will be to delay the approval of the States' abandoned mine lands programs, thereby resulting in the continued withholding of the 50 percent State share of the reclamation fund which awaits approval of the State enforcement programs. This delay will allow continuation of the detrimental effects of blighted areas and communities.

A third serious effect will be to postpone the deadline for the final decision of the Secretary approving or disapproving State program submissions until after the inauguration of the next administration, thus introducing a significant element of uncertainty into the entire process. Most coal producing States are now well advanced in preparing their program submissions. The possibility of a new administration taking over the final review and approval will prove unsettling and disruptive at best.

Mr. President, perhaps the most serious effect in the amendment is that it deletes the requirement that State programs comply with the regulations. The amendment deletes the requirement that States' regulatory programs comply with the rules and regulations issued by the Secretary pursuant to the act.

It is argued that this is a relatively minor change necessary to the creation of the "State window" which would otherwise be lacking. Nothing could be further from the truth. In fact, this amendment amounts to a substantial undermining of the intent of Congress in passing the Surface Mining Act.

It is instructive that the interim report of the President's Commission on Coal, which is chaired by Governor Rockefeller of West Virginia, one of the major proponents of this amendment, makes no mention of the Surface Mining Control and Reclamation Act or the regulations issued pursuant thereto in its search for "Acceptable Ways to Hasten the Substitution of Coal for Oil."

This omission is an indication that the act and the regulations are not an impediment to coal production. This conclusion is consistent with that of the Office of Technology Assessment in its report entitled "The Direct Use of Coal."

The basic intent of the act is to establish surface mining control and reclamation standards which will constitute the minimum uniform requirements applicable in all States.

Mr. President, there is a list of the kind of regulations which would be separately interpreted by State governments under this amendment as illustrative of the negative effect on the minimal level of the compatibility between State programs and the law. They include:

First. Definition of "significant imminent environmental harm to land, air and water resources" which is a key criteria for determining whether a cessation order is to be issued to a mine operator.

Second. Definition of "valid existing rights" which determines whether an operator can continue to mine in an area which might otherwise be designated unsuitable for mining.

Third. Definition of "subtantial legal and financial commitments" which is critical to the mine operator's right to start or continue mining.

Fourth. Definition of "any person who is or may be adversely affected" and similar phrases used in the act which serve to define where and under what conditions the public may participate in decisions related to mining.

Fifth. Definitions of the terms mine "plan area," "permit area," affected area," and "adjacent area" which are used to determine levels and types of data required in a permit application and which have been used to control and, in some cases, reduce the specificity and volume of data required upon initial application to mine.

Sixth. Definition of "historical use" which is a primary determinant of the applicability of prime farmland requirements of the act to individual mines and which has been litgated in the D.C. Circuit Court.

Seventh. Definition of "government finance construction" which is a criteria for limiting the applicability of the Surface Mining Act to highway and other construction project being carried out by State and local governments.

Eighth. The performance standard regarding the "* * * type of explosives and detonating equipment, size, timing and frequency of blast. * * *" of section 515(b)15(C) is subject to such a wide variety of interpretation that some basis for evaluation of comparability is critical.

Ninth. Explication of the phrase "* * * maximize the utility and conservation of solid fuel resource being recovered. * * *" contained in section 515(b)(1) is essential and, in fact, industry has challenged the existing regulations as

being too vague for implementation of this standard.

Tenth. Parameters for determining "best technology currently available * * *" as used in both 515(b)(10) with regard to suspended solids and 515(b)(24) with regard to fish and wildlife is essential to avoid unreasonable requirements or disputes merely because new technology has been used in isolated cases.

Eleventh. General language of the act related to data on and protection of "fish, wildlife and related environmental values" must be given some characterization by the regulations to avoid extensive controversy with the Federal and State fish and wildlife agencies regarding how much is enough.

Twelfth. The authorization for us of "best available subsoil" contained in 515(b)(6) is subject to such varying interpretation that some criteria for determining "best" are necessary.

Thirteenth. The broad authority of the act for experimental practices requires a clear basis and procedure for authorizing departure from the performance standards to avoid successful challenge to any variance allowed.

Fourteenth. Conditional approval of State programs under limited conditions has been provided in the regulations although the act is essentially silent on such a procedure.

Fifteenth. The act, in various places, requires concurrence by and cooordination with MSHA, Corps of Engineers, EPA, and USDA which would likely be necessary on a State-by-State basis if State regulations very close to the Secretary's regulations were not adopted. The Secretary's regulations have already achieved necessary concurrence. Other acts require the regulations under Surface Mining Control and Reclamation Act to be similarly coordinated with the Fish and Wildlife Service, Heritage Conservation and Recreation Service, and the Advisory Council on Historic Preservation which are facilitated by national regulations.

Mr. President, let me conclude by saying that it took us a long time to pass the Strip Mining Act. Its implementation has been fought every step of the way. It is being fought in the form of the amendment which is now being offered, which is now under consideration.

I think the effect of the amendment will surely cause a great deal more litigation. It has taken us a long time to get where we are. I would hate to see further coal development that is urgently needed interfered with by an entirely new round of court cases. This would be very disconcerting and very harmful to the proper development of coal.

I again thank the majority leader for his courtesy in allowing me some of his time.

Mr. CHAFEE and Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECONVENING DATE: NOVEMBER 12, 1980

Mr. ROBERT C. BYRD. Mr. President, sometime ago I announced that the Speaker and I had met to discuss the adjournment date and I indicated that we were in agreement that the Senate and the House would go out no later than October 4, either sine die or to return following the election.

The Speaker and I have met again and we have decided that the Senate and the House will return following the election on the date of Wednesday, November 12.

I make that announcement for the information of the Senate and hoping it will be called to the attention of all of my colleagues so that they can make plans accordingly, that is, if the adjournment in October is not sine die.

Of course, if it is sine die, we will not come back on November 12.

But if we have to go over until after the election, the Senate and the House will return on Wednesday, November 12.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I yield to Mr. Bayh with the understanding that I do not lose my right to the floor.

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

Mr. BAYH. Mr. President, I appreciate the leader yielding to me.

INTELLIGENCE AUTHORIZATION ACT, 1981

Mr. BAYH. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2597, the fiscal year 1981 intelligence authorization bill.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2597) entitled "An Act to authorize appropriations for fiscal year 1981 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1981".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1981 for the conduct of the intelligence and intelligence-related activities of the following agencies of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The Drug Enforcement Administration.

CLASSIFIED SCHEDULE OF AUTHORIZATIONS

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1981, for the conduct of the intelligence and intelligence-related activities of the agencies listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Permanent Select Committee on Intelligence of the House of Representatives to accompany H.R. 7152 of the 96th Congress. That Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

CONGRESSIONAL NOTIFICATION OF EXPENDITURES IN EXCESS OF PROGRAM AUTHORIZATIONS

SEC. 103. During fiscal year 1981, funds may not be obligated or expended for any program for which funds are authorized to be appropriated by section 101 in an amount in excess of the amount specified for that program in the classified Schedule of Authorizations describe in section 102 unless the Director of Central Intelligence or the Secretary of Defense notifies the appropriate committees of Congress of the intent to make such obligation or expenditure not less than fifteen days before such obligation or expenditure is made.

RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES

SEC. 104. Nothing contained in this Act shall be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

AUTHORIZATION OF APPROPRIATIONS FOR COUNTER-TERRORISM ACTIVITIES OF THE FEDERAL BUREAU OF INVESTIGATION

SEC. 105. In addition to the amounts authorized to be appropriated under section 101(9), there is authorized to be appropriated for fiscal year 1981 the sum of $11,400,000 for the conduct of the activities of the Federal Bureau of Investigation to counter terrorism in the United States.

TITLE II—INTELLIGENCE COMMUNITY STAFF

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1981 the sum of $18,000,000.

AUTHORIZATION OF PERSONNEL END-STRENGTH

SEC. 202. (a) The Intelligence Community Staff is authorized two hundred and forty-five full-time personnel as of September 30, 1981. Such personnel may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1981, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1981, any officer or employee of the United States or member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

SEC. 203. During fiscal year 1981, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a–403j) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

AUTHORIZATION OF APPROPRIATIONS

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1981 the sum of $55,300,000.

TITLE IV—GENERAL PROVISIONS

INCREASE IN EMPLOYEE BENEFITS AUTHORIZED BY LAW

SEC. 401. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such benefits authorized by law.

FUNDS TRANSFERS BY THE SECRETARY OF DEFENSE

SEC. 402. (a) During fiscal year 1981, the Secretary of Defense may pay for the expenses of arrangements with foreign countries for cryptologic support. Payments under this section may be made without regard to section 3651 of the Revised Statutes of the United States (31 U.S.C. 543).

(b) The authority of the Secretary of Defense to make payments under subsection (a) is effective only to the extent that appropriated funds are available for such purpose.

ADMINISTRATIVE PROVISIONS RELATING TO SPECIAL CRYPTOLOGIC ACTIVITIES OF THE NATIONAL SECURITY AGENCY

SEC. 403. (a) Notwithstanding section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), section 5536 of title 5, United States Code, and section 2675 of title 10, United States Code, during fiscal year 1981 the Director of the National Security Agency may lease real property outside the United States, for periods not exceeding ten years, for the use of the National Security Agency for special cryptologic activities and for housing for personnel assigned to such activities.

(b) During fiscal year 1981, the Director of the National Security Agency may provide to certain civilian and military personnel of the Department of Defense who are assigned to special cryptologic activities outside the United States and who are designated by the Secretary of Defense for the purposes of this subsection—

(1) allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (1), (2), (7), (9), (10), and (11) of section 911, and under sections 912, 914, 933, 941, 942, and 945, of the Foreign Service Act of 1946 (22 U.S.C. 1136 (1), (2), (7), (9), (10), (11), 1137, 1138a, 1148, 1156, 1157, 1160); and

(2) housing (including heat, light, and household equipment) without cost to such personnel, if the Director of the National Security Agency determines that it would be in the public interest to provide such housing.

(c) The authority of the Director of the National Security Agency to make payments under subsections (a) and (b), and under contracts for leases entered into under subsection (a), is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

TRAVEL EXPENSES OF PERSONNEL ASSIGNMENT TO CRYPTOLOGIC TRAINING OUTSIDE THE UNITED STATES

SEC. 404. (a) During fiscal year 1981, travel, transportation, and subsistence expenses may be paid under chapter 57 of title 5, United States Code, to civilian and military personnel of the Department of Defense who are assigned to cryptologic training outside the United States for a period of one year or longer without regard to section 4109(a)(2)(B) of such title.

(b) Any individual who is liable to the United States for any overpayment which was made to or on behalf of such individual before October 1, 1980, under chapter 57 of title 5, United States Code, while such individual was an employee of or assigned to duty with the National Security Agency and which was subsequently determined to be subject to the limitations contained in section 4109(a)(2)(B) of such title is hereby relieved of liability to the United States for such overpayment.

SECURITY OF CERTAIN FACILITIES OF THE NATIONAL SECURITY AGENCY

SEC 405. During fiscal year 1981, the Administrator of General Services, upon the application of the Director of the National Security Agency, may provide for the protection in accordance with section 3 of the Act of June 1, 1948 (40 U.S.C. 318b), of certain facilities (as designated by the Director of such Agency) which are under the administration and control of, or are used by, the National Security Agency in the same manner as if such facilities were property of the United States over which the United States has acquired exclusive or concurrent criminal jurisdiction.

AUTHORITY TO PAY DEATH GRATUITIES

SEC. 406. (a)(1) During fiscal year 1981, the Director of Central Intelligence may pay a gratuity to the surviving dependents of any officer or employee of the Central Intelligence Agency who dies as a result of injuries (other than from disease) sustained outside the United States and whose death—

(A) resulted from hostile or terrorist activities; or

(B) occurred in connection with an intelligence activity having a substantial element of risk.

(2) The provisions of this subsection shall apply with respect to deaths occuring after June 30, 1974.

(b) During fiscal year 1981, the Secretary of Defense may pay a gratuity to the surviving dependents of any officer or employee of the Department of Defense or of any member of the Armed Forces—

(1) who—

(A) is assigned to duty with an intelligence component of the Department of Defense and whose identity as such an officer, employee, or member is disguised or concealed; or

(B) is within a category of individuals determined by the Secretary of Defense to be engaged in clandestine intelligence activities; and

(2) who after the date of the enactment of this Act dies as a result of injuries (excluding disease) sustained outside the United States and whose death—

(A) resulted from hostile or terrorist activities; or

(B) occurred in connection with an intelligence activity having a substantial element of risk.

(c) Any payment under subsection (a) or (b) shall—

(1) be in an amount equal to the amount of the annual salary of the officer, employee, or member concerned at the time of death;

(2) be in lieu of payment of any lesser death gratutity authorized by any other law; and

(3) be made under the same conditions as apply to payments authorized by section 14 of the Act of August 1, 1956 (22 U.S.C. 2679a).

(d) The authority of the Secretary of Defense and the Director of Central Intelligence to make payments under this section is effective only to the extent that appropriated funds are available for such purpose.

Amend the title so as to read: "An Act to authorize appropriations for fiscal year 1981 for the intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, and for the Central Intelligence Agency Retirement and Disability System, and for other purposes.".

Mr. BAYH. Mr. President, I move that the Senate disagree to the amendments of the House, that the Senate agree to the conference requested by the House, and that the Chair be authorized to appoint conferees.

The motion was agreed to and the Presiding Officer (Mr. BOREN) appointed Mr. BAYH, Mr. STEVENSON, Mr. HUDDLESTON, Mr. INOUYE, Mr. JACKSON, Mr. MOYNIHAN, Mr. BIDEN, Mr. GOLDWATER, Mr. MATHIAS, Mr. CHAFEE, Mr. WALLOP, Mr. DURENBERGER, and Mr. LUGAR conferees on the part of the Senate; and Mr. NUNN for matters of interest to the Committee on Armed Services.

Mr. BAYH. Mr. President, I appreciate the Senate's response to this intelligence matter.

AUTHORITY FOR CERTAIN ACTIONS BY THE STAFF OF THE SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY

S. RES. 495—TAKING OF DEPOSITIONS

Mr. BAYH. Mr. President, as the chairman of the Subcommittee of the Judiciary established recently to investigate the Libyan effort to gain influence through certain individuals in this country, and with my distinguished vice chairman, the Senator from South Carolina (Mr. THURMOND), I send to the desk a resolution which will permit the staff of our subcommittee to interrogate witnesses under oath without it being necessary for Members of the Senate to be present, and I ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 495) to authorize the taking of depositions by the staff of a Subcommittee of the Committee on the Judiciary.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. BAYH. Mr. President, I yield to the Senator from South Carolina (Mr.

THURMOND) pursuant to the request and with the permission of the distinguished majority leader.

Mr. THURMOND. Mr. President, we feel that this will save a lot of time and will facilitate the work of the committee. The committee was unanimous in endorsing this resolution and approving it. We hope there will be no objection to it.

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

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. THURMOND. Mr. President, I send to the desk a resolution to obtain tax records and ask for its immediate consideration.

The PRESIDING OFFICER. Does the Senator wish action on the first resolution that was sent to the desk?

Mr. THURMOND. That will be fine.

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to and the preamble is also considered and agreed to.

The resolution, with its preamble, reads as follows.

S. RES. 495

Whereas, by Order of July 24, 1980, the Senate established a subcommittee of the Committee on the Judiciary to investigate activities relating to individuals representing the interests of foreign governments;

Whereas, for the expeditious conduct of the subcommittee investigation it is necessary that its staff members examine witnesses under oath and gather evidence;

Whereas, under 5 U.S.C. § 2903(c)(2), an oath authorized under the laws of the United States may be administered by an individual authorized by local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered: Now, therefore, be it

Resolved, That the subcommittee of the Committee on the Judiciary to investigate activities relating to individuals representing the interests of foreign governments be authorized to issue commissions and to notice depositions for staff members to examine witnesses and to receive evidence under oath administered by an individual authorized by local law to administer oaths. Employees of the Office of Senate Legal Counsel shall be deemed staff members for purposes of this resolution.

SEC. 2. The subcommittee shall have authority to place in the record of its public or executive sessions sworn testimony and evidence obtained at examinations and depositions, but testimony and evidence so obtained shall be deemed to have been taken before the subcommittee once filed with the clerk of the subcommittee, whether or not placed in the subcommittee record.

SEC. 3. Subpoenas for staff examinations and depositions may be issued under the authority granted by Order of July 24, 1980, or under any other relevant authority. This resolution shall supplement without limiting in any way the existing authority of Senate committees and subcommittees to conduct examinations and depositions.

SEC. 4. The subcommittee may delegate to the Chairman and Vice Chairman, or to staff officers designated in writing by the Chairman and Vice Chairman, power to authorize and issue deposition notices, and may determine by subcommittee rule the procedures for conducting examinations and depositions. Subcommittee rules of procedure shall be effective immediately upon adoption by a majority of the subcommittee and publication in the Congressional Record, notwithstanding any other provision of law.

SENATE RESOLUTION 496—TO RECEIVE AND INSPECT CERTAIN TAX RECORDS

Mr. THURMOND. Mr. President, I send to the desk a resolution to obtain tax records and ask for its immediate consideration.

Mr. METZENBAUM. Mr. President, I rise for a parliamentary inquiry.

Mr. ROBERT C. BYRD. Mr. President, I do not yeld for that purpose at this time. I will in a moment, may I say to my friend.

Mr. METZENBAUM. I was only making an inquiry of whether this resolution being offered by the Senator from South Carolina (Mr. THURMOND) has to do with the matter before the Judiciary Committee.

Mr. ROBERT C. BYRD. I have no objection to that.

Mr. THURMOND. It is pertaining to the investigative committee, that is right.

Mr. METZENBAUM. I have no objection.

The PRESIDING OFFICER. The clerk will state the second resolution.

The legislative clerk read as follows:

S. RES. 496

Whereas, by Order of July 24, 1980, the Senate established a subcommittee of the Committee on the Judiciary to investigate activities relating to individuals representing the interests of foreign governments;

Whereas, allegations have been made concerning that financial assistance, reimbursement, or payments to William E. Carter, III (Billy Carter), from Libyan sources, and that his reasons for seeking these may be based on his pre-existing financial condition;

Whereas, in order to investigate these allegations relating to the activities of William E. Carter, III (Billy Carter), it is necessary for the subcommittee to it is necessary for the subcommittee to inspect and receive tax returns, and tax-related matters, held by the Secretary of the Treasury.

Whereas, information necessary for such investigation cannot reasonably be obtained from any other source;

Whereas, under sections 6103(f) and 6104(a)(2) of the Internal Revenue Code of 1954, as amended, a committee of the Senate has the right to inspect tax returns if such committee is specifically authorized to investigate tax returns by resolution of the Senate: Now, therefore, be it

Resolved, That the subcommittee of the Committee on the Judiciary to investigate activities relating to individuals representing the interests of foreign governments be specifically authorized to inspect and receive for the taxable years 1975–1980 any tax return, return information, or other tax-related matter, held by the Secretary of the Treasury, with respect to William E. Carter, III, (Billy Carter), including trusts, sole proprietorships, partnerships, corporations, and other business entities, other than those which are publicly held, in which William E. Carter, III, (Billy Carter), or Sybil Carter have a financial interest, and any other tax return, return information, or other tax-related matter held by the Secretary of the Treasury which the subcommittee determines may contain information directly relating to its investigation.

Mr. ROBERT C. BYRD. Mr. President, these resolutions have not been cleared with the leadership. I suggest that they remain at the desk pending further disposition.

The PRESIDING OFFICER. The first resolution was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that that action be vitiated until the resolution is cleared with the leadership on both sides.

Mr. BAKER. Mr. President, reserving the right to object, and I am not going to object, but I simply do not know what it is all about. I just walked in the door. I will be glad to confer with the majority leader. In the meantime, I will not object to the request of the majority leader.

The PRESIDING OFFICER. Without objection, the request that both resolutions be held at the desk is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I am sorry to make that request, but the resolutions have not been cleared with my staff and they have not been cleared, as far as I know, with the minority.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

(The following proceedings occurred later in the day:)

SENATE RESOLUTION 495—TAKING OF DEPOSITIONS

Mr. ROBERT C. BYRD. Mr. President, earlier today, I asked consent that the action that was taken previously in adopting a resolution be vitiated. What was the number of the resolution?

The PRESIDING OFFICER. Senate Resolution 495.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I ask unanimous consent that the act of vitiation be vitiated.

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

Mr. ROBERT C. BYRD. Mr. President, does this latest action result in the validity of the passage by the Senate earlier of the resolution?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

SENATE RESOLUTION 496—INSPECTION AND RECEIPTS OF TAX RECORDS

Mr. ROBERT C. BYRD. Mr. President, I had earlier objected to the consideration of Senate Resolution 496.

I remove that objection.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 496), to authorize the inspection and receipt of tax records by a subcommittee of the Committee on the Judiciary.

The Senate proceeded to consider the resolution.

UP AMENDMENT NO. 1498

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for himself and Mr. THURMOND, proposes an unprinted amendment numbered 1498.

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

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

The amendment is as follows:

Strike out all after the resolving clause and insert:

Resolved, That the subcommittee of the Committee on the Judiciary established to investigate activities relating to individuals representing the interests of foreign governments be specifically authorized to inspect and receive for the tax years 1975–1980 any tax return, return information, or other tax-related material, held by the Secretary of the Treasury, related to William E. Carter III (Billy Carter), including any trusts, sole proprietorships, partnerships, corporations, and other business entities, other than publicly held corporations, in which William E. Carter III or Sybil Carter have a beneficial interest, and any other tax return, return information, or other tax-related material held by the Secretary of the Treasury which the subcommittee determines may contain information directly relating to its investigation.

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

The amendment (UP No. 1498) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the resolution, as amended.

The resolution (S. Res. 496), as amended, was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1499

Mr. ROBERT C. BYRD. Mr. President, I send an amendment to the desk to the preamble and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for himself and Mr. THURMOND, proposes an unprinted amendment numbered 1499 to the preamble:

Strike the preamble and insert new language:

Whereas, by Order of July 24, 1980, the Senate established a subcommittee of the Committee on the Judiciary to investigate activities relating to individuals representing the interests of foreign governments;

Whereas, allegations have been made that financial assistance, reimbursements, or payments were made to William E. Carter, III, by or for Libyan sources, and that his pre-existing financial condition may have been a reason for seeking such assistance, reimbursements, or payments;

Whereas, in order to investigate these allegations it is necessary for the subcommittee to inspect and receive tax returns, return information, and tax-related material, held by the Secretary of the Treasury;

Whereas, information necessary for such investigation cannot reasonably be obtained from any other source; and

Whereas, under sections 6103(f) and 6104 (a)(2) of the Internal Revenue Code of 1954, as amended, a committee of the Senate has the right to inspect tax returns if such committee is specifically authorized to investigate tax returns by resolution of the Senate: Now, therefore, be it

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

The amendment (UP No. 1499) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The resolution, with its preamble, as agreed to, follows:

Whereas, by Order of July 24, 1980, the Senate established a subcommittee of the Committee on the Judiciary to investigate activities relating to individuals representing the interests of foreign governments;

Whereas, allegations have been made that financial assistance, reimbursements, or payments were made to William E. Carter III, by or for Libyan sources, and that his pre-existing financial condition may have been a reason for seeking such assistance, reimbursements, or payments;

Whereas, in order to investigate these allegations it is necessary for the subcommittee to inspect and receive tax returns, return information, and tax-related material, held by the Secretary of the Treasury;

Whereas, information necessary for such investigation cannot reasonably be obtained from any other source; and

Whereas, under sections 6103(f) and 6104 (a)(2) of the Internal Revenue Code of 1954, as amended, a committee of the Senate has the right to inspect tax returns if such committee is specifically authorized to investigate tax returns by resolution of the Senate: Now, therefore, be it

Resolved, That the subcommittee of the Committee on the Judiciary established to investigate activities relating to individuals representing the interests of foreign governments be specifically authorized to inspect and receive for the tax years 1975–1980 any tax return, return information, or other tax-related material, held by the Secretary of the Treasury, related to William E. Carter III, (Billy Carter), including any trusts, sole proprietorships, partnerships, corporations, and other business entities, other than publicly held corporations, in which William E. Carter III, or Sybil Carter have a beneficial interest, and any other tax return, return information, or other tax-related material held by the Secretary of the Treasury which the subcommittee determines may contain information directly relating to its investigation.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 15 minutes and that Senators may speak for up to 5 minutes each therein.

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

NUCLEAR WASTE BILL: A MISTAKE

Mr. PROXMIRE. Mr. President, on Wednesday, July 30, the Senate made a serious mistake. By a margin of 8 to 7, it passed a nuclear waste program which is both unnecessary and dangerous. The Senate has created a program which requires a tremendous increase in the amount of nuclear materials shipped on our highways, and it creates a program which has been clearly shown to cost more than alternative storage techniques.

First, the question of need. Mr. President, the necessity for a Federal AFR facility at this time has not been adequately demonstrated. Since the program's inception, the Department of Energy itself has repeatedly reduced its estimate of how much spent fuel will need AFR storage. After a sharply critical GAO report was issued in 1979, the DOE reduced its estimate of 1983 storage needs from 970 metric tons to a range of 171 to 377 metric tons.

Mr. President, the Department has revealed a disturbing tendency to lower its estimate of AFR storage needs whenever it encounters outside criticism of its program. At the rate at which the DOE seems to be bringing its projections into line with reality, the agency's own rationale for an AFR program is vanishing fast. Which, as every good bureaucrat knows, is no way to run a boondoogle. To put it another way, Mr. President, the DOE is having trouble conjuring up the crisis which S. 2189 is supposed to resolve.

A careful look at the facts reveals that there may not be a real crisis at all. In a letter to Senators RANDOLPH and HART, the Office of Technology Assessment says that if a decision were made now to expand existing storage at reactor sites, the utilities could put off through the 1990's the spent fuel problem that now looms after 1987. Only one utility faces immediate problems and these can be solved by shipping wastes to another pool within its own system. Certainly a temporary storage problem at one reactor does not, in any case, justify a half-billion dollar Federal program.

Mr. President, not less than three of Congress most respected watchdog agencies have sharply questioned the need for this program. Can we afford to ignore the evidence of the Congressional Budget Office, the General Accounting Office, and the Office of Technology Assessment? The answer is no. By ignoring the advice of these agencies, we have done a disservice to both the taxpayer and the utility ratepayer. While Senator HATFIELD's amendment correctly requires utilities to pay the full cost of an AFR program, S. 2189 still encourages utilities to choose the most expensive storage alternative.

Both the GAO and the Office of Technology Assessment agree that on-site storage could be expanded to accomodate 100 percent of the utilities' spent fuel through the 1990's. Why then, Mr. President, have we created an additional level of Federal bureaucracy when we could move directly from at-reactor storage to long-term storage or disposal? Even the

Department of Energy's own environmental impact statement admits that expanded at-reactor storage is sufficient to meet utility needs. I quote, "It is assumed that in almost every case private industry would provide sufficient storage capability to prevent shutdown of existing nuclear plants." Mr. President, if the program is not needed, and the utilities can do the job themselves at cheaper cost, then there is no effective rationale for this program. Are taxpayers and utility ratepayers going to thank us for making their environment less safe and their electricity more expensive? S. 2189 is not in the public interest.

Why are we taking the technical and economic problems of the private sector into our own hands when they have demonstrated ample capacity to solve those problems themselves?

Mr. President, the GAO agrees with me. In their report to Congress they have said:

> The responsibility for interim spent fuel storage should be a utility and nuclear industry concern. They have the technical capability to deal with the problem and should have the motivation, considering their large capital investment in nuclear power.

The GAO has said it all.

To oppose an unamended S. 2189 is not antinuclear.

It is antiboondoggle.

It is antibureaucratic.

And it is good commonsense.

Mr. President, not only is the AFR program of dubious merit now, it is likely to be even less justifiable in the future. The DOE's estimate of AFR storage requirements due out in August is expected to be the lowest yet. And at the very time the Senate has geared up to pass a half-billion dollar storage program.

Expected technical developments down the road will make the AFR program we have now embarked upon look on storage techniques is likely, by 1985 sillier and sillier. Continuing research to double the amount of wastes which can be accommodated at existing pools This technological advance is above and beyond current waste consolidation techniques now being implemented. Another new technology promises even greater cost savings. New dry storage techniques now being demonstrated are likely to lower storage costs to $40,000 per metric ton, according to the OTA. Whereas, AFR storage is currently expected to cost $130,000 per metric ton. With such breakthroughs right around the corner, is it sensible to commit ourselves to an expensive and entangling program right now? I hardly think so.

Senator HART's amendment would have resolved the most glaring failings in this bill. Unfortunately, that amendment failed. Had it passed, it would have required utilities to prove concretely that they had no capacity to care for their own spent fuel onsite. Without this finding, they would not shift this burden onto the Federal Government.

Instead, the Federal Government is now the nuclear waste babysitter serving at the utilities' whim, while the American people must face the tremendous environmental hazards associated with massive shipments of radioactive materials.

And if the environmental threat is only theoretical, the cost problem is not. We face the danger that utilities may be deluded into thinking that by placing spent fuel in Federal hands, they are saving money. Unfortunately, this is not the case. According to the independent engineering firm of Stone and Webster, spent fuel stored in a 1,400 metric ton onsite pool for 20 years would cost only $143,000 per metric ton. However, adding in transportation costs, a 5,000 metric ton AFR facility would cost $233,000 for the same amount of fuel, over the same time period—$90,000 more per ton. Already, the TVA has decided that it will be cheaper to expand their own onsite storage rather than pay the costs of a central Federal facility. The economies of scale do not favor an AFR program.

Most disturbing, Mr. President, is the possibility that utilities will not show the independence and initiative of the TVA but will fall back on expensive Federal disposal and pass on the added costs directly to the already-beleaguered ratepayer.

Senator HART's amendment would have required that AFR's be established only as a last resort. A last resort, Mr. President, because there is no question that utilities should be required to expand their own storage capacity. Not cajoled, but required.

The worst problem with this bill is that we may be lulled into thinking that the nuclear waste problem is solved when it is only deferred.

In conclusion, Mr. President, my vote against S. 2189 was not antinuclear, it was procommonsense.

THE GENOCIDE CONVENTION: A FORGOTTEN HOSTAGE

Mr. PROXMIRE. Mr. President, as the hostage crisis in Iran drags into its 9th month, Americans anxiously await the return of their fellow citizens from bondage in Tehran.

In the meanwhile, another hostage crisis drags on—right here at home. It receives very little attention from the press. In fact, it is virtually ignored.

I am speaking of the International Convention on the Prevention and Punishment of Genocide, a treaty which has been held hostage by the Senate since 1949.

The treaty, which is aimed at preventing the slaughtering of ethnic, racial, and religious minorities, sits in the Senate like a prisoner—held by jailers who misunderstand its content and misstate its purpose. It last came to the floor of the Senate in February 1974, and its foes killed it by filibuster. That was the fourth time the treaty was reported to the floor, and the fourth time it was tabled. Not in the 31 years since President Truman referred it to Congress, has the Senate had a chance to vote up-or-down on this important convention.

It is unconscionable that the treaty should be held up for so long, and for such invalid reasons. One charge is that it would wreck havoc on the American system of government and the criminal code. That is, of course, ridiculous. The United States will not sacrifice one shred of its sovereignty; nor will it be shackled by international courts seeking to destroy the American judicial system.

On the contrary, the treaty will become a valuable instrument in our crusade for human rights. It will be a long-overdue statement of conscience, expressing our will to fight genocide.

Every day that American hostages are held in Iran, the world suffers a disgrace. Let us hope they are released quickly and sent home. Let us also release a hostage and end a 31-year disgrace—Let us ratify the Genocide Convention.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

DELAYING THE BUDGET: A SERIOUS ERROR

Mr. HARRY F. BYRD, JR. Mr. President, Speaker O'NEILL has indicated that consideration is being given to delaying action on the second congressional budget resolution for fiscal year 1981 until after the election in November.

This would push the debate back until after the beginning of the new fiscal year on October 1.

More significantly, it seems to me that if Congress violates its own rules and postpones the budget until after the election, the Members will feel a lot less pressure to hold down spending.

Already the President has raised his spending proposals for 1981 by $18 billion, from $616 billion to $634 billion.

If the budget debate is postponed, the total is sure to go higher.

I fear that delay will mean even more spending, and the taxpayers be damned.

All year long, and as recently as June, the budget for 1981 was being advertised as in balance. But now it is admitted to be $30 billion in deficit.

As I see it, delaying the budget debate will only mean more red ink—and more inflation.

QUORUM CALL

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

15-MINUTE RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 15 minutes.

There being no objection, the Senate, at 12 noon, recessed until 12:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HEFLIN).

EXTENSION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for routine morning business be extended for 15 minutes and that Senators may speak therein.

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

RECONSIDERATION OF RECESS RESOLUTION—(S. CON. RES. 113)

Mr. ROBERT C. BYRD. Mr. President, as to the recess resolution that was adopted, was a motion made to reconsider that resolution?

The PRESIDING OFFICER. No, it was not.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the recess resolution was agreed to.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. I thank the Chair, and I yield the floor.

REINDUSTRIALIZATION: A FOOLISH INFLATIONARY, WASTEFUL MISTAKE

Mr. PROXMIRE. Mr. President, Congress may be slipping into a series of grave mistakes in response to our economic ills. We do, indeed, suffer from rampaging inflation, from low productivity, from high unemployment, from painfully high interest rates, from a trade deficit, a fiscal deficit and a leadership deficit.

We do have a surplus of proposals, and some of those proposals would make the situation worse. One of these make-it-worse proposals has very wide support from Republicans and Democrats in and out of Congress, from some labor leaders and some business leaders and from such a normally thoughtful source as Business Week magazine. It is called reindustrialization.

Reindustrialization includes many proposals: Federal loans, Federal loan guarantees, creation of another Reconstruction Finance Corporation, refundable tax credits, allocation of funds by the Federal Reserve Board, Federal Government export subsidies, and many others. There is one common denominator of all this so-called reindustrialization. Every measure would try to assist American industry. And each measure would do so by using federal resources. Reindustrialization would strengthen American business by using the Federal taxing, spending, and lending power to do so.

Now how about it? Why should the U.S. Government not aggressively promote new industry? Why should we not do what our competitors are doing in a way that gives them a very considerable advantage over us in so many industries, that is provide the Federal Government assistance that enables them to take on the foreign competition and beat it?

GOVERNMENT TOO BIG NOW

My answer is this: If there is one clear theme in America today, it is that the Government is too big, too intrusive, too burdensome. There is no way the Government can become smaller by getting bigger. If Government steps in to provide massive subsidies, it means the taxpayer will have to pay those subsidies.

The steady theme from the business groups that would be subsidized is: "Get out of our way. Get off our backs. Cut out every program that possibly can be cut."

That is point 1. Point 2 is that any action the Government takes will tend to support one industry at the expense of others or one firm instead of others. The Government will be saving a Chrysler or a Ford or a Lockheed, at the expense of their competitors. Or on the other hand, the Government will be stepping in to try to bring along a new and promising industry, but it is, of course, not promising enough to win support from the private investment community. If it were, it would not need Government subsidy. In any event industrialization means that the Government is substituting its judgment for the judgment of the marketplace.

TAXPAYER PAYS FOR BAILOUT

That is point 2. Point 3 is that any tax cut, any loan guarantee, any subsidized loan, any grant or bail out has to be paid for by American business itself. And who will pay that in American business? Obviously, the winners—the successful, profitable operations, the working taxpayer, the successful investor—these are the people in this country who have the income that provides whatever revenue the Federal Government can spend. So reindustrialization means that the winners are losing income so Government officials can decide who among the nonwinners or the downright losers in the economic community will be handed the income these successful firms are making.

It is obvious to me that unless you have a whale of a lot of faith in the judgment of Government officials—far more than any record would justify that the result of this reindustrialization is going to be to burden successful firms in this economy in order to help those firms who cannot win the confidence of investors or buyers. Those who cannot sell their products to consumers, those who cannot sell their future to investors but are perceived somehow by public officials to be worthy—these the politically potent losers will get a helping hand from Uncle Sugar paid for by those who are now making a success out of what they are doing.

That is point 3. Point 4 is that the Government has far more to do now than the American people can afford or want to afford. The Government has a massive and expensive military burden that is sure to increase.

The Government has a vast social security and income security program, a huge and increasingly expensive health program, a mammoth education commitment, a colossal burden to help cities, a vast housing program.

REINDUSTRIALIZATION MEANS STILL BIGGER GOVERNMENT

Not one of these programs will be dismembered. Powerful constituencies will push hard to increase all of these programs. Every one of these programs have a strong hold on the conscience of the American people. With all this do we really need another mammoth program, an additional multibillion dollar burden on the taxpayer and investor? Of course, reindustrialization will be sold as so many other programs are sold as a program that will bring in far more revenue than it will cost. How often I have heard that argument? Many, many times. But it never works. But the real effort of reindustrialization will be to provide a giant prod to other spending programs. I can get it now: "How can you cut food stamps or slow down housing when we are pouring billions into building up corporate America and will this program work?"

Will it? It will if the market is and will continue to be wrong in deciding what products should sell and what products deserve to win investment funds. It will only if—however defective the market may be—the public officials who make the decision on reindustrialization will make the decision more wisely than the market. Will they?

Even on the assumption that somehow Government conveys a special wisdom in economic matters that is denied those who make their living in business, even assuming that public officials have the higher order of intelligence, the Government route is the losing route because of the nature of pressures in our democratic society. Money will go where the political power is under that kind of game. It will go where union power is mobilized. It will go where the campaign contributors want it to go. It will go where the mayors and Governors are as well as Congressmen and Senators have the power to push it. Anyone who thinks Government funds will be allocated to firms according to merit has not lived or served in Washington very long.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

LEGISLATIVE PROCEDURE—H.R. 1197 AND H.R. 7786

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the hour of 2 o'clock today the Senate proceed to the consideration of H.R. 7786. This has been cleared with the minority. It has to do with Secret Serv-

ice protection for Presidential candidates, and so forth, and that the pending business, H.R. 1197 be temporarily laid aside until the disposition of H.R. 7786; and that the Alaska lands bill remain in a temporarily laid aside status until the close of business today.

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

Mr. ROBERT C. BYRD. Mr. President, with respect to the pending business, H.R. 1197, I ask unanimous consent that it be temporarily laid aside at the time H.R. 7786 is called up, and that H.R. 1197 remain temporarily laid aside until H.R. 7786 is disposed of or until the close of business today, whichever is the earlier.

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

Mr. ROBERT C. BYRD. May I state, Mr. President, that I expect, I think there is a possibility of, rollcall votes in connection with H.R. 7786 this afternoon, but I cannot bring the bill up until 2 o'clock because the Senator who has an amendment thereto is in committee meetings prior to that time and he cannot be on the floor until around 2 o'clock to call up the amendment.

There may be a rollcall vote in connection with that amendment or in connection with the passage of the legislation. So I alert my colleagues that there may be rollcall votes this afternoon. I would not be surprised to have a rollcall vote or votes in connection with H.R. 7786. That is not to say, however, that there will be rollcall votes because we will not know until that time.

RECESS UNTIL 1:45 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 1:45 p.m. today.

There being no objection, the Senate, at 12:26 p.m. recessed until 1:45 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. BRADLEY).

EXTENSION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for routine morning business be extended to 2 p.m. today and that Senators may speak during that period.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CHRYSLER K-CAR MODELS

Mr. RIEGLE. Mr. President, the first all new K-car models of the Chrysler Corp. will begin rolling off the assembly line next Wednesday, August 6, in Detroit at Chrysler's Jefferson Avenue assembly plant. All of those who voted for the Chrysler loan guarantee legislation realize how important the K-car is to the future of Chrysler.

Chrysler and the new K-car do not represent a "pious hope" or "throwing good money after bad" as the leading opponent of Chrysler here in the Senate stated on July 30.

The new K-car that has been designed and produced by Chrysler, and which was made possible by the Loan Guarantee Act, will average 25 miles per gallon in the city and 40 miles per gallon on the highway. It is a four-cylinder, front-wheel-drive automobile that will enable us to conserve energy and counteract the massive importation of Japanese cars into the United States. The work force that is producing these cars is absolutely dedicated to offering the finest quality automobiles built anywhere in the world.

Many people have contributed to this very important day for the new Chrysler Corp. Doug Fraser and his UAW membership, Lee Iacocca and the employees of Chrysler, Senator CARL LEVIN and other congressional colleagues. The Carter administration, Detroit Mayor Coleman Young, and all of the others who led the fight to give Chrysler this unique chance in automotive history share this achievement with the Chrysler employees actually helping this company make the turnaround and produce and build these cars.

We all believe Chrysler is worth saving. Leading the way toward recovery is the K-car.

The K-car is a symbol to all of those who want to work in a positive and cooperative manner to rebuild our domestic auto industry. The domestic auto industry is vital to our national economic vitality and other special actions by Congress and the President will be needed as part of the short-term and long-term rebuilding process facing this strategic industry. But, the K-car is an important beginning; it shows we can make progress if we act positively rather than surrender to our problems or follow the negative advice of those who favored sending Chrysler into bankruptcy.

There is more good news from Chrysler in the form of other new fuel efficient vehicles that will be introduced in the months ahead. Today's issue of the Washington Star contains an important article in that respect and I ask unanimous consent it be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. RIEGLE. Mr. President, I will be in Detroit next Wednesday morning to see and drive one of the new K-cars. Let me issue an open invitation to my colleagues to attend this historic occasion with a special invite to those who opposed the Chrysler loan guarantee legislation. They might change their minds if they saw these new cars with their own eyes—and spoke directly with the workers who will be producing them.

EXHIBIT 1

AFTER K CARS: CHRYSLER SCHEDULES SPORTS MODELS, MINIVANS, PICKUPS

(By Al Fleming)

DETROIT.—What comes after K? The obvious answer is L. Unless you are Chrysler Corp.'s Board Chairman Lee A. Iacocca. In which case, K is followed by a bunch of new little cars, pickup trucks and minivans scheduled to enter dealer showrooms in the mid-1980s.

In a move to dispel what he calls the "myth" that the nation's No. 3 auto maker is likely to "slowly erode away" after its much ballyhooed K-cars—compact-size Plymouth Reliant and Dodge Aries—are introduced at the start of the 1981 model year, Iacocca took the wraps off future products in an unprecedented showing to the Detroit auto press.

"Some people say we're not going to have anything after the K-car," Iacocca told reporters touring Chrysler's Highland Park, Mich., Design Center, where prototype and clay models of vehicles were displayed. "Everything you see will be on the market by fall 1982 except for that van and that truck," he said, pointing. "We've got a lot more products coming."

So what are the products and when do they arrive?

Start with the 1982 model year. A sporty mini-pickup truck, using the front part of the subcompact Omni/Horizon body, will be introduced. Reminiscent of the sporty but larger Chevrolet El Camino and Ford Ranchero, the Chrysler version is a sporty two-door Omni 024/Plymouth TC3 from its doors forward and a 1,000-pound-payload trunk in the rear. It's the company's first try at truck downsizing.

Also coming in 1982: something Iacocca calls the "Super K"—a luxury takeoff of the K in coupe and station-wagon body styles. The Super K will bear a Chrysler nameplate, and will be set apart from the regular K by distinctive sheet-metal treatment and different trim.

What may be the most appealing of the 1982 newcomers is a four-seater sport car (two-plus-two) currently code-named Dodge 4000. Featuring a massive rear glass area not unlike the Porsche 928's, the zippy-looking sportster, designed to compete against the likes of Chevrolet Camaro, is expected to have a turbo-charged four-cylinder engine.

Another sport car will bow in the 1983 model year—imported from Italy's De Tomaso Moderna S.p.A., which once developed the Pantefa sport car for Ford Motor Co. when Iacocca was president at Ford.

The products that Iacocca told reporters will not be on the market by 1982 are a minivan and a compact-size, front-wheel-drive truck. They are programmed for 1983½- or 1984-model debut. They will both use the stretched K body. The stubby little van may have a small diesel engine as an option. The small truck will have a 1,500-pound payload.

WILLIAM J. BARODY, SR.

Mr. TOWER. Mr. President, I share the great sorrow and sense of loss which has been expressed by a number of my colleagues at the passing of Bill Baroody, Sr. Bill was truly a great man. He displayed to all who knew him those qualities to which many aspire, but few attain.

Bill was a man of splendid intellect, honesty, and integrity. A man of strong convictions, he was devoted to his family and generous with his friends. I am honored to have enjoyed his friendship and counsel.

In addition to his fine work at the American Enterprise Institute, where he served as president until 1978, Bill Baroody distinguished himself through an extensive list of accomplishments, both in and out of Government. I shall not attempt to list these achievements now, but I ask unanimous consent that a recent Washington Post article on this subject be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. TOWER. Mr. President, I am reminded of the many Republican Conventions in years past when I participated in deliberations on formulation of our platform statement. Bill Baroody was a consistent party to these sessions, and I admired his clear and precise thinking, as well as his ability to reduce ideas to words. Just 2 weeks ago, Mr. President, I was honored to serve as chairman of our Republican Platform Committee at the convention in Detroit. Assisting me in this endeavor as editor-in-chief of our platform was Mike Baroody, Bill's son.

I know I express the thoughts of many in remarking upon the loss of a fine man, and my wife, Lilla, joins me in expressing our sympathy to his family.

EXHIBIT 1

W. J. BAROODY, EX-AEI CHIEF, ADVISER TO NIXON, FORD, DIES

(By J. Y. Smith)

William J. Baroody Sr., 64, a former president of the American Enterprise Institute, a noted conservative and an informal adviser to Presidents Nixon and Ford, died at Alexandria Hospital on Monday following a heart attack. He had cancer.

Mr. Baroody joined the American Enterprise Association, now the AEI, in 1954 as executive vice president. He became president in 1962 and held that post until 1978, when he retired. He was succeeded by one of his sons, William J. Jr., a former aide in the Ford White House.

Throughout his career, Mr. Baroody espoused the conservative view on many issues and the causes of many leading Republican leaders. He was regarded as principal adviser of Sen. Barry Goldwater (R. Ariz.) when the latter was the GOP presidential candidate in 1964. He also was a friend and confidant to Nixon, Ford and others.

There was a time when the American Enterprise Institute was regarded by critics as an organization devoted largely to the conservative interests of business. In 1964, the Internal Revenue Service investigated its connections with the Goldwater campaign to see if it had violated the conditions under which it retained its tax-exempt status. The result of the investigation was that the AEI was a nonpartisan, nonprofit "think tank."

It is a measure of Mr. Baroody's success as head of the organization that the AEI now is highly regarded by persons of all political persuasions for the quality of its reports, even if its conclusions often come down on the conservative side of things. Those who have been associated with the AEI over the years include Arthur Burns, former chairman of the Federal Reserve, Melvin Laird, former secretary of defense, and Richard Neuhaus, liberal Democrat.

Under Mr. Baroody's leadership, the AEI grew from an organization that relied principally on large corporations for its budget of about $80,000 a year to a group that now receives much of its funding from major foundations and has an annual budget of about $8 million a year.

Apart from his work at AEI, where he became chairman of the development committee after he stepepd down as president, Mr. Baroody was a founder and member of the board of the Center for Strategic and International Studies at Georgetown University. He also was a member of the U.S. Catholic Bishops' Advisory Council, the chairman of the board of the Woodrow Wilson International Center for Scholars, a member of the board of consultants at the National War College, and a member of the boards of directors of Georgetown University, the Herbert Hoover Birthplace Foundation and the Near East Foundation.

William Joseph Baroody was born on Jan. 29, 1916, in Manchester, N.H. His parents were immigrants from the Lebanon and his father was a stonecutter by trade. It is said that Mr. Baroody's father spoke English with a brogue because he learned the language from his Irish neighbors.

Although it is difficult to identify Mr. Baroody as the author of specific positions held by the political leaders whom he advised, he was widely regarded as having been a man of influence and as a motivator of people.

"I come from a long line of conciliators," he said in an interview with The Washington Post in 1975. "In the Arab tribes, in ancient times, the Baroodys were known as the tribal conciliators."

Mr. Baroody graduated from St. Anselm's College in Manchester in 1936, doing odd jobs to help pay his way through school. He then joined the New Hampshire Unemployment Compensation Agency. After the outbreak of World War II, he joined the New Hampshire War Finance Committee and then served in the Navy as a lieutenant.

He moved to the Washington area in 1946 and took a job with the Veterans Administration. From 1950 to 1953, he was an official of the U.S. Chamber of Commerce and associate editor of American Economic Security. He then began his career with what became AEI.

A member of the Melkite Greek Catholic Church, Mr. Baroody was active in church affairs for much of his life.

He was an adviser to Cardinal Patrick O'Boyle, a former archbishop of Washington, a member of the board of governors of the John Carroll Society, and chairman of the diocesan council of his own church. He also was a member of the board of advisers of the DeSales Graduate School of Theology.

If Mr. Baroody was a self-made man in the grand American tradition, he was able to help his own children make easier starts in life.

In addition to William J. Jr. of Alexandria, survivors include his wife, Nabeeha of Alexandria, where Mr. Baroody lived; two other sons, Joseph D. a partner in a Washington public relations firm, of Annandale, and Michael E. director of communications for the Republican National Committee, of Alexandria; four daughters, Helene Payne and Mary Fran Cummiskey, both of Alexandria, Anne Gallagher, of Woodbridge, and Kathy Jane, of Alexandria; a brother, Charles A. of Manchester; a sister, Adele Baroody, of Alexandria, and 37 grandchildren.

The family suggests that expressions of sympathy be in the form of contributions to the Holy Transfiguration Melkite Greek Catholic Church in Vienna, or to a charity of one's choice.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has expired.

PROTECTION OF SPOUSES OF PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 7786, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 7786) to amend Public Law 90-331 to provide for personal protection of the spouses of major Presidential and Vice Presidential candidates during the 120-day period before a general Presidential election.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TIME-LIMITATION AGREEMENT—H.R. 7786

Mr. ROBERT C. BYRD. Mr. President, with respect to H.R. 7786, the pending matter giving Secret Service protection for candidates' spouses, I ask unanimous consent that there be a 20-minute time limitation on the bill to be equally divided between Mr. DECONCINI and Mr. THURMOND; that there be a time limitation of 30 minutes on an amendment by Mr. CHILES; that any second-degree amendment to Mr. CHILES' amendment be required to be germane to the Chiles amendment and that there be a time limitation on any second-degree amendment of 20 minutes; that no other amendments be in order; and that the division and control of time be in accordance with the usual form.

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

Mr. ROBERT C. BYRD. Mr. President, I thank the Chair and thank all Senators.

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, Mr. DECONCINI is on his way.

I suggest the absence of a quorum and ask unanimous consent that the time not be charged to either side.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DECONCINI. Mr. President, the bill at the desk, H.R. 7786, makes two changes in current law regarding the provision of Secret Service protection to the spouses of major Presidential and Vice-Presidential candidates.

First, it eliminates an unintentional discrepancy between the conditions under which spouses, on the one hand, and the candidates, on the other, are afforded such protection.

Under current law, Secret Service pro-

tection is extended to any major Presidential or Vice-Presidential candidate, but is limited to the spouses of major Presidential and Vice-Presidential nominees. This difference effectively precludes protection for the wives of major candidates who, for a variety of reasons, may not happen to be the nominees of our dominant parties. This bill would correct this deficiency by establishing identical eligibility requirements for both the candidates and their wives.

The second modification contained in the bill simply establishes a more realistic time frame for the provision of spousal protection. Under existing law, the Secret Service may not be assigned to the wives of Presidential and Vice-Presidential nominees until 60 days before the general election. Yet it is obvious that the spouses of the candidates for such high offices become public figures in their own right and may require Secret Service protection separate and apart from that provided for their husbands. This bill expands this period of time within which spouses become eligible for protection from 60 to 120 days preceding the general election. I believe such an adjustment is warranted by the chronology of our Presidential electoral process.

In sum, Mr. President, this measure addresses problems of considerable current significance and I would hope the Senate would agree to its provisions without amendment.

The House, as I understand it, has adjourned or is about ready to adjourn so any changes in this bill would effectively kill it, rendering both its provisions and the amendment moot.

Mr. President, I yield to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, as the distinguished Senator from Arizona has just stated, this is a simple bill. It would extend the period of time under current law by which Secret Service protection can be provided to the spouses of Presidential candidates from 60 days to 120 days prior to the election.

Current law now extends such protection only within 60 days of the election—this year, November 4, 1980. Thus, no Secret Service protection may be extended to Mrs. Reagan or Mrs. Anderson until September 4, 1980. This is an unfortunate situation because both women have been actively campaigning all summer and I expect will continue to do so up until election day.

In a campaign year emotions are always high. Media attention on candidates can arouse feelings in people and lead them to do foolish, and sometimes, dangerous things. The wives of candidates are not immune from this potential danger and because candidates' wives are taking more active roles in campaigning on their own, Secret Service protection seems to be a reasonable precaution to take.

It is my understanding that the cost of such protection will be about $500,000. The authority we are providing today is simply one of extending from 60 days before the election to 120 days before the election Secret Service coverage for the spouses of Presidential candidates. I support the bill and urge my colleagues to approve it.

UP AMENDMENT NO. 1497

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida (Mr. CHILES) proposes an unprinted amendment numbered 1497.

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

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

The amendment is as follows:

At the appropriate place in the bill add the following new section:

SEC. . The Secretary of the Treasury shall not provide Secret Service protection to any individual other than individuals listed in section 3056 of title 18, United States Code, or in the Act of July 6, 1968 (Public Law 90–331).

Mr. CHILES. Mr. President, the amendment that I have sent to the desk is to clarify which individuals are entitled to permanent Secret Service protection. In section 3056 of title 18 and in Public Law 90–331.

Those individuals who are entitled to such protection are listed. Based on these authorizations the Secret Service is currently protecting 21 individuals.

In spite of these specific authorizations the Treasury Department has in the recent past extended Secret Service protection to individuals not authorized to receive that protection. The General Accounting Office has ruled that such a practice is not legal. Nevertheless, administrations of both parties have continued this practice arguing that it is permissible because of the inherent authorities of the President.

Mr. President, I do not think that those inherent authorities go that far. The General Accounting Office does not think they go that far and yet we find that, over the period of years, Presidents of both parties have covered individuals that are not listed in the act and not entitled to protection. It seems to me that this is the time that we ought to clear this matter up.

The purpose of my amendment would be to clarify that the Secret Service may protect only those individuals authorized to receive such protection by current law. If we find from time to time the belief that other individuals should receive protection such a proposal should be submitted to the Congress for consideration by the legislative process.

Just as we are doing with this bill which would extend the time for the coverage of the spouses, we also should put in legislation to cover other individuals if it is necessary to protect them. It ought to be done that way.

Under the argument of inherent authority of the President, there is no limit to who you could cover, who those individuals would be or for what period of time they would be covered.

When we look at the costs and the drain on the manpower of the Secret Service with their other responsibilities, I think it is time that we made a change. I think this simple amendment would make that change. I urge the adoption of the amendment.

Mr. President, I reserve the remainder of my time.

Mr. DECONCINI. Mr. President, let me assure the Senator from Florida that I am cognizant of the outstanding work he has done in this connection both in the Government Operations Committee and in the Appropriations Committee as chairman of the Treasury, Postal Service, General Government Subcommittee. I understand what his concerns are.

However, Mr. President, I feel obligated to oppose the distinguished Senator from Florida's amendment.

This amendment would prohibit, as I understand it, the Secretary of the Treasury from providing Secret Service protection to any person except those individuals listed in section 3056 of title XVIII of the United States Code.

This amendment would directly interfere and severely limit the inherent power of the President to authorize Secret Service protection in emergency situations where there is a serious threat to life or imminent danger of bodily harm.

Let me give you a couple of examples.

If information were received that a terrorist group was planning some hostile activities toward a Member of Congress the President would not be able to authorize Secret Service protection for that Member, not even for 1 day.

If information were received that a group was planning to kidnap a child of a candidate, the President could not order Secret Service protection.

If information were received by the CIA that agents of a hostile intelligence service were planning to kidnap or kill a major Cabinet official in retaliation for U.S. trade or economic policies relating to that foreign country, the President could not order protection for that official.

The amendment before us attempts to prohibit any abuse of the President's discretion in the exercise of his constitutional authority as Chief Executive of the United States. Granted, there is always the possibility of abuse when you have a discretionary statute such as this.

The intent of section 3056 is really twofold:

First, to specify those persons who are to be protected by the Secret Service as a matter of statutory right; and, second, to establish the authority of the Secretary of the Treasury to order protection under circumstances that the President feels are necessary.

I believe it is in the best interest of our country.

Mr. CHILES. Will the Senator yield?

Mr. DECONCINI. Yes.

Mr. CHILES. Mr. President, will the Senator tell me where he finds in the act that it allows the Secretary of the Treasury to cover anybody that the President feels should be covered? Could the Senator tell me where he finds that?

Mr. DECONCINI. I believe it is inherent authority in the statute.

Mr. CHILES. Mr. President, will the

Senator tell me where in the statute he finds that inherent authority?

Mr. DECONCINI. I believe the inherent authority is there to the President.

Mr. CHILES. Is there some word or language in the statute that gives the Senator that feeling?

Mr. DECONCNI. If the Senator will yield, the Secretary of the Treasury is a Cabinet appointee of the President. He is the person who has the authority to direct the Secretary to furnish this protection.

Mr. CHILES. But when that statute says that "Subject to the direction of the Secretary of the Treasury, the U.S. Secret Service is authorized to protect the person of the President of the United States, members of his immediate family, the President-elect, the Vice President, or other officer in the order of succession, the Vice President-elect, and members of their family * * *"

When it lists those individuals and it does not say anything such as "or such other person that the President, under his inherent authority, might desire to protect * * *" I wonder where within four corners that authority can be found.

As I understand the argument of the general counsel of this is supposedly one of those inherent constitutional powers that the President has. I never heard anybody argue before, that the statute gives them the inherent power.

I would like to hear from the distinguished Senator from Arizona, who is an outstanding lawyer and who is such a statutory constructionist, where he reads into the statute that authority.

I would feel better if this inherent authority that the President is supposed to have was coming out of the air instead of arguing that it is in the statutes.

Mr. DECONCINI. If the Senator from Florida will yield, there is no intent in the statute to limit the inherent power of the President. I believe there is an inherent power in the President, in his role as the Chief Executive officer of this United States, to take appropriate steps in preventing criminal actions.

Let me give the Senator some examples.

In 1979, the President took such action under the inherent power and granted protection to Senator KENNEDY prior to the announcing of his candidacy. No one challenged the President's inherent authority as the Chief Executive of the United States to take such action.

I think the amendment that the Senator is offering would prohibit the President from taking precisely this kind of precautionary measure.

Mr. CHILES. Attempts have been made to prohibit the practice prior to that. The General Accounting Office said it is illegal when it has taken place.

Mr. DECONCINI. If the Senator will yield, I would only ask the Senator: Since when is the General Accounting Office the competent judge of what the inherent power of the President of the United States is?

Mr. CHILES. The General Accounting Office has been given this authority by this Congress. They have the role of determining whether vouchers should be paid, whether money should be spent, and whether it can be spent pursuant to authority, legal authority, inherent or otherwise. That is the role that Congress has given to the General Accounting Office.

Mr. DECONCINI. If the Senator from Florida will yield, that still does not answer my question: Why does the Senator feel so strongly that he could rely on the opinion of the General Accounting Office to the effect that the Chief Executive does not have inherent authority to grant this protection that he has exercised in the past and, we believe, could in the future without the Senator's amendment?

Mr. CHILES. One of the things we are trying to clarify is that I do not believe, and I do not think it was our intent in allowing the protection to be granted, that a President could, on his own volition, determine whom we wanted to protect, or whom he wanted to send the Secret Service out to protect. I think that is what we were attempting to do in enumerating who should be protected in statute. That is what this amendment would do further by saying—name the people or the classes of people you want to protect, but do not leave it open ended, unless you want to put in the statute "and whomsoever else you decide you would like to protect and spend this money on."

Mr. DECONCINI. If the Senator from Florida will yield, I think there is merit to the Senator's concern, because I can see that any inherent power could be abused. Certainly, if we want to try to determine and focus on where it would be in the best interest to limit by statute the President's inherent authority to grant protection, I would be very supportive. I would even go so far as saying for the Judiciary Committee that we will hold hearings on that matter to make that determination.

That is not the problem we have today. It seems to me very important not to forget where we are today. We need to pass this statute for very obvious reasons. I think we do not want to tie the hands of the President, and, hopefully, he will not use this inherent authority irresponsibly. But we will not tie the hands of the President in the event some circumstance arises that would convince a reasonable person—and I believe it is safe to say that the President is just that—that the protection of certain individuals and the stability of this country, perhaps, when we have an election before us in the very near future, requires the exercise of that inherent authority.

Mr. CHILES. If the inherent authority is there, as the Senator feels it is, there is really no need for this bill today, because the President can cover Mrs. Anderson, the President can cover Mrs. Reagan. If it is within his inherent power why in the world do we have this bill?

Mr. DECONCINI. The answer to the Senator from Florida is that the limitation of time in existing law is of concern and, I think, one of the main reasons for the consideration of this bill. Granted, the argument can be made, yes, well, if he has inherent authority to give protection, does he have inherent authority to grant it for longer than 60 days? Perhaps so.

Mr. CHILES. The Senator would not think his inherent authority would be limited by days?

Mr. DECONCINI. If we err, I would prefer to err on the side of what I consider safety for people who may be or may find themselves, unfortunately, in any type of circumstance where their lives would be in danger.

Mr. THURMOND. Will the Senator yield?

Mr. DECONCINI. I yield to the Senator from South Carolina.

Mr. THURMOND. The point the Senator from Florida made is an interesting point. If the spouses of Presidents have not been mentioned in the statute, then it seems that the President would have the power to provide it. But since the statute does specifically limit the spouses of Presidents and limits it to 60 days, then it seems he would have to get authority to go beyond the 60 days. That is what this bill does. It goes to 120 days.

Mr. CHILES. I find it a little unique, Mr. President, that we need to mention somebody in statute in order to protect them. According to the construction of my two distinguished colleagues, we need to mention somebody to be able to limit the inherent power, but if we do not mention them, there is no limit on the inherent power. So what we ought to do if I want to make any limitation, I had better name everybody in the world and then we can limit the power to a number of days because if we do not mention them, then there is no limitation of power.

Mr. DECONCINI. If the Senator will yield, I can only say to the Senator from Florida that I do not know of any piece of legislation that has passed through here, at least in the 4 years I have been here, that has been perfect and answers all Senators' or legislators' questions. The Senator has brought to the attention of this Senator and the whole body—and I thank him for doing so—that maybe we should refine more specifically exactly what the extent of the President's powers are in this regard.

What is important is to address the problem, as I see it, at least, of what we face today. Do we want to take a chance of having a President in office who is restricted both on days and whom he might protect? I think the Senator's amendment, which directs that he can only grant the protection to individuals identified in 3056, title XVIII, is just too restrictive. I am only urging the Senator to consider the potential problem that might arise, and hopefully it will not. I know what the Senator is interested in and I cannot criticize him at all for his effort to bring to this body the need to address a realistic problem.

How far are we going to go? Is the Senator suggesting that some President might want to grant everybody in Congress protection? Obviously, if that were done today, it would be way out of line and extremely expensive. But it could happen. That is a real need to be addressed. But still we have the need in the legislation before us to change the

60 days to 120 days to make available, particularly in the case of a candidate who is not, or the wife of a candidate who is not a nominee, the ability to have protection. I feel it is in the best interest for us at this time not to tack on to this legislation the amendment of the distinguished Senator from Florida.

Mr. CHILES. Mr. President, I thought an argument against my amendment would be raised here but it has not, so maybe I need to raise it. The argument is that the House is no longer in session. It has adjourned, and that if we had an amendment on this bill today, then the bill itself would become moot. It would be moot because the House and Senate would be out of session and we could not go to conference or pass this legislation perhaps until September and then this protection would automatically go into effect and the bill would not be needed.

Therefore, I shall withdraw my amendment. But I want the record to show for my part that it is for these reasons that I withdraw it, not because I think the President has or should have this so-called inherent power. I think if we make that argument, I do not know where it stops. I do not know where it stops, not only in this but in many other areas regarding the President's right to spend money or cause things to happen where clearly Congress has had and reserved to itself that particular role. But for those reasons stated earlier, Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. Does the Senator ask unanimous consent to withdraw the amendment?

Mr. CHILES. No, Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. Due to the pending time agreement, unanimous consent is necessary.

Mr. CHILES. Then I ask unanimous consent to withdraw it.

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

The amendment is withdrawn.

Mr. DECONCINI. Mr. President, let me express to the Senator from Florida again my understanding of what his concern is here and compliment him for bringing the issue to the attention of this Senator. We shall give careful scrutiny to just what the inherent powers of the President are in this connection and whether or not further legislation is indicated. I thank the Senator from Florida.

I yield back the remainder of my time.

Mr. THURMOND. Mr. President, I also commend the able Senator from Florida for withdrawing his amendment, because the House has gone out and any amendment to this bill would delay passage to August 18. The way is opened if the distinguished Senator wishes to introduce legislation; it could be considered in a separate bill and I imagine that is the way he wants to proceed.

Mr. CHILES. I shall try to find a way.

Mr. THURMOND. Mr. President, I yield back my time.

Mr. DECONCINI. I yield back my time.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 7786) was ordered to a third reading, was read the third time, and passed.

Mr. DECONCINI. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a continuing period for the transaction of routine morning business, not to exceed 30 minutes, and that Senators may speak therein up to 5 minutes each.

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

SECOND NATIONAL INDIAN YOUTH CONFERENCE

Mr. DECONCINI. Mr. President, the week beginning August 3 will be a historic week even in this historic city.

Four hundred Indian youth from tribes and reservations throughout the country are in Washington this week. These Indian youth are in the Capitol attending the second National Indian Youth Conference. These youth have been chosen by their tribes as potential leaders. A few of the youth are from off-reservation areas but most are from reservations in various sections of the country. Many are, or have attended Bureau of Indian Affairs boarding schools and have spent little time in urban America.

Most of the youth will be seeing Washington for the first time. All will be having a variety of new experiences: meeting with the President at a reception on the White House lawn, meeting with the Members of Congress and their staffs, being introduced to the private enterprise system by businessmen, and becoming aware of a variety of careers. They will participate in lectures, workshops, and roundtable discussions with their peers from other tribes. In addition, they will participate in a large number of social activities, including a powwow on the Washington Monument grounds.

Among those who will be addressing the conference participants is Billy Mills. Billy is the Sioux Indian who won a gold medal at the 1964 Olympic games in Tokyo, for the 10,000-meter race. Billy is still the only American to win this event.

Billy is a member of the President's Council on Physical Fitness and Sports. He has given a great deal of his time and energy to guiding the development of the Indian youth of today. He is the moderator of the conference and is speaking to the youth on personal development and leadership training and is responsible for a workshop on physical fitness.

Most of the youth who are attending the conference are involved in the tribal youth employment programs funded by the division of Indian and Native American CETA programs of the Department of Labor. They were selected by criteria set by their supervisors.

Those criteria included, but were not limited to, standards of job performance, punctuality, initiative, and behavior. Academic achievement and involvement in sports and participation in tribal community activities were also considered.

As a Senator from the State of Arizona, which has the largest Indian population, I feel that it would only be appropriate for Congress to welcome these Indian youth to Washington, wish them a most fruitful week and congratulate them on being chosen by their tribes for this experience.

COSPONSORSHIP OF ENVIRONMENTAL EMERGENCY RESPONSE ACT—S. 1480

Mr. COHEN. Mr. President, I rise to cosponsor S. 1480, the Environmental Emergency Response Act. This legislation addresses a problem of ever-widening dimensions and legitimate concern to the citizens of the country—the threat to public health posed by the improper dumping of toxic wastes.

The Committee on Environment and Public Works reported on this legislation favorably more than a month ago. Last week I joined with many of my colleagues, including Senators HEINZ and LEVIN, in urging the leadership to schedule this measure on the Senate Calendar. Companion legislation is pending before the House of Representatives.

Therefore, it is apparent that Congress has an excellent opportunity to pass the Environmental Emergency Response Act before the end of the 96th Congress.

In my view, the improper and dangerous disposal of toxic wastes represents a serious threat to the health of citizens all across the country. The Environmental Protection Agency has identified 26,000 industrial waste impoundments—pits, ponds, lagoons, and other sites—throughout the United States, about half of which contain hazardous wastes.

In Maine, the EPA has identified 31 impoundment sites directly above sources of ground water with no barrier between the wastes and the water. There are four sites in Maine where toxic wastes lie unprotected within a mile of well water supplies.

Existing law has proved inadequate to control the disposal of hazardous substances. This legislation would provide the tools necessary to respond to a growing problem which could cause future suffering on a scale equal to or greater than that afflicting residents in the area of the Love Canal in New York State.

It is certainly more than an inconvenience for thousands of citizens to be notified that chemical substances, many identified as carcinogens, have impregnated their well water or a town's groundwater. In 1977, for example, in Gray, Maine, residential wells were found to be contaminated by trichloroethylene and other chemicals from a solvent and oil waste processing facility. Municipal water lines were extended to the affected homes at a cost of $500,000. The State of

Maine paid for the cleanup of the site. Studies are now being conducted to determine what effect, if any, the contaminated water had on the health of the families who consumed it.

The fears of Americans who discover that they are living on or near chemical disposal sites must be allayed. This legislation would require that chemical and industrial firms act responsibility in disposing wastes, or be subject to fines and liability for personal and property damage. The irresponsible and dangerous dumping of toxic wastes is not a practice this Congress should accept with silence. The potential disasters that await unsuspecting Americans while drums of chemicals slowly corrode is not a fear they should harbor. The price of disaster is not one the victims should pay.

Consideration of this legislation and approval of an adequate and equitable compromise measure would be a beginning in addressing the problem of toxic dumps. The EPA has already implemented "cradle to grave" tracking of chemical wastes. Yet, many additional actions must be taken. Sites must be monitored, firms must be asked to divulge what substances have been dumped and where, guidelines—such as those in the Emergency Environmental Response Act—must be established to determine liability.

Mr. President, I hope that this Congress uses this opportunity to fashion responsible legislation promptly. I urge my colleagues to reexamine the Emergency Environmental Response Act and to seek swift consideration by the Senate.

I ask unanimous consent that the following report, dated January 1980, compiled by the EPA and detailing specific problems in Maine be printed in the RECORD.

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

DAMAGES AND THREATS CAUSED BY HAZARDOUS MATERIAL SITES

Guilford, Maine: State officials have warned fisherman to use discretion in eating fish from the Piscataquis and Penobscot Rivers due to TRIS, a carcinogen reportedly discharged into the rivers illegally in 1979.

Saco, Maine: In 1974 tests indicated that private drinking water wells adjacent to the town dump had been contaminated with chromium, iron and managanese. Disposal of sludges from wastewater treatment plants receiving large amounts of tannery waste was apparently the cause of the problem.

Gray, Maine: In 1977 residential wells were contaminated with trichloroethylene and other chemicals by a solvent and oil waste processing facility. Municipal water lines were extended to the affected community at a cost of $500,000. Health effects studies are being conducted. The State paid for cleanup of the site.

North Berwick, Maine, 1980: Eight abandoned trailers, containing 800 drums of hazardous materials, including phenols, toluene, xylene, and creosol were located on the unused portion of an industrial parking lot. The transporters intended to use this area as a storage and transfer facility without benefit of required State approvals. Two of the trailers are leaking in close proximity of a drainage ditch which leads to the Great Works River. All of the drums and trailers have been removed by the State. Threat to surface waters allowed EPA to use CWA section 311 funds to provide site security.

Easton, Maine: Since the early 1960's a potato processing plant and an adjacent sugar beet processing plant have established 21 separate surface impoundments covering 175 acres to dispose of, treat, or store their effluent. The lagoons were not properly engineered, were poorly maintained and did not work properly. Enforcement actions were hampered by bankruptcy court proceedings. Although surface water impact upon the lagoons is the most obvious problem, groundwater contamination is highly suspected. A few private drinking water wells have become contaminated but a positive connection between the contamination and the lagoons has not been established.

Baileyville, Maine: A large paper mill constructed three lagoons in 1977 to treat a wastewater flow of about 35 MGD. The lagoons were expected to be "self sealing" from the deposition of inert solids so no liners were installed. Adjacent ground water quality monitoring surveys has shown elevated levels of sodium, TDS, sulfate, iron, chloride, calcium, and magnesium. Sampling of surface waters near the impoundments also show impact. A series of meetings have taken place between the company's representatives and the Maine Department of Environmental Protection (DEP) to effect a lasting solution to the pollution problem.

East Gray, Maine: A waste disposal site in East Gray, Maine accepted an estimated 100,000 to 200,000 gallons annually of waste oils, process bottom wastes, tank bottom wastes, septic tank wastes, industrial process wastes, and various other liquid wastes. These wastes were stored in tanks or placed in a ½ acre asphalt-lined lagoon. Two years after commencement of operations complaints of poor water quality were voiced by nearby residents. In 1977 trichlorethane, trichloroethylene, dimethyl sulfate, acetone, trimethylsilanol, xylene, freon and assorted alcohols were found in 20 nearby residential well waters. It was later verified that the contamination originated from the waste disposal site. A moratorium has been placed on any new construction within a 2-mile radius of the site and the facility has been closed. Interim measures have been taken to supply residents with drinking water until a long-term solution is found.

FILIBUSTER OF THE ZIMMERMAN NOMINATION

Mr. DURENBERGER. Mr. President, there are now only 32 legislative days left before the Senate adjourns on October 4. On the calendar are nearly 100 bills, many of which represent hard-fought compromises, and 2 years of diligent legislative work. Other essential matters—like the Health Incentives Reform Act, Child Kidnaping, and the Rail Investment Incentive Acts—remain in committee, waiting their chance for floor action. Time considerations will prevent most of these bills from ever being considered.

The fault for this backlog certainly does not lie with the minority. Nevertheless, with so many important matters pending in so few legislative days, I cannot justify supporting a filibuster on the issue of the Zimmerman nomination.

Mr. President, as the votes I cast on Tuesday indicate, I do not support the Zimmerman nomination. I intend to vote against his confirmation. But the Senate has too many essential matters pending to devote several days to a filibuster on this nomination.

I want to make my position on this issue clear. I do not intend to support the filibuster, nor do I intend to support the Zimmerman nomination.

S. 2352, DEPARTMENT OF ENERGY AUTHORIZATION

Mr. DURENBERGER. Mr. President, on Wednesday I voted "no" on an amendment to this measure authored by the Senator from Missouri which would cut 1,000 positions from the Department of Energy payroll—1,000 positions is about 5 percent of the DOE payroll. I am sure the Nation could do very well with 1,000 less people working at the Department of Energy. And I am sure that this fall the Nation will elect a President who will reduce the size of the Department by that amount or more. The people of this country do not care much for the Department of Energy and its minions who do little but regulate and allocate, as the Senator from Missouri so ably pointed out.

But I voted "no" on this amendment. I voted "no" because the Senator from Missouri offered no direction in his attack on the Department of Energy. He did not indicate which 1,000 employees would be sacked or which programs would be abandoned. The Senator from Louisiana asked if these positions would be taken from the gasohol program or the schools and hospitals energy conservation program, or other programs which the Congress and the American public support. The amendment by the Senator from Missouri does not protect these programs. The amendment leaves the decisions on which programs get cut to the administration which created the Department of Energy and has been responsible for its bungling record over the last 3 years.

Mr. President, this amendment and amendments similar to it have been presented to the Senate before. The Senator from Ohio, Senator GLENN, offered a 5-percent reduction as an amendment to the Energy Security Act. In the past these amendments have always failed, as they should. But yesterday the amendment by Senator EAGLETON received 66 votes and will be sent to the conference committee with this bill. Since most members of the authorizing committee voted against the amendment, I doubt that it has much chance of clearing the conference. As most Senators know, the amendment was little more than a symbolic gesture provided so that Senators campaigning for reelection could go home and tell the constituents that they voted to cut the Department of Energy.

I voted against the amendment because I believe that willy-nilly, across-the-board cuts are of little value in our attempt to get control of the Federal budget. I voted "no" because I believe that we have a responsibility to examine the programs of each department, providing support for those programs which are effective and cutting those programs which are of little value.

Mr. President, this morning I will vote against final passage of the DOE authorization for the same reason. The bill reported by the committee abdicates our responsibility to make the policy and

set the direction for Government in the same way that Senator EAGLETON's amendment ignores our responsibilities. The bill that we are about to pass provides a continuous authorization for the Department of Energy at a level equal to the previous year's appropriation plus 10 percent. This bill gives every program in the Department of Energy a permanent life and allows each program to grow at an annual rate of 10 percent. If we are to get control of the Federal budget and stop the run-away growth, we must do it by carefully considering each program as it comes up for authorization. And we must set a statutory limit on the life of each program. We must examine each part of the bureaucracy on a regular basis to determine if it is still needed and if it is doing its job effectively.

The Energy Committee has attempted to fulfill the oversight role assigned to it in the past. It has reported authorization bills that provide line-by-line oversight of the Department of Energy. But the leadership in the Congress has never been able to get final action on these bills. So the Energy Committee has decided to attempt a new course. They have decided to give us a bill that provides permanent life to the Department of Energy and to the dozens of programs that we could very well do without.

Mr. President, I am not ready to abandon my responsibility as a Senator. I will not vote to give the Department of Energy permanent life and an automatic annual increase of 10 percent, just as I did not vote for an across-the-board 5-percent cut.

I thank the Chair.

THE ERISA BILL

Mr. DURENBERGER. Mr. President, the ERISA bill, (H.R. 3904) which we passed on Wednesday of this week represents a stopgap approach to a difficult problem. Nevertheless, we are faced with a Hobson's choice. If this legislation as modified is not immediately enacted, mandatory coverage will go into effect under the current rules. The Pension Benfit Guaranty Corporation (PBGC) has previously reported on the multi-billion-dollar disaster such inaction might entail—unfunded liability costs of almost $5 billion requiring premiums to escalate 16,000 percent from 50 cents to as much as $80 per capita.

Mr. President, among the many mistakes made in 1974 when ERISA was passed, was making termination insurance applicable to multiemployer retirement plans.

Under a multiemployer plan before ERISA, an employer's legal obligation was limited to make contributions to the plan at a negotiated rate set forth in the collective-bargaining agreement maintaining the plan. Benefits were then set by the joint board of trustees based on the expected level of contributions and plan investment income. Benefits could be adjusted up or down to meet the financial circumstances of the plan. In other words, such plans did not operate as defined benefit plans which fix only benefits, but they operated as defined contribution plans which fix contribution rates and adjust the benefit levels as necessary. ERISA changes all that by asserting that such plans be treated as defined benefit plans, by removing the ability of such plans to adjust benefits downwards, and by making employers liable for plan benefits rather than just their negotiated contributions.

Before title IV of ERISA was thrust upon multiemployer plans, there was little or no evidence of pension losses which would warrant the complex regulatory scheme we see created in S. 1076, because the needs of employees were generally protected by the collective bargaining process.

Mr. President, one of my main concerns with S. 1076 when it came before the Finance Committee was that the bill forces a company withdrawing from a pension plan to pay a share of the liability of companies which withdrew from the plan before ERISA or after ERISA and which were not required to pay any share of such liability to the plan. This liability is often referred to as unattributable because this liability is not directly attributable to the withdrawing company.

Together with a company's attributable liability, the company's unattributable financial liability to a pension fund often will exceed the company's net worth. This will create a barrier where no company will purchase another company with such a liability. Moreover, no one knows the true extent of this unattributable liability. Of course, this would influence the banks which would be asked to extend credit to such companies.

Mr. President, withdrawal liabilities threaten the existence of small trucking companies.

The argument for withdrawal is protection of those who remain. However, since most employers in the trucking industry are subject to teamster labor contracts and since the freight volume is relatively constant, affected employees will shift to remaining or new employers, thus protecting the contribution base. Within the trucking industry which consists primarily of smaller employers, there is a characteristic mobility of employers in and out of funds.

For example, in the Philadelphia area teamster plan, which has roughly 1,550 participating employers, in the most recent year, there were 127 withdrawals. Seven of these were decertifications and would not be protected by the proposed exemption. Of the remainder, 11 were bankruptcies; 56 closings; 44 moving in and out of the plan area, principally construction employers; and 9 not known. At the same time, 100 employers entered the plan and 20 of these left within a year. However, the covered employment and the contribution base remained roughly stable.

Employers may move in and out of a plan area, in response to operational changes, to accommodate changes in freight patterns. Almost all teamster labor agreements provide that such changes must be approved by a joint labor management committee whose procedures are designed to protect the seniority of the employees and their benefit entitlement. Consequently, almost all teamster pension plans provide for a kind of portability through reciprocal agreements. Thus, an employee is protected, as his term of service may take him from one plan area to another

In the instance in which reciprocal agreements do not apply, the employee characteristically is protected by agreement by leaving him covered by the same pension plan even though he may be assigned to work under another plan area.

These factors illustrate that labor contracts protect the plan contribution base as well as the benefit entitlement of the employee. This is necessary in an industry such as freight which is often cyclical or seasonal.

Given the stability of the contribution base and the fluctuations in employment, and recognizing that employers come and go, the labor contract has provided for the orderly sale of one employer's operations, or his sales and assets, by providing for the seniority rights and benefit entitlements of affected employees.

Mr. President, it is my contention that the imposition of employer withdrawal liability even in these eventualities will inhibit the orderly sales of businesses, make it difficult for companies to find purchasers, inhibit the obtaining of credit, and thus counter the purpose of the bill by preventing employers from securing an orderly transition of employee work opportunity and pension security.

For these reasons I introduced an amendment which was approved by the Finance Committee and is a part of this bill to provide that an employer will post a bond in the amount of the withdrawal liability and if there is not substantial injury to the contribution base, the bond will be canceled in 5 years. The amendment will protect the benefit entitlement of employees while at the same time allowing for the orderly sale and purchase of a business. In addition, the small businessman will not have to show the withdrawal liability on his balance sheet which, more often than not, prevents him from obtaining working capital.

Mr. President, the bill as originally referred to the Committee on Finance would have caused a severe economic problem to the Cleveland Cliffs Iron Co.

Counter to the general industry trend, Cleveland Cliffs expanded its number of vessels—and crew employment—from 8 to 14 in the 1970's in order to handle an iron ore delivery contract which ran from 1972 through 1980. Starting in 1981 another company will be delivering this iron ore in 1,000-foot vessels replacing Cliffs' 600-foot class vessels.

At present, the Marine Engineers Beneficial Association pension fund is funded by allocating the total cost to the vessel operators by using a man-hours work formula. Therefore, the larger fleets such as Cleveland Cliffs, have been paying an increased portion of the pension costs to offset the reduced man hours lost because of shrinking fleets.

The shrinking of the number of vessels is a technological trend that has been

under way for nearly 10 years. The "trigger date" of February 27, 1979, in the original bill would have imposed a special hardship on Cliffs by allowing these fleets which had reduced employment in the 1970's to escape any withdrawal liability while imposing a major liability on Cliffs—the one fleet that had expanded employment significantly in the 1970's—because its fleet size reduction will occur in 1981. Thus Cliffs would have absorbed extra pension costs during the 1970's to compensate for shrinking of other fleets' employment and be required to pay again when its own fleet is reduced.

Mr. President, I am proud to report that the bill before you eliminates this inequity.

Mr. President, the Finance Committee made the following changes in the original bill in order to make it more equitable and effective:

The committee provided that where an employer incurs withdrawal liability, and the employer is liquidated in an insolvency proceeding, 50 percent of the liability is limited to the employer's net worth. The remaining 50 percent of the liability is an unsecured claim against the employer.

The committee provided that where all or substantially all of the assets of an employer are sold to an unrelated party, withdrawal liability is limited to the greater of, first, 30 percent of the selling price, or second, the liability attributable to the employer's employees for sales of $2 million or less. For sales which exceed $2 million, the 30-percent limitation is gradually increased so that for sales exceeding $10 million it reaches 80 percent of the excess.

The committee provided that if an employer ceases to contribute to a multiemployer plan for work performed at a facility, and continues to perform work at that facility of the type covered by the plan, the employer will be considered to have partially withdrawn from the plan.

The committee provided that an employer contributing to a multiemployer plan in the retail food industry will be considered to have partially withdrawn from the plan if there is a 35-percent decline in the employer's contribution base.

The committee agreed that the General Accounting Office is required to conduct a study of the effects of the bill on, first, parties affected by the bill—for example, participants, employers, and unions—and second, the self-sufficiency of the PBGC insurance fund, and report to the Congress no later than June 30, 1985. Congressional hearings on the study and GAO recommendations are also required.

Mr. President, I would have preferred a sunset provision to a study on the effects of this bill. There are few, if any, Members in the House or Senate who can confidently state how the bill will operate. Nevertheless, operating under a deadline I think the Finance Committee has measurably improved this legislation in an attempt to protect the retirement interests of the employee while eliminating many of the economic hardships that would have been placed on employers.

HEALTH CARE

Mr. DURENBERGER. Mr. President, two articles have appeared in recent weeks which I believe indicate the expanding interest in procompetitive approaches to the delivery of health care.

In the National Journal, July 5, 1980, Linda D. Demkovich has written a thorough review of current and future directions for health legislation under the title, "New Congressional Health Leaders—the Emphasis is on Competition." In it, she perceptively describes the shift of congressional interest away from talk of a Government-run health care system to one that stresses private-sector competition. My own bill, The Health Incentives Reform Act, S. 1968, is discussed along with the other procompetitive bills before Congress.

In American Pharmacy, June edition, Jeffrey P. Cohn has also described what he terms "new political winds sweep(ing) through the Nation's capital, (with) competition rapidly replacing regulation in the reformers" lexicon.

I am pleased that these and other correspondents have detected what I believe is very much the future direction of health care legislation. And I recommend these articles for the perusal of my colleagues and readers of the RECORD. I ask unanimous consent they be printed in the RECORD.

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

COMPETITIVE HEALTH INSURANCE—CURE FOR RISING HEALTH COSTS?

As new political winds sweep through the nation's capital, "competition" is rapidly replacing "regulation" in the reformers' lexicon. Congress has already deregulated the airline industry and may soon vote railroad and trucking deregulation. And there are some who think that health insurance may be next in line for the competitive approach.

As an alternative to comprehensive national or catastrophic health insurance (see January 1980 American Pharmacy, p. 16), four bills have been introduced into Congress—two each in the Senate and House. Each seeks to foster competition among employer-provided health insurance plans by forcing both employers and employees to consider insurance's cost and encouraging insurers to offer more efficient, lower cost plans. In the end, competition's supporters hope that rising medical and hospital costs can be cut without new government regulation or spending.

"I am convinced that true competition can be injected into the health care sector," Sen. David Durenberger (R-MN) told his colleagues last fall. "We must begin to right the imbalanced incentives that exist in our health care system."

In addition to Durenberger, Sen. Richard Schweiker (R-PA), Reps. Al Ullman (D-OR) and James Martin (R-NC) have sponsored so-called competition bills. While differing in details, each would put a cap on how much employers can deduct from their taxes for employee health insurance. Employers could contribute more than the cap, but any extra sum would be considered taxable income. The bills also would require employers to offer a choice among insurance plans and to give cash rebates to employees who chose a less costly plan.

While all four bills require payment for drugs under their catastrophic coverage and for inpatients, none obliges health plans to cover outpatient drugs. That decision is left to the insurance carriers, employers, and consumers. Patients selecting lower cost plans with no drug coverage may be unable or unwilling to buy prescribed medications.

RISING COSTS

Interest in health insurance reform stems from rising health care costs. According to a staff report of the House Ways and Means Committee, which Ullman chairs, medical costs have more than doubled in the last 15 years—from 4.5 percent of the gross national product in 1955 to over 9 percent in 1979. Dollar expenditures have jumped from $60 billion in 1968 to $192 billion in 1978. In 1978 alone, health spending increased by 13.2 percent over 1977.

While general inflation has forced medical costs up, many analysts blame the third-party payment system. "Third-party payors exacerbate the rise in health care cost because they put few constraints on expenditures," the congressional Office of Technology Assessment (OTA) reported in 1978. "Prevailing methods of reimbursement encourage both inefficient utilization and increased provision of services, often without evidence of commensurate benefit to the patient."

Some economists state that physicians, hospitals, and patients alike often opt for the most expensive and extensive medical treatment without worrying about its cost because Medicare, Medicaid, Blue Cross and Blue Shield, or some other insurance plan, will pay. Doctors, Health care practitioners and medical institutions are reimbursed for fees charged for services and equipment.

Further, employers can deduct payments for employee health insurance from their gross income. Employers design expensive, all-inclusive health benefits to lure and keep employees. Labor unions often bargain for these benefits for their members in lieu of taxable wage hikes.

The result has been an increased demand for medical services with accompanying higher costs, economists and analysis agree. To counter that trend, economist Alain Enthoven of Stanford University devised a consumer choice health plan (CCHP). First proposed to then Secretary of Health, Education, and Welfare Joseph Califano in 1977, Enthoven's model called for employees to be offered a choice among competing insurance plans, fixed dollar contributions by employers, and basic standard coverage provided by all plans.

At first of only academic interest, the debate over competition shifted to Congress when Harvard economist Martin Feldstein told the Senate Health and Scientific Research Subcommittee in March 1979 that health insurance was the principal cause of rising medical costs. Other witnesses encouraged the use of tax laws to bring competition into health insurance to contain costs.

COMPETITION BILLS

With that encouragement, Durenberger introduced his bill in June 1979 and revised it in November. To receive a tax deduction for their contribution, the bill (S-1968) requires employers of 100 or more workers to offer their employees a choice of three health insurance plans, each from a different carrier. Each could offer a different range of benefits and premiums, but the employer's contribution would remain the same regardless of which was chosen.

Under the bill, employers could contribute up to $50 per month for health insurance for single employees, $100 for an employee and spouse, and $125 for a family. Employees choosing a more expensive plan that offered greater benefits would have to pay the additional premium out of taxable income. If a less costly plan were selected, the employee would receive a cash rebate from the employer for the difference. That rebate would likewise be taxable.

Each health plan would have to offer the types of benefits covered by Medicare and include catastrophic coverage for medical expenses that exceeded $3,500 in one year. It also would have to continue coverage after an employee resigned, cover dependents after an employee died, and cover spouses after a divorce, all for at least 30 days.

Schweiker's bill (S–1590) is similar to that sponsored by Durenberger. Introduced July 26, 17979, it would affect employers of 200 or more workers. Employers would have to offer a choice of three competing plans, at least one of which must require employees to pay 25 percent of all hospital costs up to a maximum of 20 percent of their annual salary.

Unlike Durenberger's bill, however, the Schweiker bill sets the cap paid by employers at the monthly premium of the highest cost plan subscribed to by at least 10 percent of the employees. Employees who choose a less costly plan would receive the difference as a tax-free rebate. Thus if 10 percent of employees chose a plan that cost $235 per month, those that selected one that cost $125 per month would get $110 in cash.

On the House side, the Ullman bill (HR–5740) applies to all employers. It requires employers to offer at least one low-cost insurance plan or a Health Maintenance Organization (HMO) if one is available. The low-cost premium must be $75 per month or less. The employer would pay $45 for a single employee, $90 for an employee and spouse, and $120 for a family. If a lower cost plan were selected, the employee would receive a taxable rebate.

Martin's bill (HR–6405) encourages but does not require employers to offer more than one insurance plan. Employers must pay at least 50 percent of the premiums. They can pay up to 100 percent, but not more than $120 per month for a family without losing the tax deduction. Whatever contribution an employer pays, it must be the same for all employees. Any plan offered must protect against medical expenses above $2,500 per year.

Opponents of the competition model argue it would actually stifle competition and create even higher costs and less medical service. To be competitive, some insurers or HMOs might reduce benefits while still appearing to offer a comprehensive plan. Critics charge that quality of medical care could be cut, since many employees would choose less costly plans.

OUTLOOK SLIM FOR 1980

The outlook for any of these bills is slim, at least this year. All are buried in committees with higher priorities in an election year. Schweiker's bill is stuck in the Senate Health Subcommittee, where it takes a back seat to Sen. Edward Kennedy's (D–MA) national health insurance bill.

In the House, both the Ullman and the Martin bill are in the Ways and Means Committee, although the Commerce Committee has joint jurisdiction. Hearings have been held, but no health insurance plan seems likely to pass this year, staffers say.

Much depends on what Sen. Russell Long (D–LA), chairman of the Senate Finance Committee, decides to do, key aides agree. "Some form of cost containment will be needed if Long pushes a catastrophic health insurance bill, and the competitive model has a good a chance as any," one staffer said. "But the question is, will anything come out of committee?"

If this fall's elections continue the trend toward deregulation and lower government spending, then competitive health insurance may stand a much better chance. Opposition like that raised by labor unions and some elements of the medical profession must still be overcome, but perhaps competition is an idea whose time is about to come.

NEW CONGRESSIONAL HEALTH LEADERS—THE EMPHASIS IS ON COMPETITION

(By Linda Demkovich)

Through most of the 1970s the words "Congress" and "health" automatically brought two names to mind: Paul G. Rogers and Edward M. Kennedy.

This year, things have been different. Rogers, the Florida Democrat whose work as chairman of the House Interstate and Foreign Commerce Subcommittee on Health and the Environment earned him the name, "Mr. Health," retired from Congress in 1978 and has been practicing law. The Massachusetts Senator, chairman of the Labor and Human Resources Subcommittee on Health and Scientific Research, has spent much of his time on the campaign trail, trying to wrest the Democratic nomination from President Carter.

That has left a unique opportunity for others—Democrats and Republicans alike—to begin having their say, bringing fresh perspectives to some time-worn issues and perhaps changing the nature of the health policy debate for years to come.

Thus, in the past year or so, the debate on Capitol Hill has taken a subtle turn, from talk of a government-run health care system to one that stresses private-sector competition. Even those who still talk about national health insurance—which typifies the regulatory approach—now would give consumers a choice in the kinds of plans available.

"We'd like to see more market forces in the health care area, and a system run by the private sector rather than the government," said Henry A. Waxman, D-Calif., Roger's successor as chairman of the key House health subcommittee and, with Kennedy, a sponsor of a comprehensive health insurance plan.

Some of the newer faces in health policy, such as Waxman, have had experience in the issues and the powers of a chairmanship to back them. Others, such as Sen. Dave Durenberger of Minnesota—have had little more than a concept of how they think the heatlh care system ought to function and a key committee assignment to give them a forum.

Last year, Durenberger, a freshman Republican who has a seat on the Senate Finance Subcommittee on Health, introduced legislation to put more competition into the health care market; this year, the subcommittee held hearings on the bill. Kennedy—who is not a member of the committee—won a hearing on his comprehensive health insurance bill before the Finance Committee last year, after promoting it for nearly 10 years.

The stimulus for this year's interest in health care in general and the competition model in particular has been Carter's controversial cost containment proposal. The Administration's bill, which would have imposed mandatory controls on hospital costs, went down to defeat in the House last November. Its opponents nevertheless conceded the need to get a handle on soaring costs and set out to design an alternative to Carter's regulatory approach.

Because of Congress's current antipathy toward regulation, the advocates of competition have won a few converts and have attracted others who, though skeptical, say it might be an idea worth trying.

Next year, however, the economy may have the biggest impact on congressional health care debates. If inflation continues to worsen, putting the bite on the dollars available for health services, and if unemployment continues to increase, leaving more and more workers without company-paid medical coverage, it's going to be increasingly difficult to find funds to pay for the kind of program that Kennedy has been advocating.

Congress may have to talk about controlling current program expenditures before it can talk about expanding benefits elsewhere—and that may cast the spotlight on some of the new actors in the continuing health care drama.

KENNEDY'S SUBCOMMITTEE

If his bid to unseat Carter fails and he returns to devote full time to his Senate duties, Kennedy undoubtedly will continue in the forefront. At a one-day hearing before his Health Subcommittee in June—the first time he had chaired the panel in many months—on the problem of toxic chemical wastes near Love Canal, Kennedy showed that he is still the media master who can evoke emotions and command headlines.

Kennedy's absence this year, say congressional aides, hasn't hurt the subcommittee's productivity very much, given the current budget climate. But its recent action on the health manpower bill, authorizing funds for medical education at a level well below the $700 million Kennedy had proposed, indicates a slip in his control, however temporary. The compromise bill, providing $321 million, was engineered by Howard M. Metzenbaum, D-Ohio, who has taken over the day-to-day chores of the subcommittee in Kennedy's absence.

It's generally assumed that if he doesn't move into the White House, Kennedy would retain his chairmanships of both the Judiciary Committee and the Health Subcommittee. If he does, observers say, don't look for Metzenbaum or anyone else to challenge him. "There's not enough room [on the subcommittee] for Kennedy and anybody else," said a Senate aide who asked not to be named. "His staff simply wouldn't allow it."

The most significant change will occur on the minority side of the subcommittee. Richard S. Schweiker of Pennsylvania, its ranking Republican, has during his tenure been more the initiator than his predecessor, Jacob K. Javits, R-N.Y., observers tend to agree. "In the past, Republicans were either in the position of saying no or of just agreeing with the Democrats," another Senate aide said. "Schweiker's made them more of a force to be dealt with."

Schweiker is, however, leaving Congress at the end of the year and his successor is not apparent yet. Most observers point to freshman Orrin G. Hatch of Utah as the one to watch.

Hatch, who moved to the Health Subcommittee at the beginning of this year, plans to introduce legislation early next year to encourage private-sector involvement in the delivery of home health service. This year, he co-sponsored Schweiker's alternative national health insurance proposal, which includes elements of the competition approach.

Hatch's conservative reputation stems largely from the positions he has taken on foreign policy matters; but on health, according to an aide, he is more of a moderate, more likely to play a "maverick" role.

Javits, who is now the ranking Republican on the Foreign Relations Committee but is still active in domestic policy issues, including health, may face a serious Democratic challenge in the November election.

THE FINANCE COMMITTEE

Because of Kennedy's near-total domination of the Health Subcommittee of the Labor and Human Resources Committee, the real opportunity for the newcomers to the health field in the Senate may lie in the Finance Committee.

The chairmanship of the Finance Subcommittee on Health probably will stay in the hands of Herman E. Talmadge, D-Ga. Talmadge had been under investigation on charges that he misused and misreported office and campaign funds, but the Justice Department's decision not to prosecute and the selection of a weak Republican opponent virtually assure his reelection.

Deservedly or not, Talmadge is not viewed as a real force in health policy development. In part, that may be because the full committee, not the subcommittees, writes legislation. He is commonly characterized as a good chairman and a fair one. But, summed up a Senate aide who asked not to be named, "he just doesn't seem very interested."

Of more consequence, say Senate observers, is the rumored departure of Jay B. Constantine, chief of the committee's health staff and viewed as an advocate of the regulatory approach. Talmadge and Finance chairman Russell B. Long, D-La., have allowed Constantine, now in his 15th year with the panel, wide latitude in drafting legislation and making decisions. His power, along with what many characterize as his "abrasive" personality, has caused other committee members and their staffs to fear him or dislike him—or both.

But as the Finance Committee itself has become a more democratic body, these observers say, Constantine's influence has waned. "It's tough to get by him," said an aide to one member, "but it's possible these days." "It's been a lot less fun for Jay since certain Senators started to challenge him," said another.

Constantine himself says there's a "reasonable" chance he will leave at the end of this Congress. Most Senate watchers are betting that he will not.

One member who will be missed is Abraham Ribicoff, D-Conn., who has announced his plans to retire at the end of the year. His role in health policy, aides say, was often more symbolic than substantive, but he was one of the few senior Senators who had good rapport with both Long and the more junior members of the committee and was willing to bridge the gap.

Following Ribicoff in seniority on the Health Subcommittee is Gaylord Nelson, D-Wis., who also sits on Kennedy's subcommittee. In the past, Nelson has associated himself with specific health issues—most notably, drug reform. But he isn't widely viewed as likely to assume Ribicoff's role; one aide remarked that Nelson is "much more combative."

That may leave room for some of the newer members of the Finance Committee to make a mark.

One who has already demonstrated in interest is freshman Max Baucus. D-Mont. Baucus, who earlier served two terms in the House, is fast emerging as the spokesman for rural health interests in the context of the broader debate over regulations versus competition.

Baucus defines the rural health problem as "partly manpower, partly access"—and partly a tendency on the part of Washington policy makers to overlook or misinterpret rural needs. "I'm involved because I represent a rural state and I just see national solutions being proposed that adversely affect rural areas," he said in an interview.

Also, he said, "I want to make sure that deregulation doesn't go too far. Government, like life, is a pendulum. I want to make sure that when the pendulum swings back, away from regulation and toward competition, that it doesn't swing too far and wipe out some of the advances that underprivileged and rural Americans have secured."

The bills giving consumers a choice of health insurance plans may make sense in areas with larger employers. But in rural areas, Baucus said, "there are not that many firms with 100 employees. In fact, many have many fewer—two or three or four."

Despite pressures to balance the budget and cut unnecessary spending, Baucus said he sees no lessening of interest in health programs. "Health is so important that people are going to want to make sure that programs aren't cut disproportionately. In a sense, it's a microcosm of the entire budget process, primarily because it affects everyone."

His freshman status on the Finance Committee hasn't left him in the cold, Baucus said. "Sen. Long has tried to accommodate the views of as many (members) as he can. I haven't felt shut out."

Another freshman Democrat on the committee who Senate observers say may be the "sleeper" in health policy issues is New Jersey's Bill Bradley. As with other junior Senators, Bradley has taken an active interest in a variety of legislative issues and has thus avoided being pigeonholed.

But, said several Senate aides, he is a bright, appealing figure with an alert, "omnipresent" staff. "He's a Senator who says very little, but appears incisive when he does say something," said one.

In recent weeks, Bradley joined Bob Packwood, R-Ore., in sponsoring legislation to set up a three-year demonstration program for delivery of home health care. He is also working with Javits on a bill to aid financially distressed hospitals.

Bradley, according to an aide, is looking into the competition concept. "He likes elements of it, but he wants to know if it works and on what scale," she said.

On the Republican side, two senior members will probably continue to influence health policy—Packwood and Robert Dole of Kansas. Dole, who is in a tough reelection race, is the ranking minority member of the Health Subcommittee; Packwood, who is not on the subcommittee, is on the Budget Committee—and that post, one aide said, will make him an important player in the debate over how to cut health spending.

But the Republican whose name is mentioned most often these days in connection with health issues is Durenberger.

Durenberger is from Minneapolis—the city where, according to conventional wisdom, competition in the health care delivery system "works." Before his election to the Senate, Durenberger had been involved in getting employer support and participation in the city's system of health maintenance organizations (HMOs), which offer prepaid plans as an alternative to traditional physicians care.

The stimulus for his bill, however, came in May of last year, after he had sat through three months of medicare hearings. "The realization just came to me that the process were merely rubberbanding a system that wasn't going to work," Durenberger said in an interview. "I said then, why can't we do nationally what we've done in Minnesota?"

At the end of May, Durenberger got together with other proponents of the competition model, and thus was born the Senate's first pro-competition bill. The measure would mandate the availability of three insurance plans for consumers and establish a fixed employer contribution to the cost of coverage.

To skeptics who say the Minneapolis experience can't be applied everywhere, Durenberger said. "Of course it can. Employers in Minneapolis are more used to working together on a variety of these things, but as people they are no different in their corporate, social responsibility from people anywhere else." Durenberger isn't ready to abandon the regulatory system altogether, however—particularly in places where it's working well.

Many of his colleagues on the Finance Committee have expressed interest in the concept, he said, "but it takes a commitment to sit down and understand it. A lot of them just need a little time to analyze it."

And despite Long's interest in his own catastrophic health insurance bill, Durenberger said he's gotten a fair shake. "He gave us the opportunity to have hearings, and he didn't have to do that. I think he really cares about the cost of health care and doesn't mind listening to innovative ideas."

Congressional aides say they are impressed with Durenberger's ability to get out in front of the competition issue in a relatively short period. His biggest problem, they suggest, is a limited staff—a problem common to junior committee members, particularly Republicans. "If he's going to be active, he's going to have to get a bigger staff or that will limit him," said one.

FILLING THE ROGERS VOID

When Paul Rogers retired in 1978. Richardson Preyer, D-N.C., was in line to become chairman of the Health Subcommittee of the Commerce Committee. When Waxman challenged Preyer and the seniority system and won, everybody wondered if the ill will generated by the fight—along with a new and notably conservative group of members—would hurt his ability to get things done.

Apparently not. Again, the budget climate has prevented much in the way of expanded or innovative health programs. But the subcommittee has completed work—on time—on a lengthy list of authorization bills, including controversial ones such as planning and health manpower. It also reported the Administrations' cost containment bill, which eventually lost on the floor. And it has engaged in a good deal of oversight work, something that wasn't a priority in Roger's day.

Waxman himself rates fairly high marks from other staffs for the way he has handled the subcommittee in the face of sometimes serious policy disagreements. "He's still learning, but by and large, he's done a good job," said an aide to another Member. "Keep in mind," said another, "this has not been a year for advocacy."

Waxman noted that when Rogers was chairman, the federal government was expanding its role, "particularly in health care. Now the challenge is to streamline and make efficient the programs the government is involved in, recognizing that we're living in a time of limited resources."

As the chief House sponsor of the Kennedy national health insurance bill. Waxman nonetheless says he is interested in seeing more competition in the health care system, and says he will hold a series of hearings later this year on the various pro-competition bills. But he cautions against moving too fast in uncharted waters.

"I don't know that competition will in fact hold down health care costs and still provide quality care to people," he said. "If it were not successful, I would think we'd need a regulatory approach to some extent to deal with the costs."

The chief issue facing the subcommittee next year will be to reauthorize the Clean Air Act, which Rogers wrote. The challenge there. Waxman said, will be to balance the nation's energy and economic needs with the protection of the public health.

The Clean Air Act debate will bring to the fore John D. Dingell, D-Mich., chairman of Commerce's Energy and Power Subcommittee, who was at odds with Rogers in 1977 over restrictions the act would place on the auto industry. Dingell will become chairman of the full committee next year, when its current chairman, Harley O. Staggers, D-W.Va., retires, and he will undoubtedly play a key role in shaping an extension of the act.

Among the Democrats on the Health Subcommittee, several who are often aligned with Waxman are expected to continue to be active and influential—among them, Barbara A. Mikulski of Maryland, Andrew Maguire of New Jersey and Mickey Leland of Texas.

However, the major change will take place on the minority side when Tim Lee Carter of Kentucky, the panel's ranking Republi-

can, a doctor and Roger's ally on many of the major health programs enacted during the 1970s, retires at the end of the current session.

Carter's successor depends on several factors, particularly the number of seats the Republican Party picks up in the November election and the impact that will have on adjustments of committee ratios.

The name most often mentioned is that of Dave Stockman of Michigan, who led the first fight, in 1977, against the Administration's cost containment bill and who has recently joined with Richard A. Gephardt, D-Mo., in writing and sponsoring a health insurance bill that stresses competition as an alternative to the Kennedy-Waxman and Administration national health insurance proposals.

Stockman, now serving his second term in the House, is considered by many to be one of the brighest, most thoughtful younger Members—too thoughtful to some. "He's too logical," said one critic who nevertheless conceded Stockman's "smarts." "In the political process, there is a legitimate irrational element, and his economic structures don't take into account that human element. People like Stockman who have all the answers scare the hell out of me."

Stockman responded that economics is, after all, "merely the study and analysis of human interaction in production and consumption of goods and services. That's about as human as you can get."

"My perspective doesn't have anything to do with my willingness or lack of willingness to compromise," he said in an interview, "but I like to start in terms of analyzing the problem correctly as I see it and then proposing a solution that addresses the problems as I define them." The designers of medicare, for example, "weren't just so many automatons trading chits back and forth. They had a view of the problem, an economic analysis of it and a policy solution that was derived from that."

Under the Gephardt-Stockman bill, virtually all existing regulations—including the health planning, health maintenance organization and peer review acts—would be repealed. Once those "barriers" are removed, Stockman said, competitive health care plans would be able to thrive. "There's a lot of activity out there, the infrastructure is being created. What we believe you've got to do is make some decisive policy changes now."

Stockman said the catalyst for his involvement in health care issues was the original hospital cost containment proposal. "That bill was so irrational and unworkable that I decided I'd better investigate this whole field and find out what's going on. Once I got into it, I found that it was a pretty fascinating, challenging area that was conducive to some fresh thinking from an alternative perspective."

WAYS AND MEANS

Gephardt, Stockman's partner on the bill, is also considered one of the bright, promising House Members. Also in his second term, Gephardt is a member of the House Budget and Ways and Means Committees. Although does not sit on the Ways and Means Health Subcommittee, he said he might be interested in moving there in the next session "to get something done on this proposal."

Gephardt's initiation into health policy occurred last year, when he led the floor fight against the Administration's bill. Ultimately, the House adopted the so called Gephardt amendment, vesting responsibility for cost containment in the private sector.

It was that battle that moved him to develop a alternative. "All through the fight I said that we were not fighting it because we were in love with the status quo, that we also perceived a very real problem in health care that had to be resolved. It was my feeling then that it was incumbent upon those of us who had fought that fight to put together a comprehensive proposal that would move the country in a different direction on health care but would also meet the very perceptible problems that the system suffers from."

Gephardt said he has no illusions that the bill will pass "in one swoop. Further I understand the concerns about dismantling the regulatory system overnight when we don't know if competition will work, and I have no problem with enacting parts of our bill in a phased-in way."

But it was important, he said, to get the entire plan down on paper. "You can't build a house until you have a blueprint showing all the parts of it, even though you may build only one room at a time or one floor at a time. We thought it was important to lay out the blueprint so that people could see where we're trying to get ultimately."

Neither, he said, is the blueprint perfect. "We did the best we could, but I don't have any great pride of authorship and I don't think Dave does either. We're willing to change it, modify it, as long as the basic concept stays intact."

If Gephardt decides he wants to move onto the Health Subcommittee, there may well be room. Charles A. Vanik of Ohio, its third-ranking Democrat, is retiring at the end of the year, and James C. Corman of California, second in the line of command, is facing a serious challenge for the seat he's held since 1961.

That has led to speculation that the current subcommittee chairman, Charles B. Rangel of New York, may take over Corman's Public Assistance and Unemployment Compensation Subcommittee or Vanik's Trade Subcommittee. Rangel assumed chairmanship of the Health Subcommittee at the beginning of this Congress.

If that happens—and Rangel's staff says he won't explore any options until after the election—his likely successor would be either William R. Cotter of Connecticut or Fortney H. (Pete) Stark of California.

Unlike Waxman's subcommittee, which oversees a wide range of programs, Rangel's major responsibility is oversight of medicare and medicaid. Much of this session was devoted to a package of technical amendments—"pretty dull, dry stuff," in the words of a House committee aide.

The subcommittee did, however, consider and report the cost containment bill. And more recently, Rangel has taken an active role in working with the Health and Human Services Department on a program to provide help for two financially distressed hospitals in Harlem, the district he represents. That program may become a prototype for inner-city and rural hospitals facing similar fiscal ills.

The lead role in health issues on the Republican side of the Ways and Means subcommittee most likely will be played by James G. Martin of North Carolina. A chemist who is also the chairman of the House Republican Research Committee's health task force, Martin was instrumental in getting Congress to impose a moratorium on a proposed ban on saccharin.

In February, he introduced an alternative catastrophic health insurance proposal, which won the support of some key House Republicans, including Minority Leader John J. Rhodes of Arizona and ranking Ways and Means Republican Barber B. Conable Jr., N.Y.

Because of the nature of the work done by Ways and Means, however, partisan differences are not considered as critical as on the Commerce subcommittee.

How much difference any of the participants make and how far their programs advance next year will depend less on the force of their arguments, however, than on the state of the economy. Even the competition bills would require additional funds to extend health cost coverage to the unemployed and the uninsured. If the budget balancing mood prevails, it may be a year of much rhetoric and little change.

TRANSPORTATION

Mr. DURENBERGER. Mr. President, I wish every Member of Congress could have joined me in Minnesota during our recent 2-week recess. No person could have spent those 2 weeks the way I did and come away without a firm commitment to improving the transportation systems in our country.

The highlights came in my travels through northwestern and southwestern Minnesota, two of the most fertile, productive agricultural areas in the world, and my participation in the National Corngrowers Association Convention.

Everywhere I went the message was the same. Inflation, especially the dramatic increases in the cost of fuel and fertilizer, is forcing many farmers to operate at a loss this year. The 20-percent interest rates that were the rule this spring put many farmers under a heavy burden of debt. A severe drought has destroyed hundreds of thousands of acres of crops. The administration's embargo—and the administration's failure to alleviate the losses farmers have suffered because of the embargo—have left huge stockpiles of unsold grain and, until recently, depressing prices.

But, in spite of all this, the one issue that most concerns farmers is the impending collapse of our Nation's transportation network. They know there is no point in worrying about inflation, the economy, the weather, or foreign policy if they cannot get their crops to market. And, their confidence in having a transportation system that will move their crops efficiently and cheaply is rapidly eroding because too many public officials have ignored this major issue of the 1980's.

That was the theme of my speech to the National Corngrowers Association. My speech was based on my personal involvement in trying to rehabilitate our rail and other transportation systems. It was based on my knowledge of the problems farmers face because of the weaknesses in our transportation system. It was based on my deep concern for the future of our transportation system. But, it was also a speech by a U.S. Senator and, despite my efforts and those of other persons in this Chamber, Congress cannot take much pride in their transportation track record.

I want to share with you the observations of a person who deals with the problem every day. Jack Lambert, chairman of Twin City Barge and Towing Co., knows firsthand the inadequacies of our system.

I do not agree with everything Mr. Lambert told the corngrowers. I beileve that sound environmental policy can be in harmony with sound transportation policy, for example. But, I do agree with his conclusion:

We need a practical national transportation policy to be enunciated by Congress. We don't need another study to determine the problems. That policy should determine not what is best for railroads or barge lines or truckers, but rather how should the system be fashioned to best serve the logistical needs of you, the shipper, at the least cost with each mode exercising its inherent advantage.

Mr. President, I ask unanimous consent that excerpts from Mr. Lambert's speech be printed in today's RECORD.

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

SPEECH BY MR. LAMBERT

Last week my company was requested by the State Department and the U.S. Feed Grains Council to show our water transport system to an important foreign buyer. He was the President of Agropol, the Polish agricultural import-export commission.

We put him on a 5,000 h.p. towboat at St. Paul and started him on the first leg of a river trip that would end in New Orleans. The tow consisted of 15 barges carrying 23,000 tons of agricultural exports. It included several barges of corn, wheat, soybeans, wheat mids pellets, alfalfa pellets and a tank barge with 420,000 gallons of sunflower seed oil.

Our Polish guest was in awe of an agricultural system that could produce such a variety of commodities in such staggering quantities. And he was equally impressed by the foresight and ingenuity of Americans who had created the 1800 mile water highway to ocean ports. He was astounded with both the economic efficiency and the energy efficiency of our river transportation system.

This water transport mode has been with us in one form or another since the earliest days of our growing nation. We rather take it for granted.

I don't want to swamp you with statistics, but just let me give you a few facts that might help place the waterway system into is proper perspective as far as agricultural commodities are concerned.

Last year (calendar 1979) 61 percent of all export grains departed the U.S. through our Gulf Coast ports, 2.7 billion bushels. Of this volume, 58 percent reached the Gulf Ports by barge and the other 42 percent arrived by rail and truck. This enormous volume of commodities does not include feed pellets or ag oils, the majority of which moved by barge.

The waterway industry employs some 10,000 barges in this movement. Each barge has a capacity of 1,500 tons, or 15 jumbo covered hopper cars. It takes 60 highway truck trailer units to fill a single barge.

We are the most energy efficient mode achieving an average of 514 ton miles per gallon of diesel fuel consumed. The comparable figures for rail are 202 ton miles per gallon, and for truck, about 60 ton miles per gallon.

Perhaps more important to you, we move grain from the head of navigation to the Gulf for about $15 per ton. This is 41 percent lower than the best 75 car unit train rate of $25.70 per ton.

Now that you are duly impressed, I must tell you that this highly efficient system which I have just described has little to offer you in the future. If you anticipate a systematic growth in your export markets, don't count on the river system to meet your future transportation demands. We have reached our critical saturation point at a few key locks, and until those constraints are removed, our capacity is limited.

Perhaps you can rely on the railroads to meet your future expectations.

The inland waterway system is a victim of its own success and a symbol of the new Washington syndrome: If its healthy, cripple it. If its sick, bail it out.

In the past ten years the rivers have been subjected to an unrelenting attack by a coalition of railroad competitors and environmentalists, both in and out of government. With a barrage of lawsuits, environmental impact statements, and endless studies, using both state and federal regulatory overkill, these folks have managed to frustrate the expansion of necessary waterway facilities.

Lock 26 at Alton is the most famous and notable example. Any damn fool who had passed 8th Grade math knew ten years ago that Lock 26 was reaching its maximum operating capacity. Now, two years after Congress authorized construction, we are still eight years away from the completion of the building of the first of two needed chambers. And what might have been built over the past ten years at a cost of some $400 million will be rebuilt at a cost in future dollars of possibly $1 billion . . .

Some state and local units of government are attempting to restrict barge mooring to the point where we are running out of space to tieoff. There is still plenty of riverfront, but it's all being zoned as parks and open space. The land balance here in the Twin Cities is about 10 to 1 in favor of riverfront acreage dedicated to parks versus industrial land.

The environmental laws have even been used to frustrate the construction of grain terminals on the river. Here is a copy of the EIS prepared by Farmers Union Grain Terminal Association in 1975 for the construction of a new grain elevator and terminal. The facility was to be constructed in an industrial location on empty wetlands between two other grain terminals. Various federal, state, local government and private groups fought this plan like it was an opium den or a house of ill-repute. They finally ran out of reasons to object and the permit was granted this year.

Now, five years later, the project isn't economically feasible. The construction cost has gone up three times. So GTA continues to fumble with old inefficient, and costly systems. In this case, the environmentalists used the law to win a war of economic attrition. . . .

There is a Federal body known as the Upper Mississippi River Basin Commission. They are a so-called coordinating body for the river basin and are composed of representatives of ten federal agencies and six adjoining states. In October, 1978, Congress directed an "immediate" study by the Commission to verify the need for a second new lock chamber at Alton and to create a River Master Plan. They authorized $12 million for the study and directed the Commission to complete its work by the end of 1981.

After months of relentless dawdling, the Commission bureaucrats said what they really needed was four years and $40 million dollars. Multitudes of Congressmen told them to stop trying to reinvent the wheel, be realistic about federal budgeting problems, and get on with the job. But just this week they held a Congressional briefing indicating that they are still resisting and demanding a study extension. This forces one to the observation that the inmates may be making the rules at this particular asylum.

Waterway user tolls in the form of a diesel fuel tax will go into effect this year as a part of the 1978 legislation that authorized Lock 26. The first tax is 4 cents per gallon of diesel fuel consumed by our towboats.

For grain movements out of the Twin Cities to the Gulf 1 cent per gallon translates into 10 cents per ton on the freight rate. And you can count on a pass-thru of that tax just as if it were an OPEC price increase. We now have escalators in our freight contracts to cover fuel price increases. The user tax will increase by steps to a full 10 cents by 1985.

But even before that, you should be aware of a needless hidden tax you now are paying for water transportation of grain and all other commodities. This year we estimate that the barge industry will waste fuel oil and incur other operating costs while sitting in line, waiting to transit Lock 26. That waiting line burden will cost about $40 million this year and will be passed thru in the way of freight charges.

I will not attempt to argue the merits of the waterway user fee on the assumption that it is what Congress has rationalized it as—an exercise in fiscal responsibility. Similar costs are being incurred on the Illinois waterway eroding its productivity.

Consider, however, if cost sharing is an idea whose time has come, this tally sheet:

1. All federal expenditures on the inland waterways since 1824 total about $6 billion.

2. The Railroad Retirement Act, by which the Federal Government subsidizes rail labor pensions, has so far obligated us for $9 billion.

3. Recent capital assistance programs to ailing railroads now totals at least $5 billion for which no recovery is in sight.

4. The cost of Conrail to the taxpayers, so far, has exceeded $3.5 billion with no recovery in sight.

Forgetting the land grants, which may prove to be worth trillions countless billions in years to come, and ignoring an endless array of other lesser gifts by our generous government over the years. The tally I have just listed shows: Waterways—$6 billion; Railroads—$17.5 billion.

So if you believe in trust cost sharing and equity as an act of fiscal responsibility, then all modes will have to be treated on an even-handed basis or we have to break the railroads hands to keep them out of the Federal cookie jar.

Some of you may be wondering, and correctly so, where the Federal Department of Transportation fits into this intermodal mess. Well, don't waste your brain power looking to them for solutions. For several years now the entrenched bureaucrats there have been part of the problem.

We need a practical national transportation policy to be enunciated by Congress. We don't need another study to determine the problems. That policy should determine not what is best for railroads or barge lines or truckers, but rather how should the system be fashioned to best serve the logistical needs of you, the shipper, at the least cost with each mode exercising its inherent advantage.

If you intend to depart from this convention with some action goals to enhance foreign trade and promote the ag economy, I urge you to do one thing.

Insist that your elected representatives in Washington regain control of government which they have abdicated to the faceless, arrogant, entrenched bureaucrats who endure to dispute legislators and legislative intent.

KGB AGENTS AT THE UNITED NATIONS

Mr. MOYNIHAN. Mr. President, I invite the attention of Senators to an extremely interesting and significant series of articles which appeared several months ago in the Times of London. These articles report an extensive interview with Mr. Ilya Dzhirkvelov, a former KGB officer and TASS correspondent, who defected to England in April 1980.

Mr. Dzhirkvelov's most recent "cover" position was that of scientific information officer with the World Health Organization in Geneva. As explained to the Times:

When [Mr. Dzhirkvelov] arrived at WHO, [he] was told by his Soviet superior that his work would be judged not by its contribution to the United Nations but by the amount of information it yielded for the KGB. "The more you report" he was told, "the better your work will be—and the better you will feel."

It should not surprise us to find a KGB officer in the guise of an international civil servant. As the article notes:

It is KGB policy, Mr. Dzhirkvelov confirms, to infiltrate the United Nations and other international organizations. But he feels too much attention has been paid to highly placed Soviet agents in the United Nations bureaucracy, such as Mr. Geliy Dneprovsky, the head of United Nations personnel in Geneva.

Mr. Dneprovsky, Mr. Dzhirkvelov says, is important because of his access to the files of the United Nations employees. But all Soviet citizens in Geneva are—like TASS correspondents—agents of the KGB in some sense, and all report back their conversations with Westerners.

Now it is an unambiguous demonstration of the degree to which American influence has declined in the United Nations, and that of the Soviets risen, when Soviet intelligence personnel now routinely fill United Nations posts in clear violation of article 100 of the United Nations Charter. The Library of Congress has compiled a list of over 25 Soviet U.N. employees caught by the FBI involved in espionage activities since 1949. All this despite the clear language of article 100 which, inter alia, states that staff "shall not seek or receive instructions from any government or from any authority external to the Organization." Article 100 also binds each member of the United Nations to respect this stricture, and "not to seek to influence (the staff) in the exercise of their responsibilities."

Mr. Dzhirkvelov's testimony confirms again that the Soviet Union flouts its obligations to the world community, and, in so doing, expresses its contempt toward those countries and the democratic principles upon which the United Nations was founded. Mr. Dzhirkvelov's defection is only one of several incidents which have made this Soviet practice clear for all to see, and the longer we do nothing about it, the more justified Soviet contempt for us would appear to be.

Some may be tempted to regard this as an insubstantial matter, a question of "mere" prestige, toward which a mature superpower ought to affect a certain indifference. But this is an untenable position, especially in the nuclear age. As Soviet readiness to use force increases, mutual perceptions become more, rather than less important. Asked why the Soviets invaded Afghanistan,

Mr. Dzhirkvelov told the Times that in his view it was to show the world—and above all Washington—that they could get away with it. He and his colleagues in Geneva see the invasion and occupation of Afghanistan as "proof of the contempt of the Soviet leadership for the United States President and world opinion."

The enslavement of Afghanistan did not risk, in Soviet eyes, war with the United States, or even perhaps a serious response of any sort. Plainly this growing impression of American passivity can only encourage Soviet risk taking. Under such circumstances, we must indeed look to our prestige, must ask how the Soviets view our seriousness.

On March 22, 1979, I addressed the House Committee on Foreign Affairs on the question of Soviet use of the international civil service for "cover" for their KGB and GRU intelligence agents. Even if we are unable unilaterally to force the Soviets to end this practice, ought we not be in a position to assure the American people that their money is not being used to pay the salaries of Soviet intelligence agents? Mr. Dzhirkvelov's salary and expenses at his P–4 grade totaled over $50,000. As I said on that occasion:

Now this much is clear: if Soviet-American detente means anything, if the United Nations Charter means anything, the Soviets should get their KGB spies out of the UN.

But they are unlikely to do so unless they perceive some cost—and unless other members of the UN also begin to perceive some cost—to their continued presence. There is no reason whatever for American spokesmen to be reticent on this issue. We ought to say to the Secretary-General in private, quiet session—and to the membership of the United Nations in public, blunt session—that the Russians are in gross violation of the Charter. We ought to make a large point of it, plain and simple. And we ought to make it clear that the United States will no longer subsidize such Soviet violations.

My main point is simple: there was a time when we took the United Nations and its agencies seriously, and we must start to take them seriously once again. We must indicate that we are prepared to defend the Charter, and that we will act when it is violated.

Mr. President, I ask unanimous consent that the Times articles be printed in the RECORD.

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

[From the Times (of London), May 20, 1980]

AFGHANISTAN INVASION SURPRISED SOME SOVIET OFFICIALS

(Note: Former KGB agent who defected explains his role in spreading approved version of events.)

Ilva Dzhirkvelov, a former KGB officer and Tass correspondent, defected to Britain last month. He has been interviewed exclusively by The Times. His disclosures about life in the KGB, Tass, how Soviet overseas officials are organized, Soviet attitudes to the Third World and specific policies in East Africa, will appear in a series of articles in The Times this week and next. In this first article he recounts how officials within the Soviet machine have reacted to the Afghan invasion and the Olympic boycott.

The Soviet invasion of Afghanistan surprised and dismayed many middle-ranking Soviet officials, some of whom privately welcomed President Carter's call for a boycott of the Olympic Games in the hope that it might make the Kremlin think again.

This is the view of Mr. Dzhirkvelov who recently held the post of information officer at the World Health Organization in Geneva. But he was also in charge of the Soviet propaganda effort in all the Geneva international organizations and, after the invasion of Afghanistan, had the dual task of spreading the Soviet version of events among his Western colleagues, and relaying their reactions to Moscow.

In the version laid down by Moscow, for dissemination abroad, the invasion was dictated by the Soviet desire for peace and by the need to defend the interests of socialism against foreign—mainly American—interference.

Approval of this line however was "hard to find" among Western officials in Geneva, and Mr. Dzhirkvelov and his colleagues were—not for the first time—placed in the position of having to tell the Kremlin what it wanted to hear rather than the true state of affairs.

Their task was made doubly difficult by the fact that they themselves did not believe the official explanation they were required to impress on the West.

Not having been given warning in advance of the invasion, Soviet officials abroad were taken aback. "When we discussed Afghanistan among ourselves", Mr. Dzhirkvelov told The Times, "we simply could not understand why the leadership [in the Kremlin] had felt it necessary to take such a senseless and irrational step. We thought it was complete madness."

Mr. Dzhirkvelov himself, who was for many years a Soviet intelligence expert on Iran and Turkey, can see no strategic or economic justification for the invasion.

"If it had been Iran, we could have understood it—there would have been an economic motive, the securing of oil and gas supplies, as well as the political advantage of controlling Tehran. But why Afghanistan? We have enough mountains in the Soviet Union already."

The Russians, according to Mr. Dzhirkvelov, are not equipped or prepared for mountain warfare, he believes the Soviet Government's action is all the more inexplicable in view of previous Soviet experience of long and bloody fighting against anti-Soviet nationalist rebels (basmatchi) in central Asia during the early years of Soviet rule.

The basmatchi, he argues, were as wild and as poorly armed as the mujahidin (combatants in a holy war) of Afghanistan, yet it took the entire might of the Red Army, fighting on its own ground, to crush them in a protracted struggle.

The Soviet troops now in Afghanistan, he maintains, are in a worse position, and are likely to become permanently bogged down in a war they may never win on foreign soil.

This is an especially bitter prospect for what Mr. Dzhirkvelov calls "people of my generation"—Soviet men and women who were in their teens or early twenties in the Second World War, and are now well entrenched in Soviet society.

"How can you justify to Soviet mothers and fathers the deaths of young Russian lads in Afghanistan? If they were dying for some high political motive that would be another matter, but Afghanistan poses no threat to the Soviet state."

So why did the Kremlin do it? Mr. Dzhirkvelov told The Times that in his view it was to show the world—and above all Washington—that they could get away with it. He and his colleagues in Geneva see the invasion and occupation of Afghanistan as "proof of the contempt of the Soviet leadership for the United States President and world opinion."

The Politburo—including President Brezhnev, who played an "important but not decisive role"—wanted to test Western reaction, to see how far they could go before the West took firm action in response, up to and including military action.

For this reason many Soviet officials of his age and rank were privately relieved when President Carter called for a boycott of the Olympic Games as a reprisal, since it might force the Soviet leadership to reconsider and revert to a "stable rather than emotional policy."

The breakdown of détente, they believed, was Russia's fault rather than America's, and struck at the heart of their hopes for a steady improvement in Soviet life through contact with the West.

The Kremlin had out of "self-regard" and over-confidence undermined at a stroke the carefully erected structure of stability between the United States and the Soviet Union, all for a purpose which brought "no conceivable gain whatever" to the Soviet Union politically, and even less to the Soviet people, whose economic plight Mr. Dzhirkvelov describes as "catastrophic."

The Soviet man in the street, he says, regards the holding of the Olympic Games in Moscow as a grim joke in circumstances where even the most elementary foodstuffs are "dim memories."

Even in the 1960s, he claims, many privately opposed the idea of siting the Olympic Games in Moscow—and economic conditions were "better then than they are now."

Most Russians are, he says, apprehensive fearing that with the mammoth diversion of scarce resources to foreign tourists and sportsmen there will be even less in the shops for Soviet consumers when the games are over and the visitors have all gone home.

The KGB, according to Mr. Dzhirkvelov, is also apprehensive about the influx of visitors for security reasons. It would, he says, be "unrealistic" to expect the security organs to keep an eye on all foreigners individually during the games.

But as a result of discussions with the Moscow Olympic Committee a "quota" of visitors has been agreed, contrary to official Soviet assertions that visas would be issued to all those wishing to attend the games.

Those who are allowed in, Mr. Dzhirkvelov reveals, will be strictly confined to certain prearranged routes, and "those who stray to right or left will not get far." Specially formed vigilante squads (druzhiniki) will help the KGB to keep contact between ordinary Russians and foreign tourists to a minimum.

"Soviet citizens," he notes with a smile, "have dealings with foreigners for only two reasons: either out of sheer necessity, or out of sheer foolhardiness."

In Mr. Dzhirkvelov's view, the Soviet Government has always sought to avoid contact between Russians and the West, even during a period of détente, and their conduct at the Olympic Games is no exception.

Mr. Dzhirkvelov expects to be called a "traitor and slanderer" for saying so; but he is convinced many in Russia share his view that the Kremlin is so isolated from its own people, and receives so distorted a view of the outside world from its agents abroad, that it believes it can survive both the disapproval of world opinion and a deteriorating economic situation at home.

KGB-Tainted Reporters' Messages, Checked in Moscow Against Reuters, Says Former Colleague

All Soviet correspondents abroad are agents of the KGB, to a greater or lesser extent. But according to Mr. Dzhirkvelov, the information they send back to Moscow is often tailored to suit the Kremlin's view of the world. As a result the Soviet leader's receive and even act upon a distorted picture of world events.

Mr. Dzhirkvelov was a fulltime KGB officer until 1956, and after a spell with the Union of Journalists in Moscow, became a correspondent of Tass, the Soviet news agency, overseas, first in Zanzibar (subsequently part of Tanzania) in the mid-1960s, then in Sudan at the begining of the 1970s'.

But, as he put it in his interview with The Times, as a Tass correspondent he "never lost touch" with his former colleagues in the KGB, and worked for Soviet intelligence both in East Africa and subsequently as information officer at the World Health Organization in Geneva, his last posting before his defection.

According to Mr. Dzhirkvelov, some correspondents are what he describes as "pure journalists", while others are simply KGB agents who use journalism as a cover. "Pure" journalists send their information to Tass, which distributes it as it thinks fit, while "KGB" journalists have their own channels.

In the final analysis both perform the same functions, since both act as an arm of Soviet foreign policy. A Soviet journalist, Mr. Dzhirkvelov says, is by definition an agent of political intelligence, whether he works directly for the KGB or not.

While what reaches the Soviet press is tendentious and selective, what reaches the authorities tends to correspond more closely to the true state of affairs. But Mr. Dzhirkvelov maintains that the authorities prefer an "interpretation" of events which reinforces their belief in the gradual advance of the Communist—or at least, Soviet—cause throughout the world and tend to ignore less palatable reports and inconvenient facts.

When he was a correspondent in both Khartum and Zanzibar, Mr. Dzhirkvelov tried—according to his own account—to alert the authorities on a number of occasions to the fact that the situation was not as favourable to the Soviet interest as was believed. His instructions in both cases were to form close ties wtih members of the Government, especially those thought to be sympathetic to Moscow.

"I was obliged", he told The Times, "to get to know leading personalities, find out the balance of forces," report back what changes were in the wind and so on. As a journalist I could ask questions a more obvious KGB agent could not."

In Khartum, Mr. Dzhirkvelov reveals, he had a meeting every morning at nine o'clock with a regular KGB agent, at which he reported in detail his conversations with Sudanese figures. He also undertook intelligence missions on request.

He was dismayed to discover in 1971 that Moscow took the quite unfounded view that Sudan was ripe for a pro-Soviet coup. Mr. Dzhirkvelov's knowledge of the country suggested otherwise, and he claims to have advised the authorities in Moscow and the local Soviet Embassy accordingly.

In the event the Communist coup of July, 1971, was shortlived, the conspirators were rounded up and shot, and the Soviet Ambassador was asked to leave. Mr. Dzhirkvelov left Sudan discreetly soon afterwards.

It is KGB policy, Mr. Dzhirkvelov confirms, to infiltrate the United Nations and other international organizations. But he feels too much attention has been paid to highly placed Soviet agents in the United Nations bureaucracy, such as Mr. Geliy Dneprovsky, the head of United Nations personnel in Geneva.

Mr. Dneprovsky, Mr. Dzhirkvelov says is important because of his access to the files of United Nations employees. But all Soviet citizens in Geneva are—like Tass correspondents—agents of the KGB in some sense, and all report back their conversations with Westerners.

"Geneva", Mr. Dzhirkvelov says, "is a huge centre of international espionage, the Tangiers of our time".

When he arrived at WHO, Mr. Dzhirkvelov was told by his Soviet superior that his work would be judged not by its contributions to the United Nations, but by the amount of information it yielded for the KGB. "The more you report", he was told, "the better your work will be—and the better you will feel".

Geneva is not on the other hand, a particularly effective espionage centre for the Soviet Union. This, is partly because Russians there report what they think the Kremlin wants to hear, including, conversations which never took place.

Another reason is the enclosed hothouse atmosphere in which the Soviet community works. Nepotism is rife, according to Mr. Dzhirkvolov, and this creates bad feeling. Also, Soviet agents in Geneva compete with one another to satisfy the KGB, with the aim of feathering their nests in Moscow once their tour of duty in the West is over.

The result, Mr. Dzhirkvelov told The Times, is even more "disinformation" in the Soviet propaganda and intelligence system.

This is a situation which he feels cannot last, especially as the gap between objective truth and the Soviet version becomes daily more apparent to Soviet people through Western broadcasts in Russian. Ninety-nine percent of those Russians interested in politics listen to the BBC or Voice of America, as indeed do the Soviet leaders themselves, Mr. Dzhirkvelov says.

"More often than not we heard the news from the BBC rather than our own correspondents, and when our people do file we always check what they send against Reuters to see what is really happening."

With the "immense growth" in the influence of the BBC and VOA in recent years, the Soviet authorities have reassessed their propaganda effort. Last year a Central Committee directive in Pravda called for a more "persuasive" approach, and less "grey" attempts at "window-dressing" in the Soviet media.

There was, it said, a "propensity toward verbal babbling and propaganda cliches". A committee was formed under the former director of Tass, Leonard Zamyatin, to liven things up.

The machinery remains, however, in Mr. Dzhirkvelov's view, clumsy and permeated with "disinformation". There were red faces in both Tass and the KGB, he says, when Mr. Robert Mugabe was elected Prime Minister of a democratic Zimbabwe, an event which Moscow had insisted the "British imperialists" would never allow.

"Old Africa hands" such as Mr. Dzhirkvelov had argued differently, but were ignored.

Rigidly Ideological Approach Wrecks Soviet Strategy in Africa

Soviet strategy in Africa has failed, largely due to Moscow's inability to comprehend African conditions and the African cast of mind, says Mr. Dzhirkvelov, who was Tass correspondent in Zanzibar from 1967 to 1970, and then for two years in Sudan.

In the 1960s and 1970s Soviet strategy, according to Mr. Dzhirkvelov, was to take advantage of anti-colonial sentiment in Africa and gain political influence over African countries by tying them to the Soviet Union economically.

Zanzibar was regarded as the "gateway to Africa" because of the openly pro-communist regime which took power then after the Zanzibar revolution of 1964. Under its President, Abaid Karume, Zanzibar was hostile to the West, while receiving vast amounts of aid from the Soviet Union, East Germany and China.

It was partly to moderate this Marxist radicalism on his doorstep that President Nyerere in neighbouring Tanganyika proposed the united state of Tanzania. But Zanzibar continued to pursue pro-communist policies semi-independently.

President Karume told Mr. Dzhirkvelov when he arrived that Zanzibar was to be an "island of freedom" on an analogy with Cuba in the Caribbean. The number of Soviet advisers in Zanzibar rose during Mr. Dzhirkvelov's time from under 300 when he first arrived to well over 400 by the time he left.

Mr. Dzhirkvelov soon became aware, he told *The Times*, that Soviet control over Zanzibar was not increasing in proportion to the economic contribution.

This was partly because the Zanzibar leaders capitalized on the Sino-Soviet split by

playing the Chinese off against the Russians. Of the two models of communism on offer, says Mr. Dzhirkvelov, President Katume preferred the Chinese, on the ground that Chinese technicians and workers were happy to live in hostels and receive low pay.

The Russians began to "lose their position" Soviet difficulties, Mr. Dzhirkvelov discloses, were compounded by errors in economic planning. As an example he cites what he now thinks of as The Great Tuna Fish Disaster.

The Russians advised President Karume to diversify the Zanzibar economy, which depends on the export of cloves. Since Zanzibar is an island, the Soviet advisers proposed the construction of a tuna processing plant. It became known, however, that the fishing vessels supplied by the Russians were slower than the tuna fish, and the necessary equipment would have to be bought from Japan, since Russia did not produce it.

The cost of building the new port complex was in any case prohibitive. Existing port facilities were being used for loading spices. "The only result", says Mr. Dzhirkvelov, "would have been that the fish would have ended up smelling of cloves and the cloves smelling of fish".

He has other examples of what he calls "economic adventurism" by the Russians in East Africa.

In 1969 he learned from the Soviet ambassador in Mogadishu that the Russians were building a huge dairy complex in Somalia because there were cows feeding near the proposed site. The dairy was completed, at considerable cost, but by then there were no cows left to be milked, since Somali farmers are nomadic and the herbs had moved elsewhere.

But the principal Soviet mistake in Africa, says Mr. Dzhirkvelov, is serious. The Russians, he argues, have very little understanding of African agrarian and tribal societies, and assume that socialism on the Soviet model is suitable and inevitable.

In Tanzania the Russians were encouraged by President Nyerere's espousal of a socialist philosophy, but failed to grasp that he was an "educated man in the Western mould", and his socialism was unique to Tanzania.

Mr. Dzhirkvelov denies that miscalculations of this kind arise from a condescending or even racialist attitude on the part of Soviet officials in Africa, although such attitudes undoubtedly exist, he says, within the Soviet Union. But in Africa, he believes, Soviet blunders are attributable rather to the rigidly ideological Soviet approach.

The Kremlin, he says, often backs the wrong horse in African politics. In 1970, for example, a number of Tanzanians were put on trial in Dar es Salaam, charged with having conspired to overthrow the Government.

The accused included (*in absentia*) Oscar Kambona, the former Foreign Minister. There was speculation, unconfirmed at the time, that the Soviet Union had supported some of the alleged conspirators. Mr. Dzhirkvelov has told *The Times* that there was indeed a "Moscow connexion", and that Soviet officials in Dar es Salaam were "extremely worried" that this might emerge at the trial. Some of the accused, says Mr. Dzhirkvelov—though not Mr. Kambona—had "close ties" with the Russians.

Mr. Dzhirkvelov attended almost all of the trial, with instructions to report to the Soviet Embassy any mention of Russia. Fearing exposure, a number of KGB agents in the embassy left Tanzania before the trial ended, indirect proof of Soviet involvement, to which the Tanzanian authorities turned a blind eye.

As for the Sudan, Mr. Dzhirkvelov recalls an even greater miscalculation, when the Russians supported, and perhaps even inspired, a communist coup against President Nimeri in July 1971. Mr. Dzhirkvelov, who was in Khartum throughout this period, foresaw that if there were such a coup it would undoubtedly be crushed, and the Sudanese Communist Party would be destroyed.

He made this plan, he claims, both in dispatches for Tass, which were passed on to the KGB, and in person to Mr. V. V. Kuznetsov, a member of the Soviet leadership who visited Sudan in March. But the Soviet authorities, including the embassy in Khartum, believed that a communist coup would succeed.

It took place in July, under Major Hashim al-Ata, and was put down within three days. President Nimeri was returned to power on a wave of popularity.

Relations between Khartum and Moscow, which until 1971 had been warm, sunk to a low ebb, from which they have never recovered. The Soviet ambassador was asked to leave, with many of his staff. Mr. Dzhirkvelov stayed on as Tass correspondent for another year, with the difficult task of presenting what had happened for Soviet readers as a "victory for progressive forces".

Looking at Africa as a whole, Mr. Dzhirkvelov sees a catalogue of setbacks for the Soviet Union, in contrast to the high hopes of the 1960s. The peaceful settlement of the Rhodesian issue was, he says, a disaster for Moscow, which had completely failed to foresee the election of Mr. Robert Mugabe as Prime Minister, and had once again backed the wrong horse in Mr. Joshua Nkomo.

Somalia and Zanzibar, Mr. Dzhirkvelov points out, have both expelled their Soviet advisers. Egypt, which expelled all Soviet personnel in 1972, was regarded by Moscow as a safe Soviet domain to the last moment. Six months before President Sadat's expulsion order, a member of the Politburo, Mr. Boris Ponomarev, visited Cairo, and was impressed by what he construed as the Egyptians' appetite for Marxism-Leninism, despite warnings from Soviet officials in Cairo that the Sadat Government was going in an unmistakably pro-Western direction.

The Soviet Union, says Mr. Dzhirkvelov, has spent millions of rubles in Africa, with very little result. Mr. Kwane Nkrumah in Ghana, President Kenneth Kunada in Zambia and Dr. Milton Obote in Uganda were all at various times the object of misplaced Soviet hopes.

Ghana was once the main KGB base in Africa, but no more, while Zambia "does not want and never did want" Soviet help. As for Uganda, Moscow even made what Mr. Dzhirkvelov considers the "appalling error" of backing Dr. Obote's successor, Idi Amin, supplying him with the arms and equipment to maintain a reign of terror.

The Soviet military intervention in Angola and Ethiopia and the use of Cuban troops Mr. Dzhirkvelov sees as a gambler's throw to turn the tide.

In Africa, and in the Third World as a whole, Mr. Dzhirkvelov believes, the Soviet Union is at a disadvantage in competition with China and the West, and will remain so as long as it is blinkered by an inflexible ideology and the dictates of self-interest.

[From the Times, May 28, 1980]

THE GOD WHO WAS REALLY A BANDIT

Ilya Dzhirkvelov is not a dissident. As a former member of the KGB, he has little time for Soviet human rights activists. In his interview with The Times, which ranged from his boyhood years to the present. Mr. Dzhirkvelov reflected on the changes in Russia over the past 30 years in a tone which suggested little sympathy for the Russian democratic movement. What he and his generation want, says Mr. Dzhirkvelov—he is in his 50s—is a decent standard of living, a degree of personal freedom, but at the same time strong leadership, order and discipline.

Mr. Dzhirkvelov, who was a member of the Communist Party for 34 years, looks back to the days of Stalin even now with a degree of nostalgia. A stocky, suntanned Georgian with close cropped white hair, Mr. Dzhirkvelov recalls with animation how he joined the KGB—at that time the NKVD—in 1944, in the first flush of youthful enthusiasm.

To many people both inside and outside Russia the initials both inside and outside fear and dread. But to young Ilya Dzhirkvelov, according to his own account, the Soviet security police was a fine, even glamorous organization, defending the state with stern but just measures, in the tradition of the revolutionary Cheka. It also offered a stepping stone to privilege and power. Only later, says Mr. Dzhirkvelov, did he understand that the victims of the secret police were the innocent casualties of a cruel, and arbitrary despotism.

DEPORTED AT GUNPOINT TO SIBERIA

His first task was to help round up the Crimean Tartars, some of whom had fought for the Germans during the war. Most of these had joined Hitler's army under duress, in order to avoid certain death in Nazi starvation camps. This did not, however, save them from equally certain death at the hands of Soviet firing squads. The remaining tartars were deported at gunpoint to Siberia and central Asia by NKVD troops, among them the 17-year-old Ilya Dzhirkvelov. Many died en route. The descendants of the survivors have still not been allowed to return to their homeland.

The wholesale deportation of the Tatars ranks as one of Stalin's most horrendous crimes. But Mr. Dzhirkvelov only now realizes he was taking part in an act of inhumanity. "At the time", he says. "I thought the Tartar nation were traitors. I had not the slightest doubt that what I was doing was right."

Doubts did enter in, Mr. Dzhirkvelov told The Times, as he became aware of the gap between the ideals proclaimed by the regime and its cynical, self-interested conduct of affairs. Even as a youth in Georgia, he says, he was struck by the fact that those in authority evacuated their own families to the Iranian border as the Germans advanced leaving lesser mortals to their fate.

Georgia, he notes, is especially corrupt among Soviet republics and has the additional distinction of having produced two of Russia's greatest monsters in Stalin and Lavrenty Beria, Stalin's chief of secret police. Mr. Dzhirkvelov saw Stalin at close quarters, together with Churchill and Roosevelt, when we was assigned to guard the delegates to the Yalta Conference in February 1945. For a young man of ambition, to guard the Big Three was to take part in an historic event. And to be close to Stalin was to be in the presence of a demi-god: "We thought he was Almighty, greater than the sun, more powerful than the Tsar."

Yet the doubts remained. In 1947 Mr. Dzhirkvelov was sent to Romania to deal with "Nazi collaborators", just as he had in the Crimea. But in Romania hostility towards the Soviet Union was open and unchecked. Russian officers were jostled and obstructed in the street. It took two Soviet guards with sub-machine guns to persuade a reluctant Romanian landlady to offer Mr. Dzhirkvelov and his new wife accommodation.

When two United States ships appeared off the port of Constanta with an offer of American grain, there were ugly anti-Soviet demonstrations. The imposition of communism on Romania, observes Mr. Dzhirkvelov, left a legacy of antagonism towards Russia which still persists, as he himself found during frequent visits in subequent years on behalf of either the KGB or Tass.

Outwardly, however, Mr. Dzhirkvelov was an exemplary citizen. He was now married to a fellow employee of the KGB. (They were later divorced; his second wife and their

daughter are with him in the West.) As a reward for loyal service, Mr. Dzhirkvelov was given a post in the First Chief Directorate of the KGB, which covers intelligence and counter-intelligence in foreign countries. He became an expert on Turkey and Iran, and was entrusted with undercover missions in those countries, helping to foment subversion by Soviet symphathizers.

However, the KGB was not without internal discords in these years, Mr. Dzhirkvelov revealed in his interview with The Times. He cites the case of a fellow agent who at a KGB meeting ridiculed the practice of getting candidates for election to the Supreme Soviet. If there was only one candidate, and he had to be approved by the KGB, surely there was not much to be said for "democracy" in the Soviet system. The "dissident" was expelled from the KGB for "Trotskyism and opportunism", and Mr. Dzhirkvelov was himself childed for "short-sightedness" when he dared to discuss the case with colleagues. The incident also compromised the "dissident's" mentor in the KGB, Fyodor Bykovsky, father of the Soviet Cosmonaut, and like Mr. Dzhirkvelov a KGB intelligence agent in Iran.

DEGREE OF RESPECT FOR STALIN

But it was the death of Stalin in 1953 and the subsequent arrest of Beria which caused the greatest tremors within the KGB. With the passing of the dictator, many KGB operatives feared the demise of the system he had created, a system which depended on the KGB for its very existence. In the power struggle which followed, Beria's colleagues in the Politburo maneuvered secretly against him, fearing that the secret police chief would try to seize power. When the plot was ready, the Politburo pounced and arrested Beria at a joint session of the Council of Ministers and the Party Central Committee. So powerful was their fear of the KGB, however, that the Soviet leaders enlisted the aid of the Army, who brought tanks on to the streets of Moscow to prevent a KGB coup. The secret police were neutralized and their chief was executed after a brief "trial".

Mr. Dzhirkvelov recalls how he and other KGB officers sat at headquarters in the Lubianka on Dzezrhinsky Square in Moscow and heard the list of charges against their boss. Beria says Mr. Dzhirkvelov, was accused of having been an "agent of international imperialism". This struck even the KGB as absured. They were used to fabricating evidence of complicity with particular Western intelligence services; but to shoot Beria for being in the pay of all of them was going too far.

Mr. Dzhirkvelov's attitude to both Stalin and Beria is coloured by the fact that both were Georgians, like himself. Beria, he says, was on the whole "disliked" by Georgians, who considered him "cruel" even by their standards.

Their attitude to Stalin was more ambivalent. When in 1956 Khrushchev made his "secret speech denouncing Stalin, there were mass peaceful demonstrations in the Georgian capital, Tbilisi. The demonstrators wanted to know why "their" Stalin was being removed from his pedestal. The authorities panicked and sent in troops, who opened fire, leaving scores dead. Because of what Mr. Dzhirkvelov calls these "tragic events", the disturbances in Georgia took an anti-Russian turn. He was sent by the KGB to Tbilisi—his home town—to find and punish the ringleaders. The KGB, he says, arrested 400 people, but no "instigators" were ever found, since the Georgian reaction to Stalin's disgrace had been quite genuine and spontaneous.

All in all Mr. Dzhirkvelov retains a degree of respect and even admiration for Stalin, coupled with a hint of disdain for the leadership of Khrushchev which followed. He acknowledges that Khrushchev brought a closed, paranoid world of Stalinism. But welcome "breath of fresh air" into the enclosed, paranoid world of Stalinism. But Stalin, says Mr. Dzhirkvelov, was at least a strong leader. His "cult of personality" was a real and fearful one, whereas the self-glorification of both Khrushchev and Brezhnev have been pale and laughable imitations.

Stalin, says Mr. Dzhirkvelov, did "great service" to the Soviet state—a remarkable statement from a man whose own father, the deputy political commissar of the Black Sea Fleet, disappeared in the purges of the 1930s. The death of Stalin, he says, was none the less the "beginning of the end" for "those who had served Soviet power long and loyally". The KGB still had a role to play, creating subversion abroad and repressing dissent at home. But it resented the curbing of its powers under Khrushchev, and missed its father-figure, Stalin. "We thought Stalin was a god: he turned out to be a bandit. And we thought to ourselves: why should we trust this Khrushchev? Perhaps he'll turn out to be a bandit as well".

What Mr. Dzhirkvelov hankers after—and, he says, "there are many who think as I do"—is a Russia with a strong central authority, but one in which a degree of personal liberty and expression of opinion is permissible. He looks back to the 1920s in the Soviet Union as an era when this combination prevailed. The fact that the KGB, which he is in some ways proud to have served, exist in order to stine the challenge posed to authoritarianism by demands for freedom does not strike him as a contradiction.

WILLIAM J. BAROODY

Mr. MOYNIHAN. Mr. President, all of us who place a high value on intelligent and civilized political discourse must regard the passing of William J. Baroody as an enormous loss. Here was a man who understood well that democratic societies thrive on the free competition of ideas, not slogans, not catch phrases or propaganda. Yet Bill's devotion to scholarship and the intellectual life never precluded responsible advocacy. He was a thoroughly political man, in the very best sense of that word, a man who served many public officials, including two Presidents, with great distinction.

Mr. Baroody's most important and enduring contribution, of course, is the American Enterprise Institute, an institution that has rightfully gained the respect of legislators, policymakers, and scholars of virtually all political persuasions.

While Bill's public life was a noble and immensely productive one, his private life also defined the rare and precious sort of man that he was. He cared deeply for his family, and he imparted to his children the spirit of unselfish public service. He also treasured his ethnic roots, taking an active part in the affairs of the Milkite Catholic Church.

We will miss him dearly. But we can be happy to have known such a wonderful human being, such an exemplary citizen of our Republic.

Mr. President, I ask unanimous consent that an editorial published in the Washington Star be printed in the RECORD.

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

WILLIAM J. BAROODY

It is not often that a single career and personality can combine vital attactment to tradition with creative anticipation of the future. It was among the distinctions of William J. Baroody, the former head of the American Enterprise Institute, who died Monday, that his career and personality did just that.

The private man was pure American myth. A poor boy from an immigrant family—his father was a stonecutter from Lebanon—he worked his way through college and, by middle age, had risen to a position where presidents of the United States were listening to his advice.

He was a patriarch emotionally centered in a large, energetic family that kept growing; when he died, the count on grandchildren was up to 37. He was gratified to have his oldest son, former White House aide, William Jr., take over as head of AEI when he retired two years ago. He was a profoundly religious man, whose preoccupations in the world of politics and intellectual controversy never got in the way of active participation in the affairs of the Melchite Greek Catholic church.

At the same time, this man of values a good many people find old-fashioned if not downright anachronistic had an extraordinarily cool and discerning eye for trends. He decided back in the 1950s that New Deal dogma on politics and economics had run out of steam, leaving a clear track for a vigorous new kind of conservatism. As one of his long-time colleagues put it, "He was always the first to spot a vacuum and move in; sometimes he would create a vacuum to move into."

Starting with a bit of corporation money and a few lively minds, including that of Nobel laureate Milton Friedman, he began to build AEI into the major American think tank it is today. At first, it was considered too right-wing to be taken seriously by the intellectual mainstream. Recruiting more and more dynamic scholars, conducting long-range studies, publishing magazines and books, sponsoring debates over critical issues, bringing in distinguished foreign thinkers and political figures, Mr. Baroody maneuvered AEI front and center to a position where it is financed by leading foundations and respected by old opponents as well as by a widening—and bipartisan—circle of new friends.

In the process, Mr. Baroody became a political force in his own right, recognized as an influence on the policies of both the Nixon and Ford administrations and on thinking in the neo-conservative wing of the Democratic party as well. It was thanks to him, among others, that the term "neo-conservative" became identified with fresh ideas and possibilities of power.

This presence will be missed in Washington and across the nation, the more so because of its continuing life in the institution he built.

HANS MORGENTHAU

Mr. MOYNIHAN. Mr. President, in this week's issue of New Republic, Dr. Henry Kissinger, the former Secretary of State, has written a moving and enlightening memoir of the life of Hans Morgenthau, who was his friend and teacher and who was indeed a teacher to a whole generation of Americans who have studied international affairs and international relations.

Few men have so marked an age by their work. He was, indeed, a seminal figure, as Dr. Kissinger states.

I ask unanimous consent that Dr. Kissinger's eulogy, if I may use that term—and it is an appropriate one—be printed in the RECORD.

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

HANS MORGENTHAU

(By Henry Kissinger)

Hans Morgenthau was my teacher. And he was my friend. I must say that at the outset because so many obituaries have stressed his disagreement with policies with which I have become identified. We knew each other for a decade and a half before I entered office. We remained in sporadic contact while I served the government. We saw more of each other afterward.

It is not often that one can identify a seminal figure in contemporary political thought or in one's own life. Hans Morgenthau made the study of contemporary international relations a major discipline. All of us who taught the subject after him, however much we differed from one another, had to start with his reflections. Not everybody agreed with Hans Morgenthau, but nobody could ignore him. We remained close through all the intellectual upheavals and disputes of two and a half decades.

Establishing international relations as a discipline was not an easy matter in the United States. For the temptation to treat the subject by analogy to our domestic experience was overwhelming. There existed in America a well-developed literature on international law that saw international relations in terms of legal processes. There was a pragmatic tradition of solving issues that arose "on their merits." There was the belief in America's moral mission that had produced both isolationism and, later on, global involvement.

Morgenthau sought to transcend all these disparate tendencies. He was passionately convinced that peace was a statesman's noblest objective, but he did not believe that this yearning alone would avoid war. He was a liberal in his political view but he thought his convictions required not simply an affirmation but sufficient stability at least to enable man's humane aspirations to prevail. He was willing to confront the political leader's fundamental dilemma—that moral aims can be reached only in stages, each of which is imperfect. Morality provides the compass course, the inner strength to face the ambiguities of choice.

So Hans set out to understand what he considered the "real" world of international politics, not as he would like it to be, but as he found it. His seminal work, *Politics Among Nations*, analyzed international relations in terms of power and national interest. He believed that a proper understanding of the national interest would illuminate a country's possibilities as well as dictate the limits of its aspirations.

Hans was much criticized for his alleged amorality in those days. His critics did not understand him. Being himself passionate, he did not trust passion as the regulator of conduct. Being committed to peace, he was prepared to enter the cold world of power politics to achieve it.

In the 1960s, Hans proved that he was beyond the manipulation of military calculations. He opposed the war in Vietnam when it was still supported by all fashionable opinion. In 1966 he and I debated the issue in *Look* magazine. He considered America overextended, the war unwinnable, the stakes not worth the cost. I maintained that the size of our commitment had determined our stake, that we had an obligation to seek our way out of the morass through negotiation rather than unconditional abandonment of the enterprise. He was right in his analysis, probably in his policy conclusions as applied to 1966. Three years later—quite unexpectedly—I was faced with the problem as a policy maker. We both stuck to our convictions.

I will not debate their ultimate merit here. But I think it is important to understand that we shared almost identical premises. We both believed America was overextended; we both sought a way out of the dilemma. Hans wanted to cut the Gordian knot in one dramatic move; I chose a different route. But we were both in a way lonely among our associates. Hans is not correctly understood as a protester. He was a teacher trying to bring home to his beloved adopted country the limits of its power, just as earlier he had insisted on its central role. Through all these disagreements I never ceased admiring him or remembering the profound intellectual debt I owed him.

With the end of the war, our paths became increasingly parallel again, though I do not wish to burden Han's memory with the army of my critics. Hans remained always himself: clear in his perception, uncompromising in his insistence on getting to the essence of a problem. He meant much to me.

A word must be said about Hans as a human being. Few eminent men correspond to their images. Hans made his reputation as an analyst of power, but he was a gentle, loving man. He was a great teacher, yet quite shy. He had a marvelous, slightly sardonic sense of humor which never stooped to the malicious. Yet he was slightly tentative—at least in his dealings with me—in showing this side of himself. He would make a witty remark with an absolutely straight face, peering from behind his bushy eyebrows to see what the response would be. Only when he saw that his sally had been understood would his whole face crease in the smile of a mischievous little boy. He was a lovable man.

Hans Morgenthau was deeply conscious of his Jewish heritage. He knew that no people was more likely to be the victim of injustice and passion. He thus felt a special obligation to resist intolerance and hatred. And he understood that in this battle he must never stoop to the methods he was combatting. He was a noble man.

I saw Hans for the last time at breakfast a few weeks ago. He had grown quite frail, though mentally he was as alert as ever. His professorship at the New School had just ended. He spoke of how much teaching meant to him. Everyone must feel he makes a difference to the world, he said. And his vocation was teaching, which he hoped to continue. I told him that he already had made a big difference to the world; he did not have to prove himself constantly. He did not quite believe it. His life was his work. As he said on another occasion, he saw no sense in extending the one by cutting down on the other.

We promised to meet regularly. It was not to be. He settled our little dialogue by his sudden death. There would be no gap between Hans Morgenthau's life and his work; he had made a difference.

And the nature of that difference is best shown in the sorrow of his friends and in the fact that all who remember Hans Morgenthau recall his passion for justice, his fertile intellect, his warmth, and his honesty. It will be a lonelier world without him.

RETIREMENT OF ROBERT A. MALSTROM

Mr. SASSER. Mr. President, Robert A. Malstrom, the Senate financial clerk, retired yesterday after 30 years of faithful service to the U.S. Senate.

I want to take this opportunity, on behalf of the Legislative Branch Subcommittee, to express our thanks for his tireless, courteous, and competent efforts on our behalf—and on behalf of all the Members of the Senate.

Bob entered the service of the Senate some 30 years ago, after his military service in World War II. During that period he rose through the ranks from the position of clerk to the top financial position in the U.S. Senate—a position he has held for the past 3 years.

Frequently, our subcommittee has called upon Bob for his expert advice and testimony—and he has always come through in a timely and competent manner.

On behalf of my colleagues on the committee, I wish Bob and his wife Pearl many years of happy retirement.

FIVE YEARS AFTER HELSINKI

Mr. JAVITS. Mr. President, today marks the fifth anniversary of the signing of the Helsinki Final Act by the heads of state of 33 European nations, the United States, and Canada, and it is therefore an appropriate occasion to take up House Concurrent Resolution 391 which commemorates that anniversary and reaffirms congressional support for full implementation of all the provisions of the Helsinki Final Act by its signatories. I would urge my colleagues to join with me and the 17 other cosponsors of the resolution in supporting and underlining the concerns and objectives that are contained within this resolution.

Although 5 years have passed since the heads of 35 nations of Europe, the United States, and Canada made their solemn commitments to abide by the principles contained within the Helsinki Final Act, we have yet to see significant progress in implementing those provisions, particularly by the Warsaw Pact States. Progress has been slow in some areas, better in others, and nonexistent in yet others, as is indicated so vividly in the Helsinki Commission's report to the Congress.

The Soviet Union—by its invasion of Afghanistan, its recent emigration policies and its imprisonment of Helsinki monitoring group members such as Shcharansky and Orlov and its banishment of physicist Andrei Sakharov—has clearly demonstrated that it is less interested in a "constructive" Madrid review meeting than it has claimed to be. As all the states prepare for the second major review meeting under the CSCE mandate at Madrid, there can be no doubt that a "successful" meeting can result only if there has been significant "success" in the implementation process prior to the meeting. As long as the Soviet Union and its allies continue to violate openly and blatantly the provisions that took so many years to negotiate, these violations must be discussed openly and frankly at any review meetings that take place. As long as some of the signatory states choose to select the provisions, they would implement, and their nonimplementation of others, there can be little hope of expanding or strengthening existing provisions.

The Helsinki framework provides the United States and our allies with a unique framework in which to express these concerns and to press for greater progress in the implementation process. Specifically, the United States has a long-standing interest in insuring a better performance in areas such as increased human contacts, improved human rights and easier movement of

people and ideas across the borders of Europe. It is our hope that these concerns will be raised in a forthright manner at the Madrid meeting and that the U.S. delegaton will press for a thorough review of implementation of the provisions of the Final Act. House Concurrent Resolution 391 therefore urges the U.S. delegation to raise human rights concerns in a "firm, forthright and specific manner" and expresses the sense of Congress that "human rights should be given serious and prominent attention during both the review of implementation and consideration of new proposal phases of the Madrid meeting." The resolution also stresses that "any new measures agreed upon at Madrid, including post-Madrid experts' meetings, should be balanced among all sections of the Final Act." Also, it must be made clear to all delegations attending the meeting that the United States cannot accept a post-Madrid meeting on security without a similar meeting on human rights to which it is so closely linked.

In sum, as we approach the Madrid meeting, we should do so with a clear sense of what U.S. objectives and hopes for the meeting are: To insure a thorough and frank review of implementation; to maintain Western unity; to insure a continuation and strengthening of the process; to press for a balanced outcome; and to continue the discussion with the East on questions of human rights, human contacts, and East/West trade and security. These concerns, despite the strain in East/West relations created by the Soviet invasion of Afghanistan, are as vital as they were 5 years ago and should be pursued with the same sense of vision and hope that the original negotiators at Helsinki brought in shaping their Final Act; and that the citizens of the Warsaw Pact states have vested in their interpretation of that document.

TONNAGE MEASUREMENT SIMPLIFICATION ACT

The Senate continued with the consideration of H.R. 1197.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, Calendar Order No. 937, I believe, is pending before the Senate at this time?

The PRESIDING OFFICER. The Senator is correct.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Alaska lands bill continue to be laid aside temporarily, and that Calendar Order 937 continue to be laid aside temporarily, during the remainder of the day, with the understanding that at such time as no other business is before the Senate, of course, the Alaska lands bill has precedence until such time as it is disposed of, and that Calendar Order 937 continue to be laid aside temporarily until the Alaska lands bill is disposed of.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders Numbered 957, 958, 961, and 964.

Mr. TOWER. Mr. President, I believe the appropriate Senators have been cleared with on this side of the aisle and they have no objection to proceeding to the consideration of the calendar items identified by the majority leader.

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

DISAPPROVAL OF DEFERRAL OF BUDGET AUTHORITY FOR EPA GRANTS FOR WASTE TREATMENT WORKS

The Senate proceeded to consider the resolution (S. Res. 470) disapproving the proposed deferral of budget authority for EPA grants for waste treatment works, which had been reported from the Committee on Appropriations with amendments as follows:

On page 1, line 2, strike "$3,647,948,114" and insert "$3,247,948,114";

On page 1, line 2, strike "(Deferral No. D80-65A)";

On page 2, line 3 strike "23" and insert "20":

So as to make the resolution read:

Resolved, That the Senate disapproves the deferral of $3,247,948,114 of budget authority for Environmental Protection Agency grants for waste treatment works (authorized under section 201 of the Federal Water Pollution Control Act) set forth in the special message transmitted by the President to the Congress on May 20, 1980, under section 1013 of the Impoundment Control Act of 1974.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Senator from Wisconsin (Mr. NELSON).

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

STATEMENT BY MR. NELSON

I am extremely gratified that the Senate has unanimously adopted my resolution to release $3.28 billion in deferred sewage treatment construction grant funds for 1980. By this action, we have restored the trust between the federal government and state and local governments to meet the mandate of Congress to improve water quality and protect the public health.

Overturning this ill-conceived deferral has been a five month effort. I first learned of EPA's intention in early March and wrote to the President urging him to reconsider. When the Administration announced on April 16th that no more sewage treatment construction grant funds would be forthcoming in 1980, we began contacting the states to determine what the impact of this decision would be. It became obvious immediately that the impact would be absolutely devastating for clean water programs in at least 35 states. These were states which had effective and efficient programs, and which were counting on spending their FY 80 allotment for construction in FY 80. These states had already spent all or nearly all of their FY 79 monies. The Administration's action effectively brought programs in these states to a halt.

On June 17, I introduced with 26 cosponsors a resolution to force the Administration to release these deferred funds now, instead of later. The resolution was referred to the Senate Appropriations Committee which reported it favorably on Monday, July 28, 1980.

A major factor, I believe, in the Appropriations Committee's decision was the finding by the Congressional Budget Office (CBO) that "disapproval of the deferral on or about August 1, 1980, would have no significant effect on fiscal year 1981 outlays." This finding by CBO substantiates my initial assessment of the Administration's unfortunate decision that the deferral would not save any money.

According to the Administration, this deferral was supposed to save $95 million in fiscal year 1981 outlays. They argued that a delay in spending fiscal year 1980 funds would produce a ripple effect in 1981 outlays. I said at the time that this was nothing more than a paper savings; that, in fact, rather than saving money, this action would actually increase the costs to local, state and federal governments because of inflation. The longer the projects are delayed, the more they will ultimately cost. In my opinion, this was false economy of the worst kind. Hundreds of small and large communities nationwide were thrown into a fiscal crisis by this decision. They were faced with either putting off work on badly needed construction projects or borrowing the money from the private sector with no assurance of reimbursement from the federal government. Furthermore, under the Clean Water Act, the interest costs on borrowed money are not reimbursable expenses, and if the project is a new one, then the entire project is not reimbursable. Many of the communities are under court orders, either state or federal, to complete their sewage treatment construction programs by a specified date or face fines or moratoriums on new construction. The construction industry also suffered. Comparing the harm done by the Administration's decision to delay projects nationwide with their hypothesized savings of $95 million which has now been shown to be non-existent, one must wonder what the Administration was thinking of, or not thinking of.

The total amount of the deferral was $3.68 billion. As a result of action by the House and Senate on the FY 80 supplemental budget, $400 million of this amount was recently released. By this action, the remaining $3.28 billion will be available immediately. I ask that a table which shows the distribution of these funds to the states be printed at this point in the RECORD.

FISCAL YEAR 1980 CONSTRUCTION GRANT FUNDING

[In millions of dollars]

	Total funds deferred	Less $400,000,000 just released	Remaining deferred
Region I:			
Connecticut	36	4.0	33
Maine	25	4.0	21
Massachusetts	98	12.0	86
New Hampshire	16	3.0	12
Rhode Island	17	7.0	10
Vermont	17	.3	17
Subtotal	209		
Region II:			
New Jersey	118		118
New York	349		349
Puerto Rico	44	1.0	44
Virgin Islands			
Subtotal	511		

FISCAL YEAR 1980 CONSTRUCTION GRANT FUNDING—Con.

[In millions of dollars]

	Total funds deferred	Less $400,000,000 just released	Remaining deferred
Region III:			
Delaware	17		17
Maryland	99		99
Pennsylvania	110	29.0	81
Virginia	56	16.0	39
West Virginia	93	5.0	88
District of Columbia	16		17
Subtotal	391		
Region IV:			
Alabama	57		57
Florida	141	20.0	121
Georgia	73	1.0	72
Kentucky	59		59
Mississippi	45	.4	44
North Carolina	80		80
South Carolina	41		41
Tennessee	53	3.0	51
Subtotal	549		
Region V:			
Illinois	178	29.0	149
Indiana	91		91
Michigan	155	1.0	145
Minnesota	64		64
Ohio	223		223
Wisconsin	65	21.0	44
Subtotal	776		
Region VI:			
Arkansas	40		40
Louisiana	60	17.0	42
New Mexico	17	.4	17
Oklahoma	46		46
Texas	191		190
Subtotal	354		
Region VII:			
Iowa	43	3.0	40
Kansas	43	5.0	38
Missouri	89		89
Nebraska	19	6.0	12
Subtotal	194		
Region VIII:			
Colorado	47		47
Montana	19		19
North Dakota	21		21
South Dakota	17	2.0	15
Utah	23	1.0	22
Wyoming	20		20
Subtotal	147		
Region IX:			
Arizona	17	9.0	9
California	346	150.0	196
Hawaii	28		28
Nevada	16		16
American Samoa	2		2
Guam	3		3
Pacific Islands Territory	9		9
Subtotal	421		
Region X:			
Alaska	22	4.0	17
Idaho	18		18
Oregon	43	12.0	31
Washington	47	24.0	22
Subtotal	130		
Total	3,682	400.0	3,282

Mr. President, the lesson which the Administration has given to state and local governments is that they should not be concerned with meeting the national goal of restoring and maintaining the quality of our waters; that they should slow down their efforts and not worry about complying with Federal law. The Administration's action was calculated to penalize the efficient programs and reward those that have lagged behind. This is hardly the kind of lesson which the federal government should be handing out. By disapproving of the deferral, the Senate has today set the matter straight.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

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

The amendments were agreed to en bloc.

The resolution, as amended, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

DISAPPROVAL OF DEFERRAL OF BUDGET AUTHORITY RELATING TO THE CUMBERLAND GAP TUNNEL

The Senate proceeded to consider the resolution (S. Res. 464) disapproving deferral of budget authority relating to the Cumberland Gap Tunnel, which had been reported from the Committee on Appropriations with amendments as follows:

On page 1, line 2, strike "of the proposed deferral numbered D80–56,";

On page 2, line 1, after "Tunnel" insert "deferral D80–56)";

So as to make the resolution read:

Resolved, That the Senate disapproves the proposed deferral of $15,500,000 of budget authority relating to the Cumberland Gap Tunnel (deferral D80–56), as set forth in the message transmitted by the President to the Congress on April 16, 1980, under section 1013 of the Impoundment Control Act of 1974.

Mr. HUDDLESTON. The construction of the Cumberland Gap Tunnel is necessary to eliminate an extremely dangerous segment of highway, while at the same time providing for the restoration of the Cumberland Gap and Wilderness Trail at its most dramatic point.

The proposed deferral would delay the commencement of construction on this highway until 1982 and would delay the expenditure of funds which have already been appropriated by the Congress. The construction of the Cumberland Gap Tunnel is at a critical stage and the actions proposed by the administration could cause a severe adverse impact on the economic development of the three State area, continue the slaughter of motorists on an inadequate mountain road, and threaten the opportunity to protect and restore this national heritage.

While I am prepared to support the administration's request to withdraw the $21.5 million recommended for fiscal year 1981, it is absolutely imperative that the $15.5 million appropriated for fiscal year 1980 not be deferred.

The amendments were agreed to.

The resolution, as amended, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

NATIONAL JOGGING DAY

The resolution (S. Res. 491) to designate October 11, 1980 as "National Jogging Day," was considered and agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas the public awareness of the need for maintaining physical fitness is becoming increasingly evident; and

Whereas jogging is an excellent, convenient, and inexpensive form of exercise that provides opportunities for a graduated program of physical fitness for most individuals regardless of age, sex, or level of fitness; and

Whereas numerous medical authorities believe that a regular, sensible jogging program improves the function of the cardiovascular system, reduces coronary risk factors, and serves as an advisable supplement to a weight-reducing or weight-control program; and

Whereas a positive correlation exists between the development of a fit body and the ability to experience an enriched and more satisfying life; and

Whereas an estimated twenty-five million persons all across America jog or run as a recreational activity which is beneficial and enjoyable; Now, therefore, be it

Resolved, That the President is authorized and requested to issue a proclamation declaring October 11, 1980, as "National Jogging Day", and calling upon the people of the United States and interested groups to celebrate such day by participating in fitness-related sports, seminars, and other events throughout the United States and to incorporate regular exercise into their everyday life.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution submitted by Mr. THURMOND was agreed to.

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

The motion to lay on the table was agreed to.

U.S. SENATE BICENTENNIAL

The resolution (S. Res. 381) relating to the commemoration of the bicentennial of the Senate of the United States, was considered and agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas the Senate of the United States in the year 1989 will celebrate the two hundredth anniversary of its establishment under the Constitution and;

Whereas the Senate's historical development has been inextricably bound to the development of our national heritage of individual liberty, representative government, and the attainment of equal and inalienable rights, and;

Whereas it is appropriate and desirable to provide for the observation and commemoration of this anniversary: Now, therefore, be it

Resolved, That there is hereby established a Study Group on the Commemoration of the United States Senate Bicentenary (hereafter in this resolution referred to as the "Study Group") to plan the commemoration of the United States Senate bicentennial.

SEC. 2. The Study Group shall be composed of the following members:

(a) the majority leader and minority leader of the Senate;

(b) the executive secretary of the Senate Commission on Art and Antiquities;

(c) five members of the Senate to be appointed by the President of the Senate upon the recommendation of the majority and minority leaders of the Senate;

(d) three former Members of the Senate to be appointed by the President of the Senate upon the recommendation of the majority and minority leaders of the Senate.

(e) the chairman of the Senate Historical Office Advisory Committee;

(f) the Librarian of Congress, or his designee;

(g) the Archivist of the United States, or his designee; and

(h) two members of the Senate Historical Office Advisory Committee to be appointed by that committee's chairman.

SEC. 3. The Study Group shall select a chairman from among its members. Five members of the Study Group shall constitute a quorum. Any vacancy in the membership of the Study Group shall be filled in the same manner in which the original appointment was made.

SEC. 4. It shall be the duty of the Study Group to prepare an overall plan for commemorating the bicentennial of the Senate of the United States through an appropriate program of publications, exhibits, symposia, and related activities. The objective of this commemoration is to inform and emphasize to the Nation the role of the Senate from its historic beginnings through two hundred years of growth, challenge, and change. The Study Group in its planning is directed to develop a program that will draw upon the resources of current and former members, scholars, and the general public.

SEC. 5. No later than eighteen months after the date of agreement to this resolution, the Study Group shall submit to the President of the Senate a comprehensive report incorporating its specific recommendations for the commemoration of the Senate's bicentennial. The report may recommend activities such as, but not limited to, the following:

(a) the production, publication, and distribution of books, pamphlets, films, and other educational materials focusing on the history and traditions of the Senate;

(b) bibliographical and documentary projects and publications;

(c) conferences, symposia, lectures, seminars, and other programs;

(d) the development of exhibits, including mobile exhibits;

(e) ceremonies and celebrations commemorating specific events; and

(f) the issuance of commemorative stamps.

SEC. 6. The report shall include proposals for such legislative enactments and administrative actions as the Study Group considers necessary to carry out its recommendations.

SEC. 7. The members of the Study Group shall receive no compensation for their services as such. Members appointed from private life shall be allowed necessary per diem and travel expenses to and from Washington, District of Columbia, to be paid from the contingent fund of the Senate upon vouchers signed by the chairman of the Study Group and approved by the majority leader and the minority leader of the Senate.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

VETERANS' ADMINISTRATION HEALTH CARE AMENDMENTS OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 7102.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 7102) entitled "An Act to amend title 38, United States Code, to promote the recruitment and retention of physicians, dentists, nurses, and other health-care personnel in the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes", with the following amendment:

In lieu of the matter proposed to be inserted by said amendment, insert:

That (a) this Act may be cited as the "Veterans' Administration Health-Care Amendments of 1980".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—HEALTH-CARE PERSONNEL AMENDMENTS

Part A—PHYSICIANS AND DENTISTS SPECIAL PAY

PERMANENT AUTHORITY FOR PHYSICIANS' AND DENTISTS' COMPARABILITY PAY

SEC. 101. Section 6 of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975 (Public Law 94–123; 38 U.S.C. 4118 note) is amended by striking out "(1)" the first and third places it appears and by striking out paragraph (2) of subsection (a).

REVISION OF SPECIAL PAY FOR PHYSICIANS AND DENTISTS

SEC. 102. (a)(1) Paragraph (1) of subsection (a) of section 4118 is amended—

(A) by striking out "hereunder" and inserting in lieu thereof "to carry out this section";

(B) by inserting "that (except as provided under subsection (d) of this section) is" after "in an amount";

(C) by striking out "$13,500 per annum" and "$6,750 per annum" and inserting in lieu thereof "$22,500 per annum" and "$10,000 per annum", respectively;

(D) by inserting after "Department of Medicine and Surgery" the second place it appears the following: "on a full-time basis (or in the case of a physician employed on a part-time basis, a proportional amount of the maximum amount that would be paid under this section to such physician if such physician were employed on a full-time basis, calculated on the basis of the proportion which the part-time employment of such physician in the Department of Medicine and Surgery bears to full-time employment)"; and

(E) by inserting after "so employed" the following: "on a full-time basis (or in the case of a dentist employed on a part-time basis, a proportional amount of the maximum amount that would be paid under this section to such dentist if such dentist were employed on a full-time basis, calculated on the basis of the proportion which the part-time employment of such dentist in the Department of Medicine and Surgery bears to full-time employment)".

(2) Notwithstanding subsection (a)(2)(C) of section 4118 of title 38, United States Code, special pay may be paid under such section to a physician or dentist employed by the Department of Medicine and Surgery of the Veterans' Administration who is a reemployed annuitant if such physician or dentist was automatically separated before September 30, 1978, under section 8335(a) of title 5, United States Code, as in effect before such date, for having become 70 years of age.

(b) Subsection (b) of such section is amended by striking out "$5,000" both places it appears and inserting in lieu thereof "$7,000".

(c) Subsections (c) and (d) of such section are amended to read as follows:

"(c)(1) In the case of eligible full-time physicians appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(2) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $15,500 to any eligible physician. In prescribing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than the following per annum amounts of incentive special pay to any full-time physician eligible therefor:

"(A)(i) For full-time status, $6,000.

"(ii) For tenure of service within the Department of Medicine and Surgery—

"(I) of two years but less than five years, $1,000;

"(II) of five years but less than eight years, $2,000; and

"(III) of eight years or more, $3,000.

"(iii) For service in a medical specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $4,000 nor more than $15,500.

"(B) For service—

"(i) as a Service Chief (or in a comparable position as determined by the Chief Medical Director), $9,900;

"(ii) as a Chief of Staff or in an Executive Grade, $12,600;

"(iii) as a Deputy Service Director or in a Director Grade, $13,000;

"(iv) as a Service Director, $13,500;

"(v) as a Deputy Assistant Chief Medical Director, $14,440; or

"(vi) as an Associate Deputy Chief Medical Director or Assistant Chief Medical Director, $15,300.

"(C) For—

"(i) specialty or first board certification, $2,000; or

"(ii) subspecialty or secondary board certification, $2,500.

"(D) For service (i) in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians in the specific category of physicians, or (ii) in the Central Office of the Department of Medicine and Surgery, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $2,000 nor more than $5,000.

"(2) In the case of eligible full-time dentists appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(2) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $7,500 to any eligible dentist. In prescribing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than the following per annum amounts of incentive special pay to any full-time dentist eligible therefor:

"(A)(i) For full-time status, $1,000.

"(ii) For tenure of service within the Department of Medicine and Surgery—

"(I) of two years but less than seven years, $500; and

"(II) of seven years or more, $1,000.

"(iii) For service in a dental specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $2,000 nor more than $7,500.

"(B) For service—

"(i) as a Service Chief (or in a comparable

position as determined by the Chief Medical Director), $2,750;

"(ii) as a Chief of Staff or in an Executive Grade, $3,500;

"(iii) as a Deputy Service Director or in a Director Grade, $3,625;

"(iv) as a Service Director, $3,750;

"(v) as a Deputy Assistant Chief Medical Director, $4,000, or

"(vi) as an Assistant Chief Medical Director, $4,250.

"(C) For service in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists in the specific category of dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,750 nor more than $2,500.

"(3) In the case of eligible part-time physicians appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(3) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $15,500 to any eligible physician. In prescribing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than a proportional amount of the following per annum amounts of incentive pay to any part-time physician eligible therefor, which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such physician bears to full-time employment:

"(A)(i) For tenure of service within the Department of Medicine and Surgery—

"(I) of more than two years but less than five years, $750;

"(II) of five years but less than eight years, $1,500; and

"(III) of eight years or more, $2,250.

"(ii) For service in a medical specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $3,000 nor more than $12,375.

"(B) For service—

"(i) as a Service Chief (or in a comparable position as determined by the Chief Medical Director), $7,220; or

"(ii) as a Chief of Staff or in an Executive Grade, $9,190.

"(C) For—

"(i) specialty or first board certification, $1,500; or

"(ii) subspecialty or secondary board certification, $1,875.

"(D) For service (i) in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians in the specific category of physicians, or (ii) in the Central Office of the Department of Medicine and Surgery, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,500 nor more than $4,000.

"(4) In the case of eligible part-time dentists appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(3) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $7,500 to any eligible dentist. In prescribing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than a proportional amount of the following per annum amounts of incentive special pay to any dentist eligible therefor, which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such dentist bears to full-time employment:

"(A)(i) For tenure of service within the Department of Medicine and Surgery—

"(I) of more than two years but less than seven years, $500; and

"(II) of seven years or more, $1,000.

"(ii) For service in a dental specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,500 nor more than $5,625.

"(B) For service—

"(i) as a Service Chief (or in a comparable position as determined by the Chief Medical Director), $2,750; or

"(ii) as a Chief of Staff or in an Executive Grade, $3,500.

"(C) For service in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists in a specific category of dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,310 nor more than $1,875.

"(5)(A) Except as provided in subparagraph (B) of this paragraph, a physician or dentist may not be provided incentive special pay under both clauses (A) and (B) of paragraph (1), (2), (3), or (4) (whichever is applicable) of this subsection.

"(B)(i) A physician or dentist serving as a Service Chief (or in a comparable position as determined by the Chief Medical Director) on a full-time basis may be provided incentive special pay under subclauses (i) and (iii) of clause (A) as well as under clause (B) of paragraph (1) or (2) (whichever is applicable) of this subsection.

"(ii) A physician or dentist serving as a Chief of Staff on a full-time basis may be provided incentive special pay under clause (A)(i) as well as under clause (B) of paragraph (1) or (2) (whichever is applicable) of this subsection.

"(d) In determining—

"(1) the total amount of special pay provided under this section to any physician or dentist for the purpose of determining the applicability to the special pay of such physician or dentist of the limitation specified in subsection (a) of this section on the total amount of such special pay; and

"(2) the total amount of incentive special pay provided under subsection (c) of this section to any physician or dentist for the purpose of determining the applicability to the incentive special pay of such physician or dentist of the limitation specified in such subsection on the total amount of such incentive special pay,

there shall be excluded any special pay provided to such physician or dentist under subsection (c)(1)(D), (c)(2)(C), (c)(3)(D), or (c)(4)(C) of this section for service in certain geographic locations.".

(d) Subsection (e)(1) of such section is amended by striking out the third sentence thereof.

(e) The amendments made by this section shall apply with respect to pay periods beginning after December 31, 1980.

CREDITING OF SPECIAL PAY FOR RETIREMENT AND INSURANCE PURPOSES

SEC. 103. (a) Section 4118(f) is amended—

(1) by striking out "Any" and inserting in lieu thereof "(1) Except as provided in paragraph (2) of this subsection, any";

(2) by striking out "81, 83, or 87" and inserting in lieu thereof "81 or 83"; and

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

"(2) Additional compensation paid as special pay under this section after September 30, 1980, to any full-time employee shall be included in basic pay for purposes of chapter 83 of title 5. Notwithstanding the preceding sentence, special pay paid to any full-time employee after September 30, 1980, shall be included in average pay, as defined in section 8331(4) of such title, for the purposes of computing an annuity under such chapter only if—

"(A) the annuity is paid under section 8337 of title 5 or under subsection (d) or (e) of section 8341 of such title; or

"(B) the employee has completed not less than 15 years of full-time service in the Department of Medicine and Surgery (except that, regardless of the length of such employee's service, no special pay may be included in average pay in computing an annuity that commences before October 1, 1985, and only one-half of any special pay paid after September 30, 1980, may be included in average pay in computing an annuity that commences on or after October 1, 1985 but before October 1, 1990).

"(3) Any additional compensation provided as special pay under this section shall be considered as annual pay for the purposes of chapter 87 of title 5, relating to life insurance for Federal employees.".

(b)(1) Not later than January 1, 1981, the Administrator of Veterans' Affairs shall notify each employee of the Veterans' Administration who on October 1, 1980, was a full-time physician or dentist in the Department of Medicine and Surgery of the provisions of paragraph (2) of section 4118(f) of title 38, United States Code, as added by subsection (a), and include in such notice an explanation of the provisions of such paragraph and of the right of such employee to make an election under paragraph (2).

(2) Each employee described in paragraph (1) may elect not to have additional compensation provided such employee as special pay under section 4118 of such title included as basic pay (as provided for under paragraph (2) of section 4118(f) of such title, as added by subsection (a)) for purposes of chapter 83 of title 5, United States Code. Any such election shall be in writing and shall be transmitted to the Administrator of Veterans' Affairs not later than April 1, 1981.

REPORTS ON ADEQUACY OF SPECIAL PAY FOR PHYSICIANS AND DENTISTS

SEC. 104. (a) Section 4118 (as amended by sections 102 and 103) is further amended by adding at the end the following new subsection:

"(g)(1) It is the policy of Congress to assure that the levels of total pay for Veterans' Administration physicians and dentists are fixed at levels reasonably comparable (A) with the levels of total pay of physicians and dentists employed by or serving in other departments and agencies of the Federal Government, and (B) with the income of non-Federal physicians and dentists, so as to make possible the recruitment and retention of a well-qualified employee work force of physicians and dentists capable of providing quality care for eligible veterans.

"(2) To assist the Congress and the President in carrying out the policy stated in paragraph (1) of this subsection, the Administrator shall—

"(A) define the bases for pay distinctions, if any, among various categories of physicians and dentists, including between physicians and dentists employed by the Veterans' Administration and physicians and

dentists employed by other departments and agencies of the Federal Government and between all Federal sector and non-Federal sector physicians and dentists;

"(B) obtain measures of income from the employment or practice of physicians and dentists in the non-Veterans' Administration sector, including Federal and non-Federal sectors, for use as guidelines for setting and periodically adjusting the amounts of special pay for Veterans' Administration physicians and dentists;

"(C) submit a report to the President, on such date as the President may designate but not later than December 31, 1982, and once every two years thereafter, recommending appropriate amounts of special pay to carry out the policy set forth in paragraph (1) of this subsection with respect to the pay of Veterans' Administration physicians and dentists; and

"(D) include in such recommendations, when considered appropriate and necessary by the Administrator, modifications of the special pay levels set forth in this section (i) whenever the Veterans' Administration is unable to recruit or retain a sufficient work force of well-qualified physicians and dentists because the incomes of non-Veterans' Administration physicians and dentists performing comparable types of duties are significantly in excess of the levels of total pay (including basic pay and special pay) of Veterans' Administration physicians and dentists, or (ii) whenever other extraordinary circumstances are such that special pay levels are needed to recruit or retain a sufficient number of well-qualified physicians and dentists.

"(3) The President shall include in the Budget next transmitted to the Congress under section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), after the submission of each report of the Administrator under paragraph (2)(C) of this subsection recommendations with respect to the exact rates of special pay for physicians and dentists under this section.

"(4) Not later than April 30 of each year, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding the implementation of this section. Each such report shall include—

"(A) a review of the implementation of this section (including the Administrator's and Chief Medical Director's actions, findings, recommendations, and other activities under this section) to date for the fiscal year during which the report is submitted and for such portion of the preceding fiscal year as was not included in the previous annual report; and

"(B) a plan in connection with the implementation of this section for the remainder of the fiscal year during which the report is submitted and for the succeeding fiscal year.".

(b) Section 3 of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975 (Public Law 94–123; 89 Stat. 673) is repealed.

HEALTH-CARE PROFESSIONALS AND DIRECTORS OF MEDICAL FACILITIES EXEMPTED FROM SENIOR EXECUTIVE SERVICE

SEC. 105. (a) Section 4101 is amended by adding at the end thereof the following new subsection:

"(e) Physicians, dentists, nurses, and other health-care professionals employed by the Department of Medicine and Surgery and appointed under section 4103, 4104(1), or 4114 of this chapter and persons appointed under section 4103(a)(8) of this chapter are not subject to the provisions of section 413 of the Civil Service Reform Act of 1978 or the following provisions of title 5: subchapter II of chapter 31, subchapter VIII of chapter 33, subchapter V of chapter 35, subchapter II of chapter 43, section 4507, subchapter VIII of chapter 53, and subchapter V of chapter 75.".

(b) Section 4103(a) is amended by redesignating clause (8) as clause (9) and by inserting after clause (7) the following new clause (8):

"(8) Such directors of hospitals, domiciliary facilities, medical centers, and outpatient facilities as may be appointed by the Administrator upon the recommendation of the Chief Medical Director.".

(c) Section 4107(c) is amended by inserting "(1)" after "(c)" and by adding at the end the following new paragraphs:

"(2) Notwithstanding any other provision of this title, the terms and conditions of employment of any person to whom paragraph (1) of this subsection applies shall (except as provided in paragraph (3) of this subsection) be the same as those applicable under this title to a physician serving as a director of a hospital, domiciliary facility, medical center, or outpatient facility.

"(3) Notwithstanding the provisions of section 4101(e) of this title, any person to whom paragraph (1) of this subsection applies shall be deemed to be a career appointee for the purposes of section 4507 of title 5.".

Part B—MISCELLANEOUS IMPROVEMENTS IN PERSONNEL ADMINISTRATION

RATES OF PAY FOR TRAVEL AND OVERTIME FOR NURSES

SEC. 111. Section 4107(e) is amended—

(1) by adding at the end of paragraph (5) the following new sentence: "For the purposes of this paragraph, the period of a nurse's officially ordered or approved travel away from such nurse's duty station may not be considered to be hours of service unless—

"(A) such travel occurs during such nurse's tour of duty; or

"(B) such travel (i) involves the performance of services while traveling, (ii) is incident to travel that involves the performance of services while traveling, (iii) is carried out under arduous conditions as determined by the Administrator, or (iv) results from an event which could not be scheduled or controlled administratively.";

(2) by inserting "or on a holiday designated by Federal statute or Executive order" in paragraph (8) after "regular hours"; and

(3) by adding at the end the following new paragraph:

"(10) Notwithstanding any other provision of law, if the Administrator determines it to be necessary in order to obtain or retain the services of nurses entitled to additional pay under this subsection, the Administrator may increase the amount of additional pay authorized under this subsection to be paid to nurses at any specific Veterans' Administration health-care facility in order to provide additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area as such Veterans' Administration health-care facility (as determined by a reasonably representative sampling of such non-Federal facilities).".

ADMINISTRATIVE ADJUSTMENTS IN RATES OF BASIC PAY

SEC. 112. Section 4107 is amended by adding at the end the following new subsection:

"(g)(1) Notwithstanding any other provision of law but subject to paragraphs (2), (3), and (4) of this subsection, when the Administrator determines it to be necessary in order to obtain or retain the services—

"(A) of physicians, dentists, podiatrists, optometrists, nurses, physician assistants, or expanded-function dental auxiliaries appointed under this subchapter; or

"(B) of health-care personnel who—

"(i) are employed in the Department of Medicine and Surgery (other than administrative, clerical, and physical plant maintenance and protective services employes);

"(ii) are paid under the General Schedule pursuant to section 5332 of title 5;

(iii) are determined by the Administrator to be providing either direct patient-care services or services incident to direct patient-care services; and

"(iv) would not otherwise be available to provide medical care and treatment for veterans,

the Administrator may increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations. Any increase in such rates of basic pay may be made on a nationwide, local, or other geographic basis, for one or more of the grades listed in the schedules in subsection (b)(1) of this section, for one or more of the health personnel fields within such grades, or for one or more of the grades of the General Schedule under section 5332 of such title.

"(2) Increases in rates of basic pay may be made under paragraph (1) of this subsection only in order—

"(A) to provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of health-care personnel at non-Federal health-care facilities in the same labor market;

"(B) to achieve adequate staffing at particular facilities; or

"(C) to recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

"(3) The amount of any increase under paragraph (1) of this subsection in the maximum rate for any grade may not (except in the case of nurse anesthetists) exceed the amount by which the maximum for such grade (under applicable provisions of law other than this subsection) exceeds the minimum for such grade (under applicable provisions of law other than this subsection), and the maximum rate as so increased may not exceed the rate paid for individuals serving as Assistant Chief Medical Director.

"(4) In the exercise of the authority provided in paragraph (1) of this subsection to increase the rates of basic pay for any category of personnel not appointed under this subchapter, the Administrator shall, not less than ninety days prior to the effective date of a proposed increase, notify the President of the Administrator's intention to provide such an increase. If, prior to such effective date, the President disapproves such increase and provides the appropriate committees of the Congress with a written statement of the President's reasons for such disapproval, such proposed increase shall not take effect.".

CHIEFS OF STAFF REQUIRED TO BE EMPLOYED ON A FULL-TIME BASIS

SEC. 113. (a) Section 4108 is amended by striking out subsections (b) and (c) and inserting in lieu thereof the following:

"(b) Any person serving as a Chief of Staff of a Veterans' Administration health-care facility shall be appointed on a full-time basis.

"(c) As used in this section:

"(1) The term 'affiliated institution' means any medical school or other institution of higher learning with which the Administrator has a contract or agreement as referred to in section 4112(b) of this title for the training or education of health personnel.

"(2) The term 'remuneration' means the receipt of any amount of monetary benefit from any non-Veterans' Administration source in payment for carrying out any professional responsibilities.".

(b) Any individual who on the date of the enactment of this Act is serving as a Chief of Staff of a Veterans' Administration health-

care facility on less than full-time basis may continue to serve in that capacity on a part-time basis so long as such individual's proportion of full-time service is not less than the proportion of full-time service in which such individual was serving on such date of enactment.

RETIREMENT CREDIT FOR PART-TIME EMPLOYEES

SEC. 114. The text of section 4109 is amended to read as follows:

"(a) Except as provided in subsection (b) of this section, persons appointed to the Department of Medicine and Surgery shall be subject to the provisions of and entitled to benefits under chapter 83 of title 5.

"(b) Notwithstanding any other provision of law, an individual retiring on or after October 1, 1981, who served at any time in a position in the Department of Medicine and Surgery to which such individual was appointed under this subchapter shall receive service credit for purposes of section 8339 of title 5 for any period of service in such Department served on less than a full-time basis on a proportionate basis equal to the fraction that such service bears to full-time service. In computing the annuity of any individual whose service is so credited, the full annual rate of basic pay shall be deemed to be the individual's rate of basic pay for the purpose of determining average pay, as defined by section 8331(4) of title 5.".

VETERANS' ADMINISTRATION REPRESENTATIVES ON DEANS' COMMITTEES

SEC. 115. Section 4112(b) is amended by inserting "(including appropriate representation from the full-time staff)" after "Veterans' Administration".

RELATIONSHIP BETWEEN TITLE 38 MEDICAL PERSONNEL SYSTEM PROVISIONS AND OTHER PROVISIONS OF LAW

SEC. 116. (a)(1) Subchapter I of chapter 73 is amended by adding at the end thereof the following new section:

"§ 4119. Relationship between this subchapter and other provisions of law

"Notwithstanding any other provision of law, no provision of title 5 or any other law pertaining to the civil service system which is inconsistent with any provision of this subchapter shall be considered to supersede, override, or otherwise modify such provision of this subchapter except to the extent that such provision of title 5 or of such other law specifically provides, by specific reference to a provision of this subchapter, for such provision to be superseded, overridden, or otherwise modified.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4118 the following new item:

"4119. Relationship between this subchapter and other provisions of law.".

(b) Section 4114 is amended by adding at the end thereof the following new subsection:

"(g) In accordance with the provisions of section 4119 of this title, the provisions of chapter 34 of title 5 shall not apply to part-time appointments under this section.".

STUDY OF PERSONNEL NEEDS OF VETERANS' ADMINISTRATION HEALTH-CARE SYSTEM

SEC. 117. (a) In order to evaluate the need for, and the likely impact on the ability of the Veterans' Administration to meet most effectively the personnel needs of the Veterans' Administration health-care program of, the conversion or non-conversion of employees of the Veterans' Administration's Department of Medicine and Surgery who are providing direct patient-care services or services incident to direct patient-care services (as determined by the Administrator of Veterans' Affairs for the purposes of paragraph (1) of section 4107(g) of title 38, United States Code, as added by section 112) to the pay schedules and other administrative provisions of chapter 73 of title 38, United States Code, the Administrator of Veterans' Affairs shall conduct a study to determine (1) which, if any, of the categories of such employees should be so converted in order to improve patient care, alleviate recruitment and retention problems regarding such personnel, and improve employee morale, and (2) the desirability of making any such categories of personnel which are not so converted eligible for premium pay under the new paragraph (10) which would have been added to section 4107(e) of such title by the amendment of the Senate to the bill H.R. 7102, Ninety-sixth Congress, agreed to by the Senate on June 5, 1980, and the impact of making such categories of personnel eligible for such pay under such paragraph.

(b) Not later than the end of the eighteen-month period beginning on the date of the enactment of this Act, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the results of such study, together with any recommendations for administrative or legislative action, or both, that the Administrator considers appropriate based on the results of such study and other pertinent information.

STUDY AND PILOT PROGRAM ON NURSE RECRUITMENT AND RETENTION

SEC. 118. (a) In order to evaluate the effectiveness of various actions in enabling the Veterans' Administration to recruit and retain sufficient qualified nursing personnel (including licensed practical or vocational nurses and nursing assistants) capable of providing quality care for eligible veterans in Veterans' Administration health-care facilities, the Administrator of Veterans' Affairs, in consultation with the Chief Medical Director of the Veterans' Administration, shall conduct a pilot program and study for a period of not less than twenty-four and not more than thirty-six months, in not less than six geographic areas in which the Veterans' Administration has experienced difficulties in recruiting and retaining such sufficient qualified personnel. In the course of such study, the Administrator shall take various administrative actions to overcome such difficulties.

(b) Not later than the end of the forty-two-month period beginning on the date of the enactment of this Act, the Administrator of Veterans' Affairs shall submit to the Congress a report on the results of such program and study, including an evaluation of the cost factors associated with each alternative administrative action on an annual basis and the impact on the recruitment and retention of nursing personnel at each facility involved, together with any recommendations for administrative or legislative action, or both, that the Administrator considers appropriate based on the results of such program and study and other pertinent information.

(c) The Administrator of Veterans' Affairs shall submit a report on the implementation of such program and the progress of such study to the Committees on Veterans' Affairs of the Senate and House of Representatives not later than six moths after the date of the enactment of this Act. Such report shall include a report on the formulation of regulations to carry out such program and on the status of the implementation of such program.

TITLE II—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

ESTABLISHMENT OF HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

SEC. 201. (a)(1) Chapter 73 is amended by adding at the end thereof the following new subchapter:

"Subchapter IV—Veterans' Administration Health

PROFESSIONAL SCHOLARSHIP PROGRAM

"§ 4141. Establishment of program; purpose; duration

"(a) There is hereby established a program to be known as the Veterans' Administration Health Professional Scholarship Program (hereinafter in this subchapter referred to as the 'Scholarship Program'). The purpose of the Scholarship Program is to assist in providing an adequate supply of trained physicians and nurses for the Veterans' Administration and for the Nation and, if needed by the Veterans' Administration, other health-care professionals appointed under subchapter I of this chapter.

"(b) The Administrator may not furnish scholarships to new participants in the Scholarship Program after the last day of the tenth fiscal year beginning after the first such scholarship is approved by the Administrator.

"§ 4142. Eligibility; application; written contract

"(a) To be eligible to participate in the Scholarship Program, an individual must—

"(1) be accepted for enrollment, or be enrolled, as a full-time student (A) in an accredited (as determined by the Administrator) educational institution in a State, and (B) in a course of training offered by such institution and approved by the Administrator, leading to a degree in medicine, osteopathy, dentistry, podiatry, optometry, or nursing or a course of training to become a physician assistant or expanded-function dental auxiliary;

"(2) submit an application to the Administrator for participation in the Scholarship Program;

"(3) sign and submit to the Administrator, at the time of submission of such application, a written contract (described in subsection (e) of this section) to accept payment of a scholarship and to serve a period of obligated service as provided in section 4143 of this title; and

"(4) at the time of submission of such application, not be obligated under any other Federal program to perform service after completion of the course of study or program of such individual referred to in clause (1) of this subsection.

"(b)(1) In distributing application forms and contract forms to individuals desiring to participate in the Scholarship Program, the Administrator shall include with such forms—

"(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Administrator, including in the summary a clear explanation of the damages to which the United States is entitled under section 4144 of this title if the individual breaches the contract; and

"(B) a full description of the terms and conditions that would apply to the individual's participation in the Scholarship Program and service in the Department of Medicine and Surgery.

"(2) The Administrator shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Scholarship Program on a date sufficiently early to allow such individuals adequate time to prepare and submit such forms.

"(c)(1) In selecting applicants for acceptance in the Scholarship Program, the Administrator shall give priority to the applications of individuals who have previously received scholarships under the Scholarship Program.

"(2) Before awarding the initial scholarship in any course of training other than in medicine or nursing, the Administrator, not

less than 60 days before awarding such scholarship, shall notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's intent to award a scholarship in such course of training and of the reasons why the award of scholarships in such course of training is necessary to assist in providing for the Veterans' Administration an adequate supply of personnel in the health profession concerned.

"(d)(1) An individual becomes a participant in the Scholarship Program only upon the Administrator's approval of the individual's application submitted under subsection (a)(2) of this section and the Administrator's acceptance of the contract signed by the individual under subsection (a)(3) of this section.

"(2) The Administrator shall provide written notice to an individual promptly upon the Administrator's approval under paragraph (1) of this subsection of the individual's participation in the Scholarship Program.

"(e) The written contract (referred to in this subchapter) between the Administrator and a participant in the Scholarship Program shall contain—

"(1) an agreement that—

"(A) subject to clause (2) of this subsection, the Administrator agrees (i) to provide the participant with a scholarship (described in subsection (f) of this section) for from one to four school years during which period the participant is pursuing a course of training described in subsection (a)(1)(B) of this section, and (ii) to afford the participant the opportunity for employment in the Department of Medicine and Surgery (subject to the availability of appropriated funds for such purpose and other qualifications established in accordance with section 4105 of this title); and

"(B) subject to clause (2) of this subsection, the participant agrees—

"(i) to accept such a scholarship;

"(ii) to maintain enrollment and attendance in a course of training described in subsection (a)(1)(B) of this section until the participant completes the course of training;

"(iii) while enrolled in such course of training, to maintain an acceptable level of academic standing (as determined by the educational institution offering such course of training under regulations prescribed by the Administrator);

"(iv) to serve as a full-time employee in the Department of Medicine and Surgery for a period of time (hereinafter in this subchapter referred to as the 'period of obligated service') equal to the greater of—

"(I) one calendar year for each school year for which the participant was provided a scholarship under the Scholarship Program, or

"(II) two calendar years; and

"(v) if the participant's period of obligated service is deferred under section 4143(b)(3)(A) of this title, to serve any additional period of obligated service prescribed by the Administrator under section 4143(b)(4)(B) of this title;

"(2) a provision that any financial obligation of the United States arising out of a contract entered into under this subchapter, and any obligation of the participant which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this subchapter;

"(3) a statement of the damages to which the United States is entitled under section 4144 of this title for the participant's breach of the contract; and

"(4) such other statements of the rights and liabilities of the Administrator and of the participant as may be appropriate and consistent with the provisions of this subchapter.

"(f)(1) A scholarship provided to a participant in the Scholarship Program for a school year under a written contract under the Scholarship Program shall consist of—

"(A) payment to, or (in accordance with paragraph (2) of this subsection) on behalf of, the participant of the amount of—

"(i) the tuition of the participant in such school year; and

"(ii) other reasonable educational expenses including fees, books, and laboratory expenses; and

"(B) payment to the participant of a stipend of not in excess of $485 per month (adjusted in accordance with paragraph (3) of this subsection) for each of the 12 consecutive months beginning with the first month of such school year.

"(2) The Administrator may contract with an educational institution in which a participant in the scholarship program is enrolled for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (1)(A) of this subsection. Payment to such an educational institution may be made without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529).

"(3) The amount of the monthly stipend, specified in paragraph (1)(B) of this subsection and as previously adjusted (if at all) in accordance with this paragraph, shall be increased by the Administrator for each school year ending in a fiscal year beginning after September 30, 1980, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5) of the adjustment (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the fiscal year in which such school year ends.

"(g) Notwithstanding any other provision of law, participants in the Scholarship Program shall not be considered to be employees of the Federal Government and shall not be counted against any employment ceiling affecting the Department of Medicine and Surgery while they are undergoing a course of training prior to engaging in deferred internship, residency, or other advanced clinical training.

"(h) The Administrator shall report to Congress not later than March 1 of each year—

"(1) the number of students receiving scholarships under the Scholarship Program and the number of students enrolled in each type of health profession training;

"(2) the educational institutions providing such training;

"(3) the number of applications filed, by health profession category, under this section during the school year beginning in such year and the total number of such applications so filed for all years in which the Scholarship Program has been in existence;

"(4) the number of scholarships accepted, by health profession category, during such school year and the number, by health profession category, which were offered and not accepted, together with a summary of the reasons that such scholarships were not accepted; and

"(5) the amount of tuition and other expenses paid, by health profession category, in the aggregate and at each educational institution for the school year beginning in such year and for prior school years.

"(i) The Administrator shall prescribe regulations to carry out the Scholarship Program.

"§ 4143. Obligated service

"(a) Each participant in the Scholarship Program shall provide service in the full-time clinical practice of such participant's profession or in another health-care position, in an assignment or location as determined by the Administrator, as a full-time employee of the Veterans' Administration for the period of obligated service provided in the contract of such participant entered into under section 4142 of this title.

"(b)(1) Not later than 60 days prior to the date described in paragraph (3) of this subsection with respect to a participant in the Scholarship Program, the Administrator shall notify the participant of the date described in such paragraph for the beginning of such participants' period of obligated service.

"(2) The Administrator shall appoint each participant in the Department of Medicine and Surgery as soon as possible after the date described in paragraph (3) of this subsection.

"(3)(A)(i) With respect to a participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, the date for the beginning of the participant's period of obligated service is the date upon which the participant becomes licensed to practice medicine, osteopathy, dentistry, optometry, or podiatry, as the case may be, in a State, except that the Administrator may, at the request of such participant, defer such date until the end of the period of time required for the participant to complete an internship or residency or other advanced clinical training. If the participant requests such a deferral, the Administrator shall notify the participant that such deferral could lead to an additional period of obligated service in accordance with paragraph (4) of this subsection.

"(ii) No such period of internship or residency or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subchapter.

"(B) With respect to a participant receiving a degree from a school of nursing, the date for the beginning of the participant's period of obligated service is the date upon which the participant becomes registered as a graduate nurse in a State.

"(C) With respect to a participant receiving a degree from an institution other than a school of medicine, osteopathy, dentistry, optometry, podiatry, or nursing, the date for the beginning of the participant's period of obligated service is the date upon which the participant completes the course of training leading to such degree.

"(4) Any participant whose period of obligated service is deferred under paragraph (3)(A) of this subsection—

"(A) shall be required to undertake internship or residency or other advanced clinical training in an accredited program in an educational institution which is an affiliated institution (as defined in section 4108(c)(1) of this title) and with respect to which the affiliation agreement provides that all or part of the internship or residency or other advanced clinical training will be undertaken in a Veterans' Administration health-care facility; and

"(B) may, at the discretion of the Administrator and upon the recommendation of the Chief Medical Director, incur an additional period of obligated service—

"(i) at the rate of one-half of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is in a medical specialty necessary to meet the health care requirements of the Veterans' Administration (as determined under regulations prescribed by the Administrator); or

"(ii) at the rate of three-quarters of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is not in a medical specialty necessary to meet the health care requirements of the Veterans' Administration (as determined

under regulations prescribed by the Administrator).

"(C) A participant in the Scholarship Program shall be considered to have begun serving a period of obligated service on the date such participant, in accordance with subsection (a) of this section, is appointed under this chapter as a full-time employee in the Department of Medicine and Surgery.

"§ 4144. Breach of contract; liability; waiver

"(a) A participant in the Scholarship Program (other than a participant described in subsection (b) of this section) who fails to accept payment, or instructs the educational institution in which the participant is enrolled not to accept payment, in whole or in part, of a scholarship under the contract entered into under section 4142 of this title, shall, in addition to any period of obligated service or other obligation or liability under the contract, be liable to the United States for the amount of $1,500 as liquidated damage.

"(b) A participant in the Scholarship Program who—

"(1) fails to maintain an acceptable level of academic standing in the educational institution in which the participant is enrolled (such level determined by the educational institution under regulations prescribed by the Administrator);

"(2) is dismissed from such educational institution for disciplinary reasons;

"(3) voluntarily terminates the course of training in such educational institution before the completion of such course of training; or

"(4) fails to become licensed to practice medicine, osteopathy, dentistry, podiatry, or optometry in a State, fails to become registered as a graduated nurse in a State, or fails to meet any applicable licensure requirement in the case of a physician assistant or expanded-function dental auxiliary, during a period of time determined under regulations prescribed by the Administrator;

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to or on behalf of the participant under the contract.

"(c) If a participant in the Scholarship Program breaches the written contract by failing (for any reason) to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula:

$$A = 3\phi\left(\frac{t-s}{t}\right)$$

in which 'A' is the amount the United States is entitled to recover; 'Φ' is the sum of the amounts paid under this subchapter or on behalf of the participant and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; 't' is the total number of months in the participant's period of obligated service, including any additional period of obligated service in accordance with section 4143(b)(4)(B) of this subchapter; and 's' is the number of months of such period served by the participant in accordance with section 4143 of this title. Any amount of damages which the United States is entitled to recover under this section will, within the one-year period beginning on the date of the breach of the written contract, be paid to the United States.

"(d)(1) Any obligation under the Scholarship Program (or a written contract thereunder) of a participant in the Scholarship Program for service or payment of damages shall be canceled upon the death of the participant.

"(2) The Administrator shall prescribe regulations providing for the waiver or suspension of any obligation of a participant for service or payment under such Program (or a contract thereunder) whenever compliance by the participant is impossible due to circumstances beyond the control of the participant or whenever the Administrator determines that the waiver or suspension of compliance would be in the best interest of the Veterans' Administration.

"(3) Any obligation of a participant under such Program (or a contract thereunder) for payment of damages may not be released by a discharge in bankruptcy under title 11 before the expiration of the five-year period beginning on the first date that payment of such damages is due.

"(e) The Administrator, in cooperation with and with the consent of the heads of other relevant departments and agencies and with the consent of the participant or individual involved, may permit—

"(1) any period of obligated service required to be performed under this subchapter to be performed in another Federal department or agency or in the Armed Forces; and

"(2) any period of obligated service required to be performed in another Federal department or agency or in the Armed Forces under another Federal health personnel scholarship program to be performed in the Department of Medicine and Surgery.

"§ 4145. Exemption of scholarship payments from taxation

"Notwithstanding any other law, any payment to, or on behalf of, a participant in the Scholarship Program for tuition, education expenses, or a stipend under this subchapter shall be exempt from taxation.

"§ 4146. Program subject to availability of appropriations

"The authority of the Administrator to make payments under this subchapter is effective for any fiscal year only to the extent that appropriated funds are available for such purposes.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following:

"Subchapter IV—Veterans' Administration Health Professional Scholarship Program

"Sec.
"4141. Establishment of program; purpose; duration.
"4142. Eligibility; application; written contract.
"4143. Obligated service.
"4144. Breach of contract; liability; waiver.
"4145. Exemption of scholarship payments from taxation.
"4146. Program subject to availability of appropriations.".

(b) Effective October 1, 1980, there are authorized to be appropriated such sums as may be necessary to carry out the program established by the amendments made by subsection (a).

LIMITATION ON SPECIAL PAY TO PERSONS SERVING OBLIGATED SERVICE UNDER THE SCHOLARSHIP PROGRAM

SEC. 202. Section 4118 (as amended by sections 102, 103, and 104) is further amended by adding at the end thereof the following new subsection:

"(h) A physician or dentist serving a period of obligated service pursuant to subchapter IV of this chapter is not eligible for incentive special pay under this section during the first three years of such obligated service and may only be paid primary special pay under this section at the discretion of the Administrator upon the recommendation of the Chief Medical Director.".

REPORT ON IMPLEMENTATION OF SCHOLARSHIP PROGRAM

SEC. 203. The Administrator of Veterans' Affairs shall submit a report on the implementation of the Veterans' Administration Health Professional Scholarship Program to the Committees on Veterans' Affairs of the Senate and House of Representatives not later than six months after the date of the enactment of this Act. Such report shall include a report on the formulation of regulations to carry out such program and on the status of the implementation of such program.

TITLE III—GERIATRIC RESEARCH AND CARE

PURPOSE

SEC. 301. The purposes of this title are (1) to improve and expand the capability of Veterans' Administration health care facilities to respond with the most effective and appropriate services possible to the medical, psychological and social needs of the increasing number of older veterans, and (2) to advance scientific knowledge regarding such needs and the methods of meeting them by facilitating higher quality geriatric care for eligible older veterans through geriatric and gerontological research, the training of health personnel in the provision of health care to older individuals, and the development of improved models of clinical services for eligible older veterans.

CENTERS OF GERIATRIC RESEARCH, EDUCATION, AND CLINICAL ACTIVITIES

SEC. 302. Section 4101, as amended by section 105(a), is amended by adding at the end the following new subsection:

"(f)(1)(A) The Administrator, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than fifteen Veterans' Administration health-care facilities as the locations for centers of geriatric research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this subsection.

"(B) In designating locations for centers under subparagraph (A) of this paragraph, the Administrator, upon the recommendation of the Chief Medical Director shall—

"(i) designate each Veterans' Administration health-care facility that on the date of the enactment of the Veterans' Administration Health-Care Amendments of 1980 is operating a geriatric research, education, and clinical center unless, on the recommendation of the Chief Medical Director, the Administrator determines that such facility does not meet the requirements of subparagraph (C) of this paragraph or has not demonstrated effectiveness in carrying out the established purposes of such center or the purposes of title III of the Veterans' Administration Health-Care Amendments of 1980 or the potential to carry out such purposes effectively in the reasonably foreseeable future; and

"(ii) assure appropriate geographic distribution of such facilities.

"(C) The Administrator may not designate any health-care facility as a location for a center under subparagraph (A) of this paragraph unless the Administrator, upon the recommendation of the Chief Medical Director, determines that the facility has (or may reasonably be anticipated to develop)—

"(i) an arrangement with an accredited medical school which provides education and training in geriatrics and with which such facility is affiliated under which residents receive education and training in geriatrics through regular rotation through such center and through nursing home, extended care, or domiciliary units of such facility so as to provide such residents with training in the diagnosis and treatment of chronic diseases of older individuals, including cardiopulmonary conditions, senile dementia, and neurological disorders;

"(ii) an arrangement under which nursing or allied health personnel receive training and education in geriatrics through regular rotation through nursing home, extended care, or domiciliary units of such facility;

"(iii) the ability to attract the participation of scientists who are capable of ingenuity and creativity in health-care research efforts;

"(iv) a policymaking advisory committee composed of appropriate health-care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center; and

"(v) the capability to conduct effectively evaluations of the activities of such center.

"(D) Prior to providing funds for the operation of any such center at a health-care facility other than a health-care facility designated under subparagraph (B)(i) of this paragraph, the Administrator shall assure that the center at each facility designated under such subparagraph is receiving adequate funding to enable such center to function effectively in the areas of geriatric research, education, and clinical activities.

"(2)(A) The Administrator shall establish in the Department of Medicine and Surgery a Geriatrics and Gerontology Advisory Committee (hereinafter in this subsection referred to as the 'Committee'). The membership of the Committee shall be appointed by the Administrator, upon the recommendation of the Chief Medical Director, and shall include individuals who are not employees of the Federal Government and who have demonstrated interest and expertise in research, education, and clinical activities related to aging and at least one representative of a national veterans' service organization. The Administrator, upon the recommendation of the Chief Medical Director, shall invite representatives of other appropriate departments and agencies of the United States to participate in the activities of the Committee and shall provide the Committee with such staff and other support as may be necessary for the Committee to carry out effectively its functions under this paragraph.

"(B) The Committee shall—

"(i) advise the Chief Medical Director on all matters pertaining to geriatrics and gerontology;

"(ii) assess, through an evaluation process (including a site visit conducted not later than two years after the date of the establishment of each new center and not later than two years after the date of the last evaluation of those centers in operation on the date of the enactment of this subsection), the ability of each center established under paragraph (1) of this subsection to achieve its established purposes and the purposes of title III of the Veterans' Administration Health-Care Amendments of 1980;

"(iii) assess the capability of the Veterans' Administration to provide high quality geriatric, extended, and other health-care services to eligible older veterans, taking into consideration the likely demand for such services from such veterans;

"(iv) assess the current and projected needs of eligible older veterans for geriatric, extended-care, and other health-care services from the Veterans' Administration and its activities and plans designed to meet such needs; and

"(v) perform such additional functions as the Administrator or Chief Medical Director may direct.

"(C)(i) Not later than April 1, 1983, the Committee shall submit to the Administrator, through the Chief Medical Director, a report with respect to its findings and conclusions under subparagraph (B) of this paragraph. Such report shall include—

"(I) descriptions of the operations of the centers of geriatric research, education, and clinical activities established pursuant to paragraph (1) of this subsection;

"(II) assessments of the quality of the operations of such centers;

"(III) an assessment of the extent to which the Veterans' Administration, through the operation of such centers and other health-care facilities and programs, is meeting the needs of eligible older veterans for geriatric and extended-care and other health-care services;

"(IV) assessments of and recommendations for correcting any deficiencies in the operations of such centers; and

"(V) recommendations for such other geriatric, extended-care, and other health-care services as may be needed to meet the needs of older veterans.

Following the submission of such report, the Committee shall also submit to the Administrator, through the Chief Medical Director, such further reports as the Committee considers appropriate with respect to the matters described in clauses (I) through (V) of the preceding sentence.

"(ii) Not later than ninety days after receipt of a report submitted under division (i) of this subparagraph, the Administrator shall transmit such report, together with the Administrator's comments and recommendations thereon, to the appropriate committees of the Congress.

"(3) There are hereby authorized to be appropriated for the basic support of the research and education activities of the centers of geriatric research, education, and clinical activities established pursuant to paragraph (1) of this subsection $10,000,000 for fiscal year 1981 and $25,000,000 for each of the next three fiscal years. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Veterans' Administration medical care account and medical and prosthetics research account, as appropriate, such amounts as the Chief Medical Director determines appropriate, and, with respect to fiscal year 1984, as the Chief Medical Director determines appropriate after taking into account the report submitted by the Committee under paragraph (2) of this subsection.

"(4) Activities of clinical and scientific investigation at each center established under paragraph (1) of this subsection shall be eligible to compete for the award of funding from funds appropriated for the Veterans' Administration medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for research in geriatrics and gerontology.".

ASSISTANT CHIEF MEDICAL DIRECTOR

SEC. 303. Section 4103(a)(4) is amended by adding at the end the following new sentence: "One Assistant Chief Medical Director shall be a qualified physician trained in, or having suitable extensive experience in, geriatrics who shall be responsible to the Chief Medical Director for evaluating all research, educational, and clinical health-care programs carried out in the Department in the field of geriatrics and who shall serve as the principal advisor to the Chief Medical Director with respect to such programs.".

EFFECTIVE DATE

SEC. 304. (a) The amendments made by sections 302 and 303 shall take effect on October 1, 1980.

(b) The Geriatrics and Gerontology Advisory Committee required to be established by the Administrator in the Department of Medicine and Surgery of the Veterans' Administration pursuant to subsection (f)(2)(A) of section 4101 of title 38, United States Code, as added by section 302, shall be established not later than January 1, 1981.

TITLE IV—MISCELLANEOUS AMENDMENTS

STANDARDS FOR PRESUMPTION OF INABILITY TO DEFRAY MEDICAL EXPENSES

SEC. 401. (a) Section 622 is amended to read as follows:

"§ 622. Evidence of inability to defray necessary expenses

"For the purposes of sections 610(a)(1)(B), 610(b)(2), 624(c), and 632(a)(2) of this title, the fact that an individual is—

"(1) eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

"(2) a veteran with a service-connected disability; or

"(3) in receipt of pension under any law administered by the Veterans' Administration; shall be accepted as sufficient evidence of such individual's inability to defray necessary expenses.".

(b) The item relating to such section in the table of sections at the beginning of chapter 17 is amended to read as follows:

"622. Evidence of inability to defray necessary expenses.".

REVOLVING SUPPLY FUND

SEC. 402. (a) Section 5021(a) is amended—

(1) by inserting after "direct" in clause (2) "cost (which may be based on the cost of recent significant purchases of the equipment or supply item involved)"; and

(2) by striking out the second sentence in such section and inserting in lieu thereof the following:

"At the end of each fiscal year, there shall be covered into the Treasury of the United States as miscellaneous receipts such amounts as the Administrator determines to be in excess of the requirements necessary for the maintenance of adequate inventory levels and for the effective financial management of the revolving supply fund.".

(b) The amendments made by subsection (a) shall take effect as of October 1, 1979.

MANAGEMENT OF REAL PROPERTY

SEC. 403. (a) Section 5022(a) is amended by inserting "(1)" after "(a)" and by adding at the end thereof the following new paragraph:

"(2)(A) Before entering into a transaction described in subparagraph (B) of this paragraph with respect to any real property owned by the United States and administered by the Veterans' Administration which has an estimated value in excess of $50,000, the Administrator shall submit a report of the facts concerning the proposed transaction to the Committees on Veterans' Affairs of the Senate and House of Representatives, and such transaction may not then be entered into until after the expiration of 30 days from the date upon which the report is submitted.

"(B) Subparagraph (A) of this paragraph applies to (i) any transfer of an interest in real property to another Federal agency or to a State (or any political subdivision of a State), and (ii) any report to a Federal disposal agency of excess real property.

"(C) A statement in an instrument of conveyance, including a lease, that the requirements of this paragraph have been met, or that the conveyance is not subject to this paragraph, is conclusive for the purposes of all matters pertaining to the ownership of any right or interest in the property conveyed by such instrument.".

(b) Section 5070(e) is amended by inserting a comma and "but no such lease may be for a period of more than 50 years" before the period at the end of the second sentence of such section.

NUMBER OF BEDS REQUIRED TO PROVIDE ADEQUATE NURSING HOME CARE IN STATE HOME FACILITIES

SEC. 404. Section 5034(1) is amended by striking out the comma and "which number" and all that follows in such section and inserting in lieu thereof a period.

REPEAL OF REQUIREMENT THAT RECIPIENTS OF HEALTH-CARE PERSONNEL TRAINING GRANTS MUST INCREASE NUMBER OF INDIVIDUALS RECEIVING TRAINING

SEC. 405. Section 5093(b)(1) is amended by striking out "and will result" and all that follows through "training at such institution".

AVAILABILITY OF FUNDS FOR BENEFICIARY TRAVEL

SEC. 406. No provision of law enacted after the date of the enactment of this Act which imposes any restriction or limitation on the availability of funds for the travel and transportation of officers and employees of the executive branch of the Government and their dependents, or on the transportation of things of such officers and employees and their dependents, shall be applicable to the travel of eligible veterans, dependents, or survivors, for which reimbursement is authorized under title 38, United States Code, pursuant to the terms and conditions of section 111 of such title, unless such provision is expressly made applicable to the travel of such veterans, dependents, or survivors.

EXTENSION OF TIME FOR SUBMISSION OF REPORT ON HOSPITAL CARE AND MEDICAL SERVICES FURNISHED IN THE COMMONWEALTH OF PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 407. Section 8(a) of the Veterans' Administration Programs Extension Act of 1978 (Public Law 95-520; 92 Stat. 1822) is amended by striking out "February 1, 1980" and inserting in lieu thereof "February 1, 1981".

TECHNICAL AMENDMENTS

SEC. 408. Section 4101(b) is amended by striking out "manpower" both places it appears and inserting in lieu thereof "personnel".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a statement by Mr. CRANSTON be printed in the RECORD.

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

● Mr. CRANSTON. Mr. President, as chairman of the Veterans' Affairs Committee, I urge the concurrence in the House amendment to the Senate amendment to the bill, the House amendment being a compromise agreed to between the two Veterans' Affairs Committees after extensive discussion and negotiation.

Mr. President, in order that all Senators and the public may fully understand the provisions of the compromise agreement, I ask unanimous consent that there be printed in the RECORD at the conclusion of my remarks a document entitled "Explanatory Statement on H.R. 7102, the Veterans' Administration Health-Care Amendments of 1980," also inserted in the RECORD yesterday in the other body, accompanied by a Cordon print showing the changes that would be made to existing law by the compromise agreement.

Mr. President, I urge the Senate to support the pending amendment to H.R. 7102, the proposed "Veterans' Administration Health-Care Amendments of 1980."

BACKGROUND

The bill was originally passed by the House of Representatives on May 20, 1980. On June 5, the Senate considered S. 2534 as it had been reported favorably by the Committee on Veterans' Affairs on May 15. Following Senate consideration of S. 2534 as reported, the provisions of that measure were substituted in lieu of the provisions of H.R. 7102 as originally passed by the House, and as so amended H.R. 7102 was passed by the Senate.

The bill as it comes before the Senate is a compromise agreed to by the two Veterans' Affairs Committees and passed by the House of Representatives yesterday.

Mr. President, the Veterans' Affairs Committees of the two Houses enjoy a most constructive relationship. Although we occasionally advocate different approaches to a particular issue, resulting, for example, in the development of different bills on the same subject that must be reconciled as in this situation, it is clear that the two committees are united in the commitment to assuring that our Nation's veterans receive full measure of the benefits and services that are their due.

This commitment is once more manifested in the measure pending before the Senate today. Like all compromises, it does not contain every provision that passed the Senate or that I would have liked to have seen in this legislation, but I believe that it represents an equitable resolution of the differences between the two Houses and, I believe, fairly vindicates the basic position of the Senate on the various matters addressed by the legislation.

BASIC PURPOSE

The basic purpose of the pending measure is to maintain and improve the quality, scope, and efficiency of health-care services provided the Nation's veterans through the Veterans' Administration's health care system.

SUMMARY OF PROVISIONS

Mr. President, since I have made extended statements on the various issues addressed in the legislation both at the time it was introduced (CONGRESSIONAL RECORD 7567 (April 2, 1980)) and following the time of Senate passage (CONGRESSIONAL RECORD 14366 (June 13, 1980)), I will restrict my remarks today to an outline, in summary fashion, of the provisions of the bill as it is before the Senate today—which I will refer to as the compromise agreement. These provisions are more fully described in the explanatory statement to be printed at the end of my remarks. Following the outline of the provisions, I will comment briefly on some of the key provisions in the compromise.

TITLE I—HEALTH-CARE PERSONNEL AMENDMENTS

The provisions of title I are designed to improve the VA's ability to recruit, retain, and manage its health-care personnel in order to assure that the agency will have sufficient, qualified health-care personnel—including physicians, dentists, registered nurses, and other nursing and allied health personnel—to provide quality health care to eligible veterans and dependents. Included in title I are provisions that would:

First, make permanent the VA's special pay authority for eligible physicians and dentists serving in the VA's Department of Medicine and Surgery—D.M. & S.—under title 38, replacing the temporary program in current law.

Second, revise the existing program for special pay for eligible D.M. & S. physicians and dentists by increasing the rates of such pay effective January 1, 1981, and restructuring some of the factors used in computing such pay.

Third, allow amounts of special pay hereafter received by full-time and part-time VA physicians and dentists to be used for determining amounts of coverage of life insurance available under the civil service personnel system.

Fourth, allow amounts of special pay hereafter received by full-time VA physicians to be used, after 15 years of full-time service, for computing an annuity under the civil service retirement system or, without reference to the length of service, in computation of a disability retirement or a death annuity.

Fifth, require the Administrator to monitor the impact of the special pay authority on the VA's ability to recruit and retain physicians and dentists to report annually to the Congress on this issue, and to make biennial recommendations to the President on the levels of pay authorized, which recommendations would be available for consideration by the President in the next following budget process who would be required to include recommendations relating to such pay in the next following budget submitted to the Congress.

Sixth, remove top D.M. & S. personnel who are hired under the authority of title 38 from coverage by the Senior Executive Service—SES—under title 5, United States Code.

Seventh, convert VA nonphysician medical facility directors from the general civil service personnel system under title 5, United States Code, to the D.M. & S. personnel system under title 38, thereby including such nonphysician directors in the exclusion from the coverage of the Senior Executive Service mentioned above, and provide that such nonphysician directors would continue to be eligible to receive SES bonuses under the terms and conditions applicable to such bonuses.

Eighth, modify the rates of premium pay for nurses and other specified personnel to first, allow a VA nurse on travel status to receive such pay on the same basis as would an employee under the general schedule and, second, allow the Administrator to assign title 38 nurses and other specified personnel to on-call duty on a Federal holiday that falls within a regular workweek so that such personnel could remain at home but in an on-call status on such a holiday.

Ninth, authorize the Administrator to adjust the rates of premium and overtime pay for service outside of the normal work day or week paid to title 38 nurses and other specified title 38 personnel at individual VA health-care facilities when necessary to provide rates competitive with those being paid similar personnel in non-Federal health-care facilities in the same area.

Tenth, authorize the Administrator to adjust minimum, intermediate, or maximum rates of basic pay for D.M. & S.

personnel employed under title 38, as well as, subject to a 90-day delay during which the President could disapprove such action, for any D.M. & S. employees employed under the general schedule determined to be providing either direct patient-care services or services incident to such direct-care services, and to so so on a nationwide, local, or other geographic basis when necessary to, first, provide pay competitive with that being paid in non-Federal health-care facilities in the same area, and, second, meet the staff needs of a particular Veterans' Administration health-care facility, or third, recruit individuals with specialized skills.

Eleventh, require a person serving as a chief of staff in a VA health-care facility to serve on a full-time basis, except that an individual serving as a chief of staff on a part-time basis on the effective date of the act could continue to so serve.

Twelfth, provide that, after October 1, 1981, any employee serving in D.M. & S. on a part-time basis would accumulate civil service retirement credit for such employment at a rate equal to the percentage of their part-time employment for the VA rather than accumulating, as at present, a full-month's retirement for each month of part-time service.

Thirteenth, clarify that any provision of title 5 or other law relating to the Federal civil service does not supersede, override, or otherwise modify title 38 provisions relating to the VA's medical personnel system unless such other provisions expressly supersede, override, or modify the title 38 provision.

Fourteenth, clarify that, consistent with the above provision, part-time appointments made under title 38 are made without reference to chapter 34 of title 5.

Fifteenth, mandate a study of the impact of converting categories of title 5 personnel working in D.M. & S. and providing direct patient-care services or services incident to such direct-care service, to the title 38 personnel system and, for categories of such personnel that remain in title 5, of the desirability and impact of paying such personnel premium pay under title 38 rather than title 5, and require a report of such study to be submitted within 18 months of the date of enactment.

Sixteenth, mandate a pilot program and study, of between 24 and 36 months duration, of the impact on the VA's recruitment and retention of nursing personnel of taking various administrative actions, require a report of such study within 42 months of the date of enactment, and require the Administrator to report within 180 days of the date of enactment of the act on the status of steps taken to implement the pilot program and study.

TITLE II—VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

Title II of the compromise agreement would amend title 38, United States Code, to authorize a comprehensive health professional scholarship program to improve the VA's ability to staff its health personnel system. Included in title II are provisions that would:

First, authorize the VA to provide scholarships to students enrolled in physician or nursing training and to students enrolled in professional training in the other five health-care disciplines under the title 38 personnel system, as necessary to meet staffing needs in the Veterans' Administration, in exchange for the student's obligation to serve as a full-time employee in D.M. & S. for a specified period of time.

Second, allow a program participant to defer serving his or her obligated service while receiving graduate medical education, with such deferral possibly conditioned on accruing additional obligated service.

Third, provide a scheme by which damages could be collected in the event a program participant breached his or her contract to serve in the VA.

Fourth, establish an amount for a monthly stipend that would be paid to program participants together with a basis to adjust such stipend as required to meet cost-of-living increases.

Fifth, clarify that any program participant may not be obligated for service to the Federal Government under any other program.

Sixth, limit the amount of special pay a program graduate would be eligible to receive during the period of obligated employment.

Seventh, require the Administrator to report within 180 days of the date of enactment of the act on the status of steps taken to implement the scholarship program.

Eighth, require the Administrator to report annually on the scholarship program.

TITLE III—GERIATRIC RESEARCH AND CARE

Title III of the compromise agreement would authorize, subject to the appropriation of sufficient funds, the establishment of up to 15 geriatric research, education, and clinical centers at VA health-care facilities. Included in title III are provisions that would:

First, authorize, subject to the appropriation of sufficient funds, the establishment of up to 15 geriatric research, education, and clinical centers—hereinafter referred to as geriatric centers—at VA health-care facilities.

Second, require that, to be designated as a geriatric center site, a facility have—or be expected to develop—

An affiliation with an accredited medical school that provides a training program in geriatrics and regularly rotates residents through the center and through one of the facility's long-term care units;

An arrangement for a geriatric training program for nursing and allied health personnel in such a long-term care unit;

The ability to attract scientists who are capable of ingenuity and creativity in health research;

A policymaking advisory committee composed of VA and affiliated school health-care and research representatives; and

The ability to conduct effective evaluation of geriatric center activities.

Third, require the Administrator to assure appropriate geographic distribution of the geriatric centers.

Fourth, require the Administrator to assure, prior to providing funds to VA facilities for establishing new geriatric centers, that the eight existing geriatric centers are receiving adequate funding to function effectively in research, education, and clinical activities.

Fifth, mandate the establishment of a geriatrics and gerontology advisory committee—GGAC—to advise the chief medical director on all geriatrics and gerontology matters; to assess the ability of each center to achieve its purpose and the purposes of this title of the bill; and to assess the ability of the VA to provide high-quality health-care services to older veterans, the current and projected needs of these veterans for such services, and the VA's plans to meet those needs.

Sixth, require the GGAC to submit, 30 months after the effective date of this provision, a report to the Administrator on its findings and conclusions and its recommendations regarding the geriatric center program and VA health care for older veterans; authorize the GGAC to submit such further reports as it considers appropriate; and require the Administrator, 90 days after receiving any GGAC report, to transmit it to the appropriate congressional committees, along with the Administrator's comments and recommendations on it.

Seventh, authorize appropriations for the basic support of the research and education activities of geriatric centers—but not the clinical component which would continue, as at the existing centers, to be funded from general medical care appropriations—of $10,000,000 for fiscal year 1981 and $25,000,000 for each of the following 3 fiscal years; and direct the chief medical director (CMD) to allocate to the geriatric centers from other funds appropriated generally for the VA medical care account and the medical and prosthetics research account such amounts as the CMD determines appropriate and, with respect to fiscal year 1984, as the CMD determines appropriate in light of the mandated GGAC report.

Eighth, specify that clinical and scientific investigation activities at the geriatric centers shall be eligible to compete for funding from the VA's medical and prosthetics research account and that these geriatric center efforts shall receive priority in the awarding of funding from that account insofar as funding for geriatric and gerontological research is concerned.

Ninth, require that one of the eight assistant chief medical director positions be filled by a physician trained, or having suitable, extensive experience, in geriatrics, who would be responsible to the chief medical director for evaluating all research, education, and clinical health-care programs carried out in D.M. & S. in the field of geriatrics and who shall serve as the principal advisor to the CMD with respect to the operation of such programs.

Tenth, provide that the amendments made by this title shall take effect on October 1, 1980.

TITLE IV—MISCELLANEOUS AMENDMENTS

Title IV would limit the presumptive validity of an individual's oath of inability to defray the cost of VA medical care

under title 38, and make other miscellaneous changes. Included in title IV are provisions that would:

First, limit the presumptive validity of an individual's oath of inability to defray the cost of VA medical care to those individuals eligible to receive medical assistance pursuant to title XIX of the Social Security Act, service-connected disabled veterans, or those in receipt of a VA pension, thereby allowing the VA to look behind such oaths taken by individuals not in such categories so as to determine if the individuals concerned have valid health insurance that would basically cover the cost of care and, if so, to direct such veterans to non-VA facilities for care.

Second, modify the VA's authority to enter into long-term leases—beyond 3 years—with affiliated medical schools to limit the authority to enter into such leases to leases of 50 years or less.

Third, require, 30 days prior to transferring real property valued at more than $50,000 to another Federal agency or a State or reporting such property as excess, that the VA notify the Committees on Veterans' Affairs in each House.

Fourth, remove the limit on the number of nursing home beds that may be supported in a State under the VA's State veterans' home program.

Fifth, allow VA revolving supply fund reimbursements to be based on the cost of recent significant purchases of the items involved and provide for return to the Treasury at the end of each fiscal year of only such amounts as the Administrator determines to be in excess of supply fund needs.

Sixth, delete the requirement that, for grants for the training of nonphysician health care personnel to be approved, such grants must result in the expansion of the number of health care personnel being trained by the grant recipient.

Seventh, clarify that any restrictions on the expenditure of funds for the travel and transportation of officers and employees of the executive branch and their dependents or for the transportation of things of such officers, employees, and their dependents do not apply to funds for reimbursements paid for the travel of eligible veterans, dependents, and survivors, pursuant to section 111 of title 38, in connection with their receipt of other VA benefits and services unless such restrictions expressly include reference to the title 38 fund.

Eighth, extend, from February 1, 1980, to February 1, 1981, the deadline for a statutorily mandated VA report on hospital and medical services furnished in the Commonwealth of Puerto Rico and the Virgin Islands.

DISCUSSION: SPECIAL PAY PROVISIONS

Mr. President, the key focus of this legislation since its introduction has been on the VA's authority to pay special pay to VA physicians and dentists. The original authority to provide such pay dates from 1975 and Public Law 94–123. The rates of such pay established at that time were effective in improving the VA's recruitment and retention of physicians and dentists. However, over the intervening years, that original authority, which has not been modified except to extend it, lost much of its original impact.

Mr. President, it is abundantly clear to both committees that the VA is experiencing difficulty in attracting and, more importantly, retaining sufficient numbers of qualified physicians. The hearing record of the April 16 hearing of the Committee on Veterans' Affairs provides very compelling evidence in this regard. There is a need for prompt, effective action to correct this situation.

I believe that the provisions in the compromise agreement do just that by making the authority permanent, by providing for adequate increases in the rates of such pay over the 1975 levels, by targeting the special pay authority more directly so as to give the Administrator the maximum flexibility to adjust the rates of special pay for physicians in scarce specialties and in certain hard-to-recruit-to geographic areas, including the VA's central office.

The total special pay limit of $22,500—which could be augmented by an additional $5,000 in situations involving service in difficult geographic recruitment areas—is quite appropriate in light of the special pay levels—including $29,000 maximum bonus for some physicians—included in the recently enacted Uniformed Services Health Professionals Special Pay Act of 1980. Public Law 96–284, as well as the 11.7-percent pay raise for members of the armed services—including, of course, physicians—overwhelmingly voted by the Senate on July 2, 1980, during consideration of H.R. 6974, the Defense Authorization Amendments Act, 1981.

Mr. President, the major differences in the area of special pay between the bills passed by the two Houses were with regard to the levels of special pay authorized to be paid to VA dental personnel and part-time physicians and dentists. The provisions in the compromise agreement in these areas reflect the result of a careful analysis of the need for special pay for these categories.

With reference to full-time VA dentists, as with the full-time physicians, the rates authorized are essentially those from the Senate amendment. The rates for dentists are designed to provide the Administrator with the needed flexibility to pay special pay to deal with recognized recruitment problems for dentists, such as individuals serving in scare specialties or in hard-to-recruit-to geographical areas where such special pay can make a difference.

Mr. President, the combination of the rate increases, the change to the special pay authority to make it permanent and the new requirement included in the compromise agreement pursuant to which the Administrator has a statutory obligation to monitor the impact of the levels of special pay on the VA's recruitment and retention effort and make recommendations on such levels to the President every 2 years, should result in a truly effective special pay program that should greatly enhance the VA's ability to acquire the type of employee workforce of physicians and dentists the agency needs to meet the health-care needs of eligible veterans.

NURSING PERSONNEL PROVISIONS

Mr. President, any health-care system of the size and complexity of the VA must rely on a multidisciplinary team to provide health care to its clients. Although the primary momentum for this legislation has been to resolve the recruitment and retention problems for physicians and dentists, the Senate Committee remained deeply cognizant throughout the process of the need to strengthen the VA's attractiveness to other health-care providers, most especially to nursing personnel.

The bill as it passed the Senate contained a number of provisions directed toward the goal of improving the VA's efforts to attract and keep nursing personnel, including: authority for the Administrator to increase rates of pay—both basic pay and premium pay—for nursing personnel so as to meet competition for nurses from community facilities—a problem that is particularly acute in certain areas of the country, southern California among them, a mandated pilot program and study of the effect of taking various administrative actions on the VA's efforts to recruit and retain nursing personnel, modifications to the VA's premium pay authority to improve certain provisions applicable to nursing personnel, authority for the Administrator to provide training support for VA registered nurses seeking a baccalaureate degree, and authority for the Administrator to elevate the Director of Nursing Service in VA Central Office to a position as an Assistant Chief Medical Director or a Deputy Assistant Chief Medical Director.

Mr. President, I am pleased that our counterparts in the House generally accepted the Senate provisions and philosophy in this area. I am confident that both committees understand the urgency of the VA's nurse recruitment problem—a recent survey of the VA health-care system found 1,051 nursing vacancies—full- and part-time—where there were both funding and ceiling available—just no nurses—and an additional 3,665 full- and part-time nursing "vacancies" where funding and ceiling were not available but the VA facility directors concerned felt they needed nurses.

I am very hopeful that the provisions in the compromise agreement together with continuing vigorous oversight on the part of both committees will make a major contribution to helping correct the situation.

Mr. President, there were three changes in these authorities relating to nursing personnel which are discussed in greater detail in the explanatory statement to be printed following my remarks that I want to note briefly at this point.

First, in the mandated pilot program and study, mentioned above, of the impact of taking various administrative actions on the VA's nurse recruitment and retention efforts, the bill as passed by the Senate included a number of specific administrative actions that were to be included in the pilot program and study—modifications to the existing workday or week, such as flexitime or compressed

workweek, the establishment of child care centers at VA facilities to care for children of nurses and other personnel, the provision of subsidized or free parking to nurses, and enhanced programs of career development for nursing personnel, including assistance for outside training and, where appropriate, academic appointments at affiliated health-care training institutions—but which were dropped from the compromise agreement.

In deleting these specific items, it was not intended to express disapproval of any specific action; rather, the intent was that the pilot program and study should be carried out with maximum flexibility, and there was concern expressed that enumerating specific actions could work contrary to this goal. I continue to believe that the various measures included in the Senate bill deserve serious consideration, and I urge the Administrator, Chief Medical Director, and Director of Nursing Service to include the various actions in the mandated pilot program and study.

Mr. President, the second point on the nursing provisions that I want to note is that, in dropping a provision in the Senate bill that would have provided the Administrator with express authority to provide training support, such as is available under chapter 41 of title 5, to a VA registered nurse seeking a baccalaureate degree, there was no belief that such training activity is not needed.

Rather, it was recognized that, first, the Office of Personnel Management could—and should, I believe—reverse existing policy to permit such training support to be provided by the VA under chapter 41 of title 5, and, second, that absent such a change, the VA could and should still provide this type of support through the new scholarship program included in title II of the compromise agreement. I continue to believe that it is vital for the VA to provide such training support—both to attract and retain nursing personnel as well as to enhance the qualifications and performance of its nursing service—and will continue to work toward such a goal.

OTHER ADMINISTRATIVE IMPROVEMENTS

Mr. President, there are a number of provisions in the compromise bill that are designed to yield other improvements in the VA's health-care personnel recruitment beyond those I have described. I would like to highlight just a few of these at this point.

In describing the provisions in the compromise agreement that will improve the VA's efforts with reference to nursing personnel, I mentioned the authority to modify rates of basic pay. This new authority applies not only to nursing personnel rates of pay but also to those of other health-care personnel appointed under title 38 as well as to those general schedule employees appointed under title 5, United States Code, who are working in D. M. & S. and providing either direct patient-care services or services incident to such direct-care services.

As to the latter class, the Administrator's exercise of this authority would be subject to a 90-day delay during which the President—or the President's designee, presumably the Director of the Office of Personnel Management—could disapprove the proposed increase, in which event he would send the appropriate congressional committees an explanation of why he did so. Even as so limited, however—and this time limitation does not apply to title 38 personnel—this new authority should significantly increase the Administrator's ability to manage D.M. & S. personnel.

I would also note, with reference to this authority, the specific exclusion of nurse anesthetists from an otherwise general limitation on the amount by which the Administrator could increase the pay rate for any one pay grade or rate.

Mr. President, similar to the authority just described is a new authority for the Administrator to modify rates of premium pay for title 38 personnel. I mentioned this earlier during my description of the nursing personnel provision because it is to that group that premium pay provisions apply most directly.

I want to note, however, that although the compromise agreement does not contain the provision from the Senate bill allowing certain title 5 personnel working in D.M. & S. to be paid premium pay under title 38, it does contain a mandated study that would address the issue of paying premium pay under title 38 to these title 5 employees working in D.M. & S. who provide direct patient-care services or services incident to such direct-care services. Depending on the findings of that study—and congressional action in response to those findings—the authority to modify rates of premium pay might prove to be of more wide-reaching significance.

Mr. President, the study I just mentioned is the second of two important personnel studies—the first being the one in conjunction with the pilot program mentioned above on the effect of various administrative actions on nursing personnel recruitment. The second study, in addition to addressing the issue of desirability and impact of paying premium pay under title 38 to direct-patient-care title 5 personnel, will focus on the impact on VA health-care programs of converting such title 5 personnel from the civil service personnel system into the title 38 VA medical-care personnel system. The report on this study, which is due to be submitted to the Congress 18 months after date of enactment of the legislation, should provide valuable information to assist the Congress with the resolution of this matter.

SPECIAL PAY ELIGIBILITY

Mr. President, there is one matter that the Senate committee viewed as an important personnel matter that is not included in the compromise agreement and that I would like to highlight. Since the establishment of the special pay authority in 1975, the Administrator, pursuant to an exercise of administrative authority provided in the special pay provisions, has precluded physicians serving as hospital directors from receiving special pay. This restriction has had the predictable effect of keeping the number of physician directors very low—there are only six such directors at present in the 172 hospitals.

I have long advocated that this policy be changed because I believe that, in order to provide proper staffing in the central office of D.M. & S., the agency needs to have a cadre of physicians who have received management experience at the level of hospital director. Thus, the Senate version of this legislation contained a provision designed to provide special pay for physician hospital directors.

During negotiations with the House committee, however, it became clear that the House, although no longer opposed, as it had been previously, to an administrative change on the part of the Administrator on this issue, did not believe that it was necessary and preferred not to take any legislative action. In view of the change in the House position, I sought and received the assurance of the responsible agency officials that they would be willing to revise the existing administrative bar to special pay for physician directors. With that clear assurance, we thus agreed to delete the Senate provision from the compromise agreement.

MISCELLANEOUS PROVISIONS

Mr. President, there are two provisions in title IV of the compromise agreement—miscellaneous amendments—that I want to mention very briefly.

The first, Mr. President, is a provision, derived from the House bill, that amends the VA's authority to look behind an individual veteran's oath of inability to defray the cost of medical care. As is developed more fully in the explanatory statement, this provision is seen by the two committees as the appropriate response to the issue of the VA looking to a veteran's health-insurance carrier for reimbursement—as would be authorized by the administration-proposed bill, S. 759—for care provided by the VA for non-service-connected disability or disease.

On that score, I find the provision entirely appropriate, and I urge those who have advocated so-called third-party reimbursement to study this change and its relationship to the health-insurance issue.

The other point that I wanted to make on this provision is to express my view that, while I think the change in existing law under which the VA must accept an oath of inability to pay as conclusive is proper, I am committed to assuring that the change is implemented in such a way that veterans in need of care who might have some minimal health-insurance coverage are not referred to non-VA facilities on that basis but rather that the VA focuses specifically on the likely cost of the care needed in a given case and the extent to which an individual veteran's health insurance coverage will basically defray the costs of such care.

Mr. President, one further point with reference to our accepting the provision relating to the VA's authority to look behind an individual's oath of inability to defray the cost of VA care in response to the issue of the VA seeking reimbursement from veterans' health insurance carriers—so-called third-party reimbursement. In including this provision, all provisions from title III of the Senate bill relating to the third-party reimbursement issue were dropped. As to one of these—a comprehensive study on third-party reimbursement—I am in agreement that it is no longer necessary in light of the action on the oath-of-inability provision.

However, as to the other—a provision clarifying the VA's authority to seek reimbursement, when appropriate, under workers' compensation, no-fault auto insurance, and State crime victim reparation schemes, I disagree with the judgment of the House that this change is unnecessary. I believe that, with regard to each form of payment, the VA already has authority to seek reimbursement, and our committee views the legislation as necessary to clarify this point so as to enable the VA to avoid unnecessary and costly litigation to assert its rights in these areas.

Thus, although I agreed to drop the provision in question from the compromise agreement so as to move this legislation forward, I will continue to press the House to accept this provision and to add it to other legislation on which action will be occurring later this session.

Mr. President, the other title IV provision that I want to mention is derived from a provision in the Senate amendment relating to reimbursement to eligible veterans for their travel in conjunction with other VA benefits and service—so-called beneficiary travel.

An excerpt from the committee's report that described this provision was included in my statement in conjunction with Senate consideration of the legislation (CONGRESSIONAL RECORD, 14385, June 13, 1980). The thrust of the provision in the Senate bill was to counter an interpretation by the Office of Management and Budget of a provision in Public Law 96-86, the Continuing Appropriations Act for fiscal year 1980, that placed restrictions on executive branch employee travel.

As a result of that OMB interpretation—an interpretation that was, in my view, clearly at odds with congressional intent—the VA's beneficiary travel funds were nearly exhausted and it was very clear that action was needed. Since the time of Senate passage of the bill, however, the matter has been resolved for this fiscal year. Thus, the Senate provision was no longer necessary for fiscal year 1980. To attempt to prevent a reoccurrence in future years, however, the provision was modified to have a prospective application and included in the compromise agreement. I believe that this is an important policy matter, and I am pleased that we have established a clear legislative policy on it.

GERIATRIC RESEARCH AND CARE

Mr. President, I have often expressed my deep commitment to issues relating to aging and meeting the health-care needs of elderly veterans and other persons. As chairman of the Veterans' Affairs Committee, I am particularly concerned with the needs of the elderly veteran and strongly believe that the VA should be in a leadership role within the Federal Government in efforts to produce a better understanding of the aging process, its effects, and the medical, social, and family needs of all our elderly citizens. Thus, I am most pleased that the compromise agreement, in title III, contains the basic provisions from the Senate amendment title II which should help the VA reach this goal.

Mr. President, title III of the compromise agreement, the geriatric research and care provisions, contains provisions that are designed to enhance the ability of the VA's health-care system to respond with the most effective and appropriate services possible to the needs of an increasing number of older veterans. It does this primarily by codifying and authorizing expansion of the program of geriatric research, education, and clinical centers—the so-called GRECC's—and establishing a Geriatrics and Gerontology Advisory Committee to the Chief Medical Director.

Mr. President, as I indicated earlier, a complete description of S. 2534, as reported including title II, the geriatric research and care amendments, was printed in the June 13, 1980, CONGRESSIONAL RECORD. Highlights of the legislative background, its major thrusts, and a comprehensive explanation of its provisions were included in that account so I will not repeat those details at this time.

Although, as I indicated, the compromise before us today contains essentially the provisions of the Senate version of these provisions, several changes were agreed upon during the negotiations with the House Veterans' Affairs Committee. I believe these changes will strengthen the legislation. The first change is to compromise on the authorized appropriations so that the bill now authorizes appropriations of $10,000,000 for fiscal year 1981 and $25,000,000 for each of the next 3 fiscal years.

The second revision makes the Assistant Chief Medical Director who is responsible for matters relating to geriatrics and gerontology responsible to the CMD for evaluating all research, educational, and clinical health-care programs carried out in the Department of Medicine and Surgery in the field of geriatrics and designates that person as the principal advisor to the Chief Medical Director with respect to such programs. Finally, with respect to designating geriatric center locations and the criteria which must be met, those criteria regarding the ability to attract creative researchers and to conduct effective evaluation are made subject to the general provision that the criteria may be considered satisfied if it is determined that it is reasonable to expect them to be satisfied in the foreseeable future at a center.

I believe that the VA has played a significant role in providing quality health-care services to older veterans and that this legislation should help to assure a leadership role for the VA in the development of innovative approaches to meeting the health-care needs of elderly persons and in geriatric and gerontological research advancing medical and scientific knowledge of the problems of aging and how to meet them—a matter of intense interest to me.

Mr. President, at this time I want to congratulate Senator THURMOND for his great leadership in this area and express my thanks to him for his most helpful contributions in the development of these provisions. I also want to congratulate Congresswoman MARGARET HECKLER, who was ably assisted by Peter Sroka, for her work on this legislation in the House last year where she played such an active role in securing its passage by a wide margin. The committee is also especially grateful to Dr. Ralph Goldman, former Assistant Chief Medical Director for Extended Care, and Dr. Paul Haber who presently holds that position, for their technical assistance in the development of these provisions.

VETO THREAT

Mr. President, before I close, I want to touch on one final point—the concern that this measure is likely to be vetoed by the President.

Mr. President, almost from the outset earlier this year of the two committee's consideration of the general issue of VA recruitment and retention problems and of special pay for VA physicians and dentists, there has been speculation that the President would reject any legislation in this area. I have heard this speculation and I have been concerned about it. In urging the Senate to act today to send this measure to the President, I remain aware of the concern but do not feel it is justified.

Mr. President, the two committees of jurisdiction have worked long and hard to understand what is a most complex issue. Personnel issues are not simple. Why an agency or any other entity is or is not able to attract and retain the individuals needed to do its job is not a question that generally allows a simple answer, and that is certainly the case with respect to the VA health-care system.

Reasonable people may argue the merits of one approach or another without any solution until the approach is tried. I believe that the scheme of benefits and other changes included in the compromise agreement will go a long way toward improving the current situation in the VA, and I hope that the President and his advisors will recognize this and approve the measure so that the reform can be put in place.

Clearly, if some part or another of the proposed changes does not work or proves counterproductive, I will not hesitate to take appropriate action to remedy the problem. However, until new efforts are tried, we have no way of judging their impact.

Mr. President, another reason why I believe the President will sign this bill is because I believe he will recognize that the committees have made a bona fide effort to meet the problems and objections that have been raised by the Office of Management and Budget, the Office of Personnel Management, and the VA. The committees requested and received most helpful technical assistance from each of the three entities, and that the final compromise agreement is much the better for having had the assistance. I recognize that there are some provisions in the agreement that some in the administration would prefer we not have included; however, on balance, I believe that the compromise agreement recognizes many points of view and attempts to reconcile those viewpoints fairly.

I very much expect, therefore, that the Administrator of Veterans' Affairs and the Chief Medical Director will recognize the value and reasonableness of the approach in the compromise agreement and will strongly urge that the President sign the bill and that the President will agree and sign it.

CONCLUSION

Mr. President, as I noted earlier, I believe this compromise agreement represents a fair resolution of the differences between the two Houses and vindicates the Senate's position on the most significant points. Thus, I strongly commend this compromise to the Senate today.

In closing, I want to thank the chairman of the House Committee on Veterans' Affairs (Mr. ROBERTS), my very good friend and someone I have greatly enjoyed working with over the years—and also to congratulate him for his excellent work on the scholarship program included in title II of the agreement—as well as the chairman of the Subcommittee on Medical Facilities and Benefits (Mr. SATTERFIELD) and the ranking minority member on the full committee and the subcommittee (Mr. HAMMERSCHMIDT) for their cooperation in fashioning this compromise agreement.

I am also very grateful to my distinguished colleague, the ranking minority member of our committee, the Senator from Wyoming (Mr. SIMPSON), as well as the other members of the committee for their fine work on this measure. I especially want to thank my good friend, the Senator from South Carolina (Mr. THURMOND), for his fine work on the geriatric research and care provisions in title III of the compromise agreement.

In addition, I would like to recognize certain of the members of the House committee staff whose expertise and hard work helped make the development of this compromise possible—Mack Fleming, Jack McDonell, Ralph Casteel, Bruce Herbert, Jim Webb, and John Holden—as well as the members of our committee's staff who participated in this effort, Bill Brew, Ed Scott, Jon Steinberg, Cheryl Beversdorf, Harold Carter, Molly Milligan, and Janice Orr on the majority staff who were ably assisted by Terri Morgan, Becky Walker, Ingrid Post, Karen Anne Smith, Ann Garman, Julia Butler, Jim MacRae, and Walter Klingner, and, on the minority staff, Garner Shriver and John Pressly.

I am also very grateful for the fine work of our legislative counsels—Bob Cover in the House and Hugh Evans in the Senate—and to the VA for its technical assistance, particularly to Chuck Kelley, Don Schimmel, Bob Coy, Audley Hendricks, and others for their invaluable insights into VA personnel and other matters.

Mr. President, I urge my colleagues to support the pending amendment:

EXPLANATORY STATEMENT OF COMPROMISE AGREEMENT ON H.R. 7102/S. 2534

TITLE I. HEALTH-CARE PERSONNEL AMENDMENTS

Permanent authority for Veterans' Administration physicians and dentists comparability pay

Both the House bill and the Senate amendment would make permanent the Veterans' Administration's program for special pay for eligible physicians and dentists in the VA's Department of Medicine and Surgery (DM&S) by amending Public Law 94–123, the law that established this special-pay program, to repeal the provision (section 2) that placed a September 30, 1981, termination date on the VA's authority to enter into special-pay agreements.

Revision of special-pay program for physicians and dentists

Both the House bill and the Senate amendment would amend section 4118 of title 38, United States Code, to provide for the comprehensive revision and restructuring of the VA's special-pay program.

The House bill would provide for a comprehensive new program, effective with respect to pay periods beginning after October 1, 1980. Under the House bill, the general maximum caps for special pay would be $22,000 for physicians and $11,000 for dentists, primary special pay would be $6,900 for full-time physicians and $3,450 for full-time dentists, and the incentive special pay general maximum caps would be $15,000 for full-time physicians and $7,550 for full-time dentists. The House bill would provide primary special pay for part-time physicians and dentists based on a proportioned amount of the $6,900 and $3,450 for physicians and dentists, respectively, to be calculated on the basis of the proportion which individual physician's or dentist's employment is of full-time employment. The incentive special-pay categories in the House bill are set out in a comparative chart below.

The House bill would allow the caps on maximum special pay and incentive special pay to be breached by the amounts paid for board certification and for service in a remote geographic area having a scarcity of qualified physicians or dentists, thus allowing for a possible maximum special pay of $27,900 for physicians and $16,400 for dentists.

The Senate amendment would provide for two sets of revisions to the special-pay program—one making a few changes, effective with respect to pay periods beginning after October 1, 1980. This first set of changes includes provisions to authorize incentive special pay for two new categories and to delete the current requirement that the annual rate of special pay of a physician and dentist be reduced by an amount equal to the amount equal to the amount of the October 1975 cost-of-living pay raise for the grade and step in which the physician or dentist is serving.

The second, comprehensive set of changes would provide general maximum special-pay caps of $23,500 for physicians and $10,000 for dentists, primary special pay of $7,000 for physicians and $2,500 for dentists, and the general maximum caps for incentive special pay of $16,500 for physicians and $7,500 for dentists. With respect to part-time physicians and dentists, the Senate amendment would provide that special pay is to be computed as a proportion—equal to the proportion that a part-time physician's or dentist's part-time employment is of full-time—of 75 percent of special-pay rates for a full-time physician or dentist, as the case may be. The Senate amendment would generally leave existing law intact for dentists except for removing the effect of the 1975 pay raise adjustments, thereby providing all present VA dentists with some special-pay increase and substantially increasing incentive pay for dentists needed for scarce dental specialties or in specific hard-to-recruit-for geographic locations.

The incentive special-pay categories in the Senate amendment are also set out in the comparative chart.

The Senate amendment would allow the caps on maximum special pay and incentive special pay to be breached by the amounts paid for service in a geographic area where there are extraordinary recruitment and retention difficulties with respect to specific categories of physicians and dentists, thus allowing for a possible maximum special pay of $28,500 for physicians and $12,500 for dentists.

The compromise agreement provides for a single, comprehensive set of changes in the special-pay program, effective with respect to pay periods beginning after January 1, 1981. Under the compromise agreement, the general maximum caps for special pay are $22,500 for physicians and $10,000 for dentists and for incentive pay, $15,500 for physicians and $7,500 for dentists; and primary special pay is $7,000 for physicians and $2,500 for dentists. The compromise agreement would remove the effect of the 1975 pay raise adjustment from the computation of special pay, thereby increasing all eligible physicians and dentists special pay by the amount of such raise. With respect to part-time physicians and dentists, the compromise agreement also generally incorporates the special pay amounts from the Senate amendment but provides for eligible part-time physicians and dentists to take a straight proportional share of such amounts, such share based on the ratio their service is of full-time employment. The incentive special-pay categories for the House bill, the Senate amendment, and the compromise agreement are as follows:

HOUSE BILL

	Physicians		Dentists	
	Full time	Part time (percent of service)	Full time	Part time (percent of service)
Full-time status	$6,000	$2,000	$3,000	$1,000
Tenure:				
Completion of probation period or 3 yr (whichever is less)	1,350	1,000	675	500
More than 7 yr	2,700	2,000	1,350	1,000
Scarce medical specialty	3,400	2,000	3,400	1,000
For service:				
As a service chief, not in a scarce specialty (or comparable)	11,800	5,500	5,900	2,750
As a service chief in a scarce specialty (or comparable)	13,800	7,000	6,900	3,500
As a chief of staff or in an executive grade	13,800	7,000	6,900	3,500
As deputy service director	14,200	----------	7,100	----------
In a director grade	14,500	----------	7,250	----------
As a service director	14,500	----------	7,250	----------
As a deputy assistant chief medical director	15,200	----------	7,600	----------
As an associate deputy chief medical director or assistant chief medical director	15,800	----------	7,900	----------
Board certification:				
General	2,000	1,000	2,000	1,000
Specialty	2,500	1,250	2,500	1,250
Remote locations	3,400	2,000	3,400	2,000

SENATE AMENDMENT

Full-time status	$6,000	NA	$1,000	NA
Tenure:				
3 to 5 yr	1,000	$750	----------	----------
3 to 7 yr	----------	----------	500	$375
5 to 8 yr	2,000	1,500	----------	----------
7 or more years	----------	----------	1,000	750
8 or more years	3,000	2,250	----------	----------
Scarce specialty	4,000–16,500	3,000–12,375	2,000–7,500	1,500–5,625
For service:				
As a service chief or associate chief of staff (or comparable)	9,625	7,219	2,750	2,063
As a chief of staff or in an executive grade	12,250	9,188	3,500	2,625
As a deputy service director or in a director grade	12,700	9,525	3,625	2,719
As a service director	13,125	9,844	3,750	2,813
As a deputy assistant chief medical director	14,000	10,500	4,000	3,000
As an assistant chief medical director or an associate deputy chief medical director	14,875	11,156	4,250	3,188
Board certification:				
First or specialty	2,000	1,500	----------	----------
Subspecialty	2,500	1,875	----------	----------
Specific geographic locations (including VA central office for physicians)	3,500–5,000	2,625–3,750	1,750–2,500	1,313–1,875

COMPROMISE AGREEMENT

Full-time	$6,000	NA	$1,000	NA
Tenure:				
2 to 5 yr	1,000	$750	----------	----------
2 to 7 yr	----------	----------	500	$500
5 to 8 yr	2,000	1,500	----------	----------
7 or more years	----------	----------	1,000	1,000
8 or more years	3,000	2,250	----------	----------
Scarce specialty	4,000–15,500	3,000–12,375	2,000–7,500	1,500–5,625
For service:				
As a service chief (or comparable)	9,900	7,230	2,750	2,750
As a chief of staff or in an executive grade	12,600	9,190	3,500	3,500
As a deputy service director or in a director grade	13,000	----------	3,625	----------
As a service director	13,500	----------	3,750	----------
As a deputy assistant chief medical director	14,400	----------	4,000	----------
As an associate deputy chief medical director or assistant chief medical director	15,300	----------	4,250	----------
Board certification:				
Specialty	2,000	1,500	----------	----------
Subspecialty	2,500	1,875	----------	----------
Specific geographic area (including VA central office for physicians)	2,000–5,000	1,500–4,000	1,750–2,500	1,313–1,875

The compromise agreement allows the caps on special pay and incentive special pay to be breached only by amounts paid for service in geographic areas where there are extraordinary recruitment and retention difficulties in the recruitment and retention with respect to the category of physicians and dentists involved, including, for physicians, service in VA central office.

Crediting of special pay for retirement purposes

Both the House bill and the Senate amendment provide for the crediting of a full-time DM&S physician's or dentist's special pay for civil service retirement purposes. The House bill provides for such crediting in all cases of a physician or dentist who has been employed in DM&S on a full-time basis for at least 15 years. The Senate amendment provides for such crediting as one of two options that the physician or dentist may elect. Under the Senate amendment, one electing the civil service retirement-credit option would be credited on a phased-in basis under which individuals would receive credit for special pay (from which deductions would be made and paid into the civil service retirement fund) in the computation of average pay for retirement, as follows:

For those retiring after September 30, 1981, 20 percent; after September 30, 1983, 40 percent of special pay received after September 30, 1981; after September 30, 1985, 60 percent of special pay after September 30, 1981; after September 30, 1987, 80 percent of special pay received after September 30, 1981; and after September 30, 1989, 100 percent of special pay received after September 30, 1981.

The second option in the Senate amendment would allow a full-time DM&S physician or dentist to use amounts received as special pay for contributions to an individual retirement account (IRA).

The compromise agreement does not include the Senate's IRA provision and provides prospectively for treating special pay paid to full-time DM&S physicians and dentists as basic (annual) pay for civil service retirement in the cases of all physicians and dentists with at least 15 years of full-time service in DM&S. The retirement provisions also include provisions to cover a situation where an individual dies or is disabled prior to completing 15 years of full-time service and also include a provision allowing a one-time waiver by physicians and dentists employed in DM&S on the effective date of the new authority from coverage under the retirement provisions.

The crediting of special pay will occur on a 2-step, phased-in basis: 50 percent of special pay may be used to compute an annuity after October 1, 1985, and 100 percent of such pay may be used after October 1, 1990. Thus, no retirement pay will be paid out to any retiree under this provision before October 1, 1985.

The Senate amendment, but not the House bill, would allow amount of special pay to be used in computation of the amount of Federal life insurance an individual is eligible to purchase.

The compromise agreement contains the Senate provision.

Reports on the adequacy of special pay for Physicians and Dentists

The Senate amendment (section 110), but not the House bill, would establish in the Office of the Administrator of Veterans' Affairs a five-person "Veterans' Administration Physicians' and Dentists' Pay Board" which would analyze the income of non-VA physicians and dentists and make biennial recommendations for changes in rates of special pay for Veterans' Administration physicians and dentists, when appropriate, to the President for inclusion in the Presidential budget submitted to the Congress; and provide for the operation of such Board. Such recommendations submitted by the President would become effective unless the Congress enacted legislation establishing other rates or either House of Congress approved a resolution disapproving the recommendations.

The compromise agreement would delete the provisions for the establishment and operation of such a board but would require the Administrator to perform the biennial analyses of the income of non-VA physicians and dentists and to make biennial recommendations to the President for changes in rates of special pay for VA physicians and dentists. The compromise agreement would also require that the President make recommendations, in the budget next transmitted to the Congress following the submission of the Administrator's recommendations, as to the rates of special pay for physicians and dentists in DM&S, but deletes the provisions making any such recommendations effective in the absence of Congressional action. In addition, the compromise agreement would require the Administrator to submit to the Committees on Veterans' Affairs annual reports on the implementation and administration of activities under the special pay provisions (including any required actions, findings, and recommendations of the Chief Medical Director and the Administrator) and would repeal section 3 of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975, under which the Administrator is required to submit annual reports on the special-pay program.

Exemption of VA health-care professionals and medical facility directors from the Senior Executive Service and conversion of such directors to title 38 personnel system

Both the House bill (section 102) and the

Senate amendment (section 102) would exempt health-care professionals in the VA's title 38 personnel system from the provisions of section 413 of the Civil Service Reform Act of 1978 and title 5, United States Code, relating to the Senior Executive Service (SES).

The compromise agreement contains this provision.

Further, the House bill (section 102), but not the Senate amendment, would convert VA non-physician hospital directors into the VA's title 38 medical personnel system from the title 5 system and exempt them from the same title 5 provisions relating to the SES.

The Senate recedes with an amendment to provide that, for the purposes of section 4507 of title 5, relating to the awarding of ranks under the Senior Executive Service, such non-physician directors shall be considered to be career appointees so as to be eligible, upon recommendation of the Administrator and the Director of the Office of Personnel Management, to receive an award of Meritorious Executive (lump-sum bonus payment of up to $10,000) or Distinguished Executive (lump-sum bonus payment of up to $20,000) under such section (which provides that a recipient of either such award may not receive that rank again during the four following fiscal years). The Committees believe that shifting these key personnel into the title 38 personnel system will provide the Administrator with greater control over the selection and management of such personnel but believe that it is important that these personnel, who are currently eligible for inclusion in the Senior Executive Service, and thus, have the potential to receive a bonus award under section 4507, should not suffer potential financial harm from the personnel system shift.

Nursing service provisions

The Senate amendment (section 103), but not the House bill, would have authorized the Administrator to appoint the Director of Nursing Service as an Assistant Chief Medical Director or Deputy Assistant Chief Medical Director. In the Senate's report accompanying its legislation, this provision was described as important in order to "give the Nursing Service head a greater and needed role in policy matters within DM&S, including general policy matters as well as those affecting nurses most directly. . . ."

Both Committees are in agreement that it is vital that provision be made for extensive Nursing Service participation in planning, policy development, and decision-making activities throughout the VA health-care system, not only at Central Office but in individual VA health-care facilities. Some of the most important issues which face the VA health system today—including, among many others, the severe, nationwide nursing shortage, increased demands for both long-term and acute care for chronic illness from an increasingly aging veteran population, and the impact of restricted resources with which to operate the VA health-care programs—are matters of great concern to VA nursing personnel including, of course, the Director of Nursing Service, and involve issues on which nursing personnel leadership has particular contributions to make.

The compromise agreement does not, however, contain the section 103 provision from the Senate bill because the Committees are concerned that legislation which would authorize raising the Director of Nursing Service to an Assistant Chief Medical Director, without otherwise modifying the statutory limitations on positions at that management level could have an untoward impact on the top management structure in the Central Office of the Department of Medicine and Surgery (DM&S) and there is insufficient information on which to base a change in those statutory limitations at this time.

As to a Deputy Assistant Chief Medical Director level, the Committees note that raising the Director of Nursing Service to that level can be accomplished by the Administrator under existing law. The Committees believe that this would be an appropriate action for the Administration to take and, therefore, recommend to the Administrator and Chief Medical Director that this change be made administratively, accompanied by appropriate issuances to assure greater involvement by the Director of the Nursing Service and facility Chief Nurses in the planning, policy, and decision-making activities of DM&S.

Also on the general issue of the VA's nursing service, the Committees note their belief that the pilot program and study on nurse recruitment and retention mandated by section 118 of the compromise bill should yield valuable information on the current problems confronting the agency as it attempts to attract and retain quality nursing personnel. In that regard, the Committees urge that the Director of Nursing Service at Central Office and the Chief Nurse at each facility where the pilot program and study is carried out be involved to a very significant degree in the planning, design, conduct—and in the evaluation of the results—of the pilot program and study, and in the preparation of the subsequent report and recommendations. The Committees believe that such participation by nursing personnel should help assure that the pilot program and study is as realistic, effective, and comprehensive as possible.

Rates of pay for travel and overtime for nurses

The Senate amendment (section 104(4)), but not the House amendment, would amend certain title 38 provisions relating to premium pay for nurses and other specified personnel for work outside of the regular work day or week (such as for overtime or Sunday duty) to conform such provisions in the areas of overtime pay while on travel and work on a Federal holiday that falls on a regular workday to similar provisions in title 5 applicable to General Schedule employees.

The compromise agreement contains the Senate provision.

The Senate amendment (sec. 104(4)), but not the House bill, would also provide authority for the Administrator to modify these rates of premium pay as necessary to meet competition with respect to such pay from non-Federal hospitals in the same labor market.

The compromise agreement contains the Senate provision.

The Committees note that sections 104, 110, and 111 of the Senate amendment contained provisions requiring "such consultation" with exclusive representatives of employees "as is required under any applicable collective bargaining agreements" as part of various amendments made by those sections relating to personnel issues. Those provisions for such consultation are not included in the relevant sections of the compromise agreement.

It was the Senate's intention, as expressed in the Senate Committee report, in including the consultation provisions to assure that nothing in the bill could be construed as negating recognized collective bargaining rights, including consultation rights. Those provisions are not included in the compromise bill in recognition of the Committees' agreement that such a specific reference to such rights is unnecessary and could engender confusion. In deleting those provisions, the Committees wish to make clear that they do not intend that any of the changes made by the legislation to the VA's health-care personnel authorities detract in any way from employee rights under existing collective bargaining agreements between the VA and its employees.

The compromise agreement would also provide specific authority for the Administrator to utilize the new authority to increase the rates of pay for nurse anesthetists without regard to the limitation regarding the amount of the pay rate increase, although the ceiling (the rate for an Assistant Chief Medical Director) would still apply. The intent is to provide the Administrator with maximum flexibility for increasing the pay and/or grade of a nurse serving in this capacity. The rate of pay is to be based on the professional qualifications and special training of the nurse anesthetists rather than the supervisory or administrative responsibilities of the individual.

Administrative adjustments in rates of basic pay

The Senate amendment (section 104(5)) would provide authority for the Administrator to modify minimum, intermediate, and maximum rates of basic pay on a local, regional, or nationwide basis for one or more health personnel fields—or grades within such fields—for title 38 personnel, and for title 5 health-care personnel working in the VA and providing either direct patient-care services or services incident to such services, as necessary to meet rates paid by non-Federal hospitals in order to maintain adquate staffing or to recruit personnel with specialized skills.

The House bill (section 104) would provide authority to set rates of pay for title 38 physicians, dentists, and nurses without reference to the provisions of section 5301 of title 5 which require a comparability, based on job responsibilities, among Federal rates of pay; this provision is designed to authorize selected VA rates of pay to be modified without regard to title 5 restrictions.

The House recedes with an amendment that subjects the Administrator's exercise of the authority to modify rates of pay for title 5 personnel to a possible disapproval of such action by the President (or his designee) within 90 days of the Administrator's notification of intention to exercise such authority. In the event that the President (or his designee) disapproved such a proposed action, the President (or his designee) would be required to submit to the appropriate Congressional Committees a notification of such action accompanied by a full explanation of the reasons for such disapproval.

The veto authority would not apply to the Administrator's authority to modify rates of pay for title 38 personnel.

Chiefs of staff required to be full-time

The Senate amendment (section 106), but not the House bill, would require VA chiefs of staff, associate chiefs of staff, and service chiefs to be full-time employees. As to chiefs of staff, those serving in such capacity on a less than full-time basis on the effective date of the provision would be allowed to continue to so serve but would not be eligible to receive any increases in special pay. Associate chiefs of staff and service chiefs would likewise be grandfathered and, in addition, the Chief Medical Director would have wide discretion to exempt either individuals or categories of such personnel from the full-time requirement if it is found to be in the best interests of the Federal Government to do so.

The House recedes with respect to chiefs of staff, with an amendment removing the bar to receipt of increases in special pay for those chiefs of staff covered by the grandfathering provision. The Senate recedes with respect to the full-time requirement as to associate chiefs of staff and service chiefs.

Retirement credit for part-time employees

The Senate amendment (section 108) would modify the way in which part-time title 38 employees in DM&S accrue credit for civil service retirement purposes so as to provide that such employees accrue such credit on a pro-rata basis rather than receiving a full month's credit for each month worked on a part-time basis, no matter how small the fraction of part-time service. The House bill contained no comparable provision.

The House recedes with perfecting amendments to assure that this amendment's effect is limited to the way in which part-time service is counted in the process of computing an annuity and that there are no other ramifications on a part-time employee's eligibility for an annuity. In addition, the effective date of this change is delayed until October 1, 1981.

Veterans' Administration representatives on dean's committees

The Senate amendment (section 108), but not the House bill, specified that the representatives of the Veterans' Administration on dean's committees at affiliated medical schools should include representatives from the full-time staff at the VA facility.

The House recedes.

Both the House bill (section 302) and the Senate amendments (section 108(1)(B)) contained provisions generally aimed at reenunciating some basic principles set forth in the Department of Medicine and Surgery's Policy Memorandum No. 2 of January 30, 1946, regarding the balance of responsibilities between VA health-care facilities and affiliated medical schools. These provisions were designed to address what the Committees believe is a problem present at some VA facilities that are affiliated with medical schools where the medical schools—through the deans' committees, bodies established pursuant to section 4112 of title 38 to carry out advisory functions in conjunction with the affiliation relationship—become dominant partners in the affiliation relationship and begin to dictate policy at the VA facility, including matters with respect to which VA authority and responsibility for decision-making should be final, such as policies regarding admissions to and the mission of the VA facility and decisions regarding VA employment.

The Committees believe very strongly that such situations are improper and should be remedied.

Although the Committees continue to support the basic provisions set forth in each bill regarding this issue, the compromise agreement does not contain the provisions on this issue from either bill in recognition of the fact that the Committees believe, after much deliberation, that this problem is not prevalent in most such affiliations and that, where it does exist, it is a VA management problem that should be corrected through forthright administrative action rather than a problem that can be addressed effectively through legislation.

The Committees are aware that the incumbent Chief Medical Director of the Veterans' Administration, Dr. Donald Custis, shares this point of view and is working actively to achieve appropriate balances at VA health-care facilities and affiliated medical schools. The Committees intend to follow closely the Chief Medical Director's progress in this area and will provide him with any appropriate assistance to assure that relationships in all affiliations are in appropriate balance.

Relationship between title 38 medical personnel system provisions and other provisions of law

The House bill (section 102), but not the Senate amendment, would specify that part-time appointments in DM&S under section 4114 are made without reference to chapter 34 of title 5, which relates to general civil service part-time employment matters.

The Senate recedes with an amendment to clarify that the general relationship between title 38 medical personnel system provisions in subchapter 1 of chapter 73 of title 38 and provisions in title 5 or elsewhere pertaining to the civil service personnel system is such that no provisions from title 5 or elsewhere (whether heretofore or hereafter enacted) shall be considered to supercede, override, or otherwise modify title 38 provisions unless such other provision does so expressly by specific references to the title 38 provision.

Study of personnel needs of Veterans' Administration health-care system

The Senate amendment (section 105), but not the House bill, would mandate an eighteen-month study of the need for and impact of converting, from title 5 personnel system to the VA's title 38 personnel system, categories of title 5 personnel employed in DM&S who provide direct patient-care services or services incident to such services.

The House recedes with an amendment to expand the study to include an analysis of the desirability and impact of, if some categories of such personnel are not so converted, paying such personnel who are not converted premium pay for work outside of the regular work day or week (e.g., overtime work or work on a holiday) under the title 38 premium pay provisions in the paragraph (10) proposed to be added (but deleted in the compromise agreement) to present section 4107(e) by section 104(4) of the Senate amendment, rather than under certain title 5 provisions.

Study and pilot program on nurse recruitment and retention

The Senate amendment (section 111), but not the House bill, would mandate a twenty-four to thirty-six month pilot program and study (in at least six geographic areas) to evaluate the impact on the VA's recruitment and retention of sufficient qualified nursing personnel of various administrative actions, including, but not limited to, combinations of modifications of existing work schedules, establishment of on-site child-care centers at VA health-care facilities, provision of free or subsidized parking for nursing personnel, and enhanced programs of career development for nursing personnel (including support for outside education opportunities). The Senate amendment (section 106(2)), but not the House bill, would also provide the Administrator with authority to provide training support, including support as described in chapter 41 of title 5 and under conditions as set forth in such chapter, to registered nurses employed in the VA for training to acquire a baccalaureate degree.

On the study provision, the House recedes with an amendment deleting the specification of any particular administrative actions. The Senate recedes on the training support issue. The deletion of the specification of particular administrative actions is intended to provide greater flexibility to the VA in the selection of recruitment and retention measures.

In deleting this training support authority, the Committees note that a VA registered nurse desiring to return to school to acquire a baccalaureate degree could receive assistance under the new VA Scholarship Program included in title II of the compromise agreement and urge the Administrator, Chief Medical Director, and Director of the Nursing Service, to assure that, once the Scholarship Program is implemented, all VA registered nurses without a baccalaureate degree are made aware of the opportunity to use the Scholarship Program in such a manner and are provided appropriate opportunities to receive assistance under the Scholarship Program.

Moreover, in receding on the training support provision, the Committees are not conceding the correctness of the present interpretation of section 4101 of title 5 that excludes from that Government-supported Federal employee training provision baccalaureate training for an AA-degree or three-year hospital-trained registered nurses.

TITLE 38 PREMIUM PAY FOR CERTAIN TITLE 5 PERSONNEL

The Senate amendment (section 104(4)), but not the House bill, would authorize the Administrator to pay premium pay for work outside of the regular work day or week to title 5 personnel working in DM&S and determined by the Administrator to be providing direct patient-care services or services incident to such direct-care services so as to assure greater uniformity between title 38 and title 5 employees working in the same work area.

The compromise agreement does not contain this provision. However, the provision mandating a study of the personnel needs of the VA health-care system was amended for inclusion in the compromise agreement to include a requirement that the desirability and impact of pay such premium pay under title 38 to such title 5 be included in such study.

TITLE II. VETERANS' ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

The House bill (title II), but not the Senate amendment, would authorize a scholarship program under which the VA would provide scholarships to students enrolled in health-care professional training in the disciplines under the title 38 personnel system in exchange for the student's obligation, following completion of training (and, in certain cases, after obtaining a license to practice), to serve as a full-time employee in DM&S for a specified period of time. Under the Scholarship Program, the period of obligated service would equal one calendar year for each school year for which a scholarship was provided, or two calendar years, whichever is greater, and would be extended at specified rates where the participant's entry into obligated service is deferred (as the House bill would allow in certain cases) to permit the participant to undertake an internship or residency or other advanced clinical training. Participants failing to complete their training, to obtain a license or registration, as appropriate in the field for which trained, or to complete their period of obligated service would be subject to specified monetary penalties.

The Senate recedes with an amendment designed to focus the program most directly on physicians and nurses, to provide the Administrator with flexibility to modify certain conditions of the program—such as the requirement of additional obligated service for deferrals for residencies and the payment of primary special pay during obligated service—and to authorize only voluntary transfers between VA and other Federal scholarship recipients with obligated service.

TITLE III. GERIATRIC RESEARCH AND CARE

Both H.R. 4015 as passed by the House of Representatives on June 5, 1979 (hereinafter referred to as the "House bill") and the Senate amendment (title II) to H.R. 7102 would establish a statutory program for geriatric centers at VA health-care facilities. (Presently, the VA operates, under a program established administratively, geriatric research, clinical, and education centers (GRECC's) at 8 VA medical centers.) The House bill would require 15 VA hospitals to be designated as the locations for centers of geriatric research, education, and clinical activities (hereinafter referred to as "geriatric centers" or "centers") and permit 5 additional VA hospitals to be so designated if suitable hospitals and sufficient funds are available; the Senate amendment would re-

quire "up to" 15 VA health-care facilities to be so designated, would require that designation be made upon the recommendation of the VA's Chief Medical Director (CMD), and would also require that, subject to appropriation of sufficient funds, the geriatric centers be established and operated at the designated facilities.

The House recedes.

With respect to the selection of facilities for designation as geriatric-center sites, the House bill would require the Administrator to take into consideration the hospitals that are, on the date of enactment, operating a GRECC—and to designate, to the extent possible, each such hospital—to take into consideration the need for geographic dispersion of the centers. The Senate amendment would specifically require the Administrator, upon the CMD's recommendation, to designate each facility operating a GRECC on the date of enactment unless the Administrator determines, on the CMD's recommendation, that such facility does not meet certain requirements, described below, for the designation of any facility, or has not demonstrated effectiveness in carrying out—or the potential to carry out in the foreseeable future—its established purposes or the purposes of the title II provisions of the Senate amendment, and to assure appropriate geographic distribution of such facilities.

Also with respect to designating geriatric center locations, the House bill would require the Administrator to take into consideration the desirability of designating hospitals which are affiliated with an accredited medical school which has (or may reasonably be anticipated to develop) a department, division, or organized program of geriatrics. The Senate amendment would require that, for a facility to be designated, it must (1) be affiliated with an accredited medical school which provides education and training in geriatrics and have an arrangement for residents to receive education and training in geriatrics through regular rotation through the facility's center and nursing home, extended care, or domiciliary units, (2) have an arrangement for nursing or allied health personnel to receive geriatric training and education through the facility's nursing home, extended-care, or domiciliary unit, (3) have the demonstrated ability to attract scientists capable of ingenuity and creativity in health-care research efforts, (4) have an advisory committee on policy matters pertaining to activities of the center, and (5) have the demonstrated capability to conduct effective evaluations of the center's activities. Except for criteria (3) and (5), these criteria may be considered to be satisfied if the Administrator, upon the CMD's recommendation, determines that it is reasonable to expect them to be satisfied.

The House recedes with an amendment providing that criteria (3) and (5) would also be met if the Administrator, upon the CMD's recommendation, determines that it is reasonable to expect them to be satisfied.

The Senate amendment, but not the House bill, would require that, prior to providing funds for a new center, the Administrator assure that the geriatric center at each designated facility that is operating a GRECC on the date of enactment is receiving adequate funding to enable it to function effectively in the areas of research, educational, and clinical activities.

The House recedes.

The House bill would provide for the establishment of a Geriatrics and Extended Care Task Force within the VA's Special Medical Advisory Group (SMAG); the Senate amendment, for a Geriatrics and Gerontology Advisory Committee in the Department of Medicine and Surgery.

In addition, the Senate amendment, but not the House bill, would require the Administrator, upon the CMD's recommendation, to appoint the Committee membership—which would include non-Federal Government employees who have demonstrated interest in aging research, education, and clinical activities, and at least one national veterans' service organization representative—to invite appropriate Federal department and agency representatives to participate in Committee activities, and to provide the Committee with necessary staff and support. The House bill would require the "task force" to act in an advisory capacity to the Assistant Chief Medical Director responsible for geriatrics and extended care; the Senate amendment would require the "Committee" to advise the CMD on all matters pertaining to geriatrics and gerontology.

Both the House bill and the Senate amendment would require the advisory body to perform additional functions as directed by the Administrator or Chief Medical Director. Both the House "task force" and the Senate "Committee" would be required generally to assess the VA's capability to provide high quality geriatric and clinical health services to eligible veterans; and the Senate amendment, but not the House bill, would also require the "Committee" to make an assessment of VA extended health-care services.

The House bill would require the "task force" to assess the VA's capability to provide the services so described in the House bill on a sustained, continuing, and growing basis; the Senate amendment would require the "Committee" assessment to take into consideration the likely demands for such services from eligible older veterans. Both the House "task force" and Senate "Committee" would be required to assess the current and projected health-care needs of older veterans, and the Senate amendment, but not the House bill, would also require assessment of VA activities and plans to meet those needs.

The Senate amendment, but not the House bill, would specifically require that assessments of the ability of each center to achieve its established purposes, as well as the purposes of the title II provisions of the Senate amendment, be based on site visits.

Both the House "task force" (not later than 18 months after the effective date of the legislation) and the Senate "Committee" (not later than 30 months after the effective date of the legislation) would be required to submit a report to the Administrator (and the SMAG in the House bill; through the CMD in the Senate amendment). Both reports would be required to include assessments of the quality of the operations of the centers, the extent to which the VA, through the centers, is meeting the needs of older veterans and any deficiencies in the operations of the centers. In addition, the Senate amendment, but not the House bill, would require that the report include recommendations for other geriatric, extended-care, and other health-care services needed to meet the needs of older veterans.

The Senate amendment, but not the House bill, also authorizes the submission of further reports. Both the House bill and the Senate amendment would require the Administrator to transmit the report (the "Committee's" first report in the Senate amendment) within ninety days after it is received, together with comments and recommendations, to Congressional committees.

With respect to the provisions relating to the "committee" and the "task force", the House recedes with an amendment requiring the "Committee" to submit its first report not later than April 1, 1983.

The House bill would authorize for the purpose of operating the geriatric centers appropriations of $15,000,000 for fiscal year 1980, $20,000,000 for fiscal year 1981, and $25,000,000 each for fiscal years 1982 and 1983. The Senate amendment would authorize appropriations only for basic support of the research and education activities of the centers in the amounts of $10,000,000 for fiscal year 1981, $12,500,000 for fiscal year 1982, and $15,000,000 each for fiscal years 1983 and 1984. The House bill, but not the Senate amendment, provides that the geriatric centers shall operate until September 30, 1983. The Senate amendment, but not the House bill, would provide for the CMD to allocate to the centers such funds from the VA's medical care account and medical and prosthetics research account as the CMD determines appropriate and, with respect to fiscal year 1984, as the CMD determines appropriate based on the first "Committee" report. The Senate amendment, but not the House bill, would specify that clinical and scientific investigation activities at each geriatric center may compete for funds awarded from the VA's medical and prosthetics research account and are to receive priority in the award of funding from this account insofar as such funds are used for geriatrics and gerontology research.

The House recedes with an amendment to authorize appropriations of $10,000,000 for fiscal year 1981 and $25,000,000 for each of the following three fiscal years.

Both the House bill and the Senate amendment would require that one Assistant Chief Medical Director (ACMD) be responsible for certain geriatric research, education, and clinical health-care matters. Included within such an ACMD's jurisdiction, the House bill would specify "service operations" and the Senate amendment "policy and evaluation". The House bill would require the ACMD to be a qualified doctor of geriatrics and gerontology and the Senate amendment, a qualified physician trained, or having suitable, extensive experience, in geriatrics. The Senate amendment would also specify that the ACMD would report directly to the CMD.

The compromise agreement would provide for one ACMD who shall be a qualified physician trained in, or having suitable, extensive experience in, geriatrics who shall be responsible to the CMD for evaluating all research, educational, and clinical health-care programs carried out in the Department of Medicine and Surgery in the field of geriatrics and who shall serve as the principal advisor to the CMD with respect to the operation of such programs.

The effective date for the geriatrics provisions in the House bill would be October 1, 1979; in the Senate amendment, October 1, 1980.

The House recedes.

TITLE IV—MISCELLANEOUS AMENDMENTS

Standards for presumption of inability to defray medical expenses

The House bill (section 301), but not the Senate amendment, would amend section 622 of title 38 to limit the presumptive validity of an individual's oath of inability to defray the cost of VA medical care to those individuals eligible to receive medical assistance pursuant to title XIX of the Social Security Act, service-connected disabled veterans, or those in receipt of a VA pension. The Senate amendment (in Title III), but not the House bill, on a related matter, would clarify the VA's authority to obtain reimbursement for the cost of treatment provided to veterans for non-service-connected disabilities, in appropriate instances, from workers compensation carriers, from auto no-fault insurers, and, in conjunction with State crime victims' reparation schemes and further, would mandate a comprehensive study of the impact of authorizing the VA to obtain reimbursement from third-party health insurance carriers for health care provided to veterans for non-service-connected disabilities.

The Senate recedes. The Committees continue to believe strongly that the cost-sav-

ings that the Administration and some in the Congress believe would result from the enactment of legislation authorizing the recovery of the costs of non-service-connected care from insurance carriers have been based on incorrect assumptions regarding the extent to which veterans seeking care in the VA for non-service-connected disabilities have applicable, in-force health insurance coverage from which recovery could be obtained. The Committees also believe that any attempt to provide such authority to the VA to collect from such insurers for such services and to reduce the VA's appropriations in conjunction with such authority would significantly disrupt VA health-care efforts and would ultimately prove futile or largely futile. Thus, the Committees have determined that the provision in the compromise agreement which would generally allow the VA to determine if a veteran has valid health insurance that would basically cover the cost of care and, if so, to direct such veteran to a non-VA facility, is the more appropriate response to concerns about individual veterans receiving care from the VA where the cost should be borne by a health-insurance carrier.

Revolving supply fund

The compromise agreement would amend the statutory provisions relating to the VA's revolving supply fund to allow VA revolving supply fund reimbursements to be based on the cost of recent significant purchases of the items involved and provide for return to the Treasury at the end of each fiscal year of only such amounts as the Administrator determines to be in excess of supply fund needs. (This provision is identical to the provision in section 506 of S. 2649, the proposed "Veterans' Disability Compensation and Housing Benefits Amendments of 1980", as reported by the Senate Committee on Veterans' Affairs on July 30, 1980.)

Management of real property

The House bill (section 303), but not the Senate amendment, would modify the VA's real property management authority to remove the authority for the VA to enter into long-term leases (beyond 3 years) with affiliated medical schools and to require that, 30 days prior to transferring real property valued at more than $50,000 to another federal agency or a State or reporting such property as excess, the VA notify the Committees on Veterans' Affairs in each House.

The Senate recedes on the property transfer issue. On the long-term lease issue, the Senate recedes with an amendment limiting the VA's existing authority to enter into such leases to leases of 50 years or less.

Number of beds required to provide adequate nursing home care in State home facilities

The House bill (section 304), but not the Senate amendment, would change the limit on the number of nursing home beds that may be supported in a State under the VA's State Veterans' Home Program (to raise the limit from two and one-half beds per thousand veterans in a State to four beds per thousand).

The Senate recedes with an amendment removing the numerical limit, thereby allowing the Administrator the authority to establish appropriate limits per State without reference to any fixed number prescribed by statute.

Repeal of requirement that recipients of health personnel training grants must increase number of individuals receiving training

Both the House bill (section 305) and Senate amendment (section 402) would repeal a requirement in existing law that requires a health personnel training institution (other than an affiliated medical school) applying for a VA grant under subchapter III of chapter 82 for health personnel training, to, as a condition of receiving such grant, increase the number of personnel trained. A similar repeal was made last year in Public Law 96-151 to a comparable provision in subchapter II of such chapter relating to affiliated medical schools, and the original House-passed bill providing for such repeal (H.R. 3892) included a provision to repeal the subchapter III provision. However, by inadvertence, the subchapter III-provision repealer was deleted from the legislation at the time of final passage.

The compromise agreement contains this provision.

Availability of funds for beneficiary travel

The Senate amendment (section 401), but not the House bill, would clarify that the fiscal year 1980 restriction in Public Law 96-86 on obligations for "travel and transportation of persons, and transportation of things, for officers and employees of the executive branch of the Government" does not apply to reimbursement under title 38 to eligible veterans, dependents, and survivors pursuant to section 111 of title 38 in connection with their receipt of other VA benefits and services.

The compromise agreement provides this clarification effective only with respect to future enactments and not in situations where legislation containing such a restriction on obligations or expenditures for executive branch travel expressly states that it applies to such beneficiary travel under title 38. The FY 1980 problem to which the Senate provision was addressed has been resolved by the President's submission on May 16, 1980, of a budget amendment (Senate Document 96-49, 96th Cong., 2d Sess.) and direction from the Senate Appropriations Committee in its report on H.R. 7542, the Supplemental Appropriations and Recission Bill, 1980 (S. Rept. No. 96-829, page 19).

Extension of time for submission of report on hospital care and medical services furnished in the Commonwealth of Puerto Rico and the Virgin Islands

Both the House bill (section 306) and the Senate amendment (section 403) would amend Public Law 95-520, the Veterans' Administration Program Extension Act of 1978, to extend, from February 1, 1980, to February 1, 1981, the deadline for a VA report on hospital care and medical services furnished in the Commonwealth of Puerto Rico and the Virgin Islands.

The compromise agreement contains this provision.

Technical amendment

The Senate amendment (section 102), but not the House bill, would delete the gender-specific term "manpower" in section 4101 of title 38 and insert in lieu thereof "personnel".

The House recedes.

Changes in existing law made by the compromise agreement are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38—UNITED STATES CODE

* * * * *

Part II—General Benefits

* * * * *

Chapter 17—Hospital, Nursing Home, Domiciliary, and Medical Care

* * * * *

Subchapter III—Miscellaneous Provisions Relating to Hospital and Nursing Home Care and Medical Treatment of Veterans

621. Power to make rules and regulations.
622. [Statement under oath] *Evidence of inability to defray necessary expenses.*
623. Furnishing of clothing.
624. Hospital care, medical services and nursing home care abroad.
626. Reimbursement for loss of personal effects by natural disaster.
627. Persons eligible under prior law.
628. Reimbursement of certain medical expenses.

* * * * *

Subchapter III—Miscellaneous Provisions Relating to Hospital and Nursing Home Care and Medical Treatment of Veterans

* * * * *

§ 622. [Statement under oath] *Evidence of inability to defray necessary expenses*

[(a)] For the purposes of [section] *sections* 610(a)(1)(B), [section] 610(b)(2), [section] 624(c), and [section] 632(a)(2) of this title, the [statement under oath of] *fact that* an [applicant on such form as may be prescribed by the Administrator] *individual is—*

(1) eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(2) a veteran with a service-connected disability; or

(3) in receipt of pension under any law administered by the Veterans' Administration;

shall be accepted as sufficient evidence of *such individual's* inability to defray necessary expenses.

[(b) Notwithstanding the provisions of subsection (a) of this section, the receipt of pension under any law administered by the Veterans' Administration shall constitute sufficient evidence of inability to defray necessary expenses, and any veteran in receipt of such pension shall be exempt from making any statement under oath regarding such veteran's inability to defray necessary expenses.]

* * * * *

Part V—Boards and Departments

* * * * *

Chapter 73—Department of Medicine and Surgery

Subchapter I—Organization; General

4101. Functions of Department.
4102. Divisions of Department.
4103. Office of the Chief Medical Director.
4104. Additional appointments.
4105. Qualifications of appointees.
4106. Period of appointment; promotions.
4107. Grades and pay scales.
4108. Personnel administration.
4109. Retirement rights.
4110. Disciplinary boards.
4111. Appointment of additional employees.
4112. Special Medical Advisory Group and other advisory bodies.
4113. Travel expenses of employees.
4114. Temporary full-time, part-time, and without compensation appointments; residencies and internships.
4115. Regulations.
4116. Defense of certain malpractice and negligence suits.
4117. Contracts for scarce medical specialist services.
4118. Special pay for physicians and dentists.
4119. Relationship between this subchapter and other provisions of law.

* * * * *

Subchapter IV—Veterans' Administration Health Professional Scholarship Program

4141. Establishment of program; purpose; duration.
4142. Eligibility; application; written contract.
4143. Obligated service.
4144. Breach of contract; liability; waiver.
4145. Exemption of scholarship payments from taxation.

4146. Program subject to availability of appropriations.

* * * * *

Subchapter I—Organization; General

§ 4101. Functions of Department

(a) There shall be in the Veterans' Administration a Department of Medicine and Surgery under a Chief Medical Director. The primary function of the Department of Medicine and Surgery shall be to provide a complete medical and hospital service, as provided in this title and in regulations prescribed by the Administrator pursuant thereto, for the medical care and treatment of veterans.

(b) In order to carry out more effectively the primary function of the Department of Medicine and Surgery and in order to assist in providing an adequate supply of health [manpower] *personnel* to the Nation, the Administrator shall, to the extent feasible without interfering with the medical care and treatment of veterans, develop and carry out a program of education and training of such health [manpower] *personnel* (including the developing and evaluating of new health careers, interdisciplinary approaches and career advancement opportunities), and shall carry out a major program for the recruitment, training, and employment of veterans with medical military occupation specialities as physician assistants, expanded-function dental auxiliaries, and other medical technicians (including advising all such qualified veterans and members of the armed forces about to be discharged or released from active duty of such employment opportunities), acting in cooperation with such schools of medicine, osteopathy, dentistry, nursing, pharmacy, optometry, podiatry, public health, or allied health professions; other institutions of higher learning; medical centers; academic health centers; hospitals, and such other public or nonprofit agencies, institutions, or organizations as the Administrator deems appropriate.

* * * * *

(d)(1) Within ninety days after enactment of this subsection, the Administrator, in consultation with the Chief Medical Director, is directed to conclude negotiations for an agreement with the National Academy of Sciences under which such Academy (utilizing its full resources and expertise) will conduct an extensive review and appraisal of personnel and other resources requirements in Veterans' Administration hospitals, clinics, and other medical facilities to determine a basis for the optimum numbers and categories of such personnel and other resources needed to insure the provision to eligible veterans of high quality care in all hospital, medical, domiciliary, and nursing home facilities. Such agreement shall provide that (A) at the earliest feasible date interim reports and the final report will be submitted by the National Academy of Sciences to the Administrator, the President of the Senate, and the Speaker of the House of Representatives, and (B) the final report will be submitted no later than twenty-four months after the date of the agreement except that the Administrator, in consultation with the Chief Medical Director and after consultation with the House and Senate Committees on Veterans' Affairs, may permit an extension up to twelve additional months.

(2) Within ninety days after the submission of the final report described in subsection (a) of this section, the Administrator shall submit to the Senate and House Committees on Veterans' Affairs a detailed report of the Administrator's views on the National Academy of Sciences' findings and recommendations submitted in such report, including (A) the steps and timetable therefor (to be carried out in not less than three years) the Administrator proposes to take to implement such findings and recommendations and (B) any disagreements, and the reasons therefor, with respect to such findings and recommendations.

(3) The Administrator shall cooperate fully with the National Academy of Sciences, and make available to the Academy all such staff, information, records, and other assistance, and shall set aside for such purposes such sums, as are necessary to insure the success of the study.

(e) Physicians, dentists, nurses, and other health-care professionals employed by the Department of Medicine and Surgery and appointed under section 4103, 4104(1), or 4114 of this chapter and persons appointed under section 4103(a)(8) of this chapter are not subject to the provisions of section 413 of the Civil Service Reform Act of 1978 or the following provisions of title 5: subchapter II of chapter 31, subchapter VIII of chapter 33, subchapter V of chapter 35, subchapter II of chapter 43, section 4507, subchapter VIII of chapter 53, and subchapter V of chapter 75.

(f)(1)(A) The Administrator, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than fifteen Veterans' Administration health-care facilities as the locations for centers of geriatric research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this subsection.

(B) In designating locations for centers under subparagraph (A) of this paragraph, the Administrator, upon the recommendation of the Chief Medical Director, shall—

(i) designate each Veterans' Administration health-care facility that on the date of the enactment of the Veterans' Administration Health-Care Amendments of 1980 is operating a geriatric research, education, and clinical center unless, on the recommendation of the Chief Medical Director, the Administrator determines that such facility does not meet the requirements of subparagraph (C) of this paragraph or has not demonstrated effectiveness in carrying out the established purposes of such center or the purposes of title III of the Veterans' Administration Health-Care Amendments of 1980 or the potential to carry out such purposes effectively in the reasonably foreseeable future; and

(ii) assure appropriate geographic distribution of such facilities.

(C) The Administrator may not designate any health-care facility as a location for a center under subparagraph (A) of this paragraph unless the Administrator, upon the recommendation of the Chief Medical Director, determines that the facility has (or may reasonably be anticipated to develop)—

(i) an arrangement with an accredited medical school which provides education and training in geriatrics and with which such facility is affiliated under which medical residents receive education and training in geriatrics through regular rotation through such center and through nursing home, extended care, or domiciliary units of such facility so as to provide such residents with training in the diagnosis and treatment of chronic diseases of older individuals, including cardiopulmonary conditions, senile dementia, and neurological disorders;

(ii) an arrangement under which nursing or allied health personnel receive training and education in geriatrics through regular rotation through nursing home, extended care, or domiciliary units of such facility;

(iii) the ability to attract the participation of scientists who are capable of ingenuity and creativity in health-care research efforts;

(iv) a policymaking advisory committee composed of appropriate health-care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center; and

(v) the capability to conduct effectively evaluations of the activities of such center.

(D) Prior to providing funds for the operation of any such center at a health-care facility other than a health-care facility designated under subparagraph (B)(i) of this paragraph, the Administrator shall assure that the center at each facility designated under such subparagraph is receiving adequate funding to enable such center to function effectively in the areas of geriatric research education, and clinical activities.

(2)(A) The Administrator shall establish in the Department of Medicine and Surgery a Geriatrics and Gerontology Advisory Committee (hereinafter in this subsection referred to as the "Committee"). The membership of the Committee shall be appointed by the Administrator, upon the recommendation of the Chief Medical Director, and shall include individuals who are not employees of the Federal Government and who have demonstrated interest and expertise in research, education, and clinical activities related to aging and at least one representative of a national veterans' service organization. The Administrator, upon the recommendation of the Chief Medical Director, shall invite representatives of other appropriate departments and agencies of the United States to participate in the activities of the Committee and shall provide the Committee with such staff and other support as may be necessary for the Committee to carry out effectively its functions under this paragraph.

(B) The Committee shall—

(i) advise the Chief Medical Director on all matters pertaining to geriatrics and gerontology;

(ii) assess, through an evaluation process (including a site visit conducted not later than three years after the date of the establishment of each new center and not later than two years after the date of the last evaluation of those centers in operation on the date of the enactment of this subsection), the ability of each center established under paragraph (1) of this subsection to achieve its established purposes and the purposes of title III of the Veterans' Administration Health-Care Amendments of 1980;

(iii) assess the capability of the Veterans' Administration to provide high quality geriatric, extended, and other health-care services to eligible older veterans, taking into consideration the likely demand for such services from such veterans;

(iv) assess the current and projected needs of eligible older veterans for geriatric, extended-care, and other health-care services from the Veterans' Administration and its activities and plans designed to meet such needs; and

(v) perform such additional functions as the Administrator or Chief Medical Director may direct.

(C)(1) Not later than April 1, 1983, the Committee shall submit to the Administrator, through the Chief Medical Director, a report with respect to its findings and conclusions under subparagraph (B) of this paragraph. Such report shall include—

(I) descriptions of the operations of the centers of geriatric research, education, and clinical activities established pursuant to paragraph (1) of this subsection;

(II) assessments of the quality of the operations of such centers;

(III) an assessment of the extent to which the Veterans' Administration, through the operation of such centers and other health-care facilities and programs, is meeting the needs of eligible older veterans for geriatric and extended-care and other health-care services;

(IV) assessments of and recommendations for correcting any deficiencies in the operations of such centers; and

(V) recommendations for such other geriatric, extended-care, and other health-care services as may be needed to meet the needs of older veterans.

Following the submission of such report, the Committee shall also submit to the Administrator, through the Chief Medical Director, such further reports as the Committee considers appropriate with respect to the matters described in clauses (I) through (V) of the preceding sentence.

(2) Not later than ninety days after receipt of a report submitted under division (1) of this subparagraph, the Administrator shall transmit such report, together with the Administrator's comments and recommendations thereon, to the appropriate committees of the Congress.

(3) There are hereby authorized to be appropriated for the basic support of the research and education activities of the centers of geriatric research, education, and clinical activities established pursuant to paragraph (1) of this subsection $10,000,000 for fiscal year 1981 and $25,000,000 for each of the next three fiscal years. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Veterans' Administration medical care account and medical and prosthetics research account, as appropriate, such amounts as the Chief Medical Director determines appropriate, and, with respect to fiscal year 1984, as the Chief Medical Director determines appropriate after taking into account the report submitted by the Committee under paragraph (2) of this subsection.

(4) Activities of clinical and scientific investigation at each center established under paragraph (1) of this subsection shall be eligible to compete for the award of funding from funds appropriated for the Veterans' Administration medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for research in geriatrics and gerontology.

§ 4102. Divisions of Department

The Department of Medicine and Surgery shall include the following: Office of the Chief Medical Director, a Medical Service, a Dental Service, a Podiatric Service, an Optometric Service, a Nursing Service, and such other professional and auxiliary services as the Administrator may find to be necessary to carry out the functions of the Department.

§ 4103. Office of the Chief Medical Director

(a) The Office of the Chief Medical Director shall consist of the following—

(1) the Chief Medical Director, who shall be the Chief of the Department of Medicine and Surgery and shall be directly responsible to the Administrator for the operations of the Department, and who shall be a qualified doctor of medicine, appointed by the Administrator.

(2) The Deputy Chief Medical Director, who shall be the principal assistant of the Chief Medical Director, and who shall be a qualified doctor of medicine, appointed by the Administrator upon the recommendation of the Chief Medical Director.

(3) The Associate Deputy Chief Medical Director, who shall be an assistant to the Chief Medical Director and the Deputy Chief Medical Director, and who shall be a qualified doctor of medicine, appointed by the Administrator upon the recommendation of the Chief Medical Director.

(4) Not to exceed eight Assistant Chief Medical Directors, who shall be appointed by the Administrator upon the recommendation of the Chief Medical Director. Not more than two Assistant Chief Medical Directors may be persons qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicines. One Assistant Chief Medical Director shall be a qualified doctor of dental surgery or dental medicine who shall be directly responsible to the Chief Medical Director for the operation of the Dental Service. *One Assistant Chief Medical Director shall be a qualified physician trained in, or having suitable extensive experience in, geriatrics who shall be responsible to the Chief Medical Director for evaluating all research, educational, and clinical health-care programs carried out in the Department in the field of geriatrics and who shall serve as the principal advisor to the Chief Medical Director with respect to such programs.*

(5) Such Medical Directors as may be appointed by the Administrator, upon the recommendation of the Chief Medical Director, to suit the needs of the Department. A Medical Diretcor shall be either a qualified doctor of medicine or a qualified doctor of dental surgery or dental medicine.

(6) A Director of Nursing Service, who shall be a qualified registered nurse, appointed by the Administrator, and who shall be responsible to the Chief Medical Director for the operation of the Nursing Service.

(7) A Director of Pharmacy Service, a Director of Dietetic Service, a Director of Podiatric Service, and a Director of Optometric Service, appointed by the Administrator, and who shall be responsible to the Chief Medical Director for the operation of their respective Services.

(8) Such directors of hospitals, domiciliary facilities, medical centers, and outpatient facilities as may be appointed by the Administrator upon the recommendation of the Chief Medical Director.

[(8)](9) Such other personnel as may be authorized by this chapter.

(b) Except as provided in subsection (c) of this section—

(1) any appointment under this section shall be for a period of four years, with reappointment permissible for successive like periods,

(2) any such appointment or reappointment may be extended by the Administrator for a period not in excess of three years, and

(3) any person so appointed or reappointed or whose appointment or reappointment is extended shall be subject to removal by the Administrator for cause.

(c) The Administrator may designate a member of the Chaplain Service of the Veterans' Administration as Director, Chaplain Service, for a period of two years, subject to removal by the Administrator for cause. Redesignation under this subsection may be made for successive like periods or for any period not exceeding two years. A person designated as Director, Chaplain Service, shall at the end of such person's period of service as Director revert to the position, grade, and status which such person held immediately prior to being designated Director, Chaplain Service, and all service as Director, Chaplain Service, shall be creditable as service in the former position.

* * * * *

§ 4107. Grades and pay scales

(a) * * *

* * * * *

(c)(1) Notwithstanding any other provision of law, the per annum salary rate of each person serving as a director of a hospital, domiciliary facility, or center who is not a physician shall not be less than the salary rate which such person would receive under this section if such person's service as a director of a hospital, domiciliary facility, or center had been service as a physician in the director grade. The position of the director of a hospital, domiciliary facility, or center shall not be subject to chapter 51 and subchapter III of chapter 53 of title 5.

(2) Notwithstanding any other provision of this title, the terms and conditions of employment of any person to whom paragraph (1) of this subsection applies shall (except as provided in paragraph (3) of this subsection) be the same as those applicable under this title to a physician serving as a director of a hospital, domiciliary facility, medical center, or outpatient facility.

(3) Notwithstanding the provisions of section 4101(e) of this title, any person to whom paragraph (1) of this subsection applies shall be deemed to be a career appointee for the purposes of section 4507 of title 5.

* * * * *

(e)(1) In addition to the rate of basic pay provided for nurses in subsection (b)(1) of this section, a nurse shall receive additional pay as provided by paragraphs (2) through (8) of this subsection.

(2) A nurse performing service on a tour of duty, any part of which is within the period commencing at 6 postmeridian and ending at 6 antemeridian, shall receive additional pay for each hour of service on such tour at a rate equal to 10 per centum of the nurse's hourly rate of basic pay, if at least four hours of such tour fall between 6 postmeridian and 6 antemeridian. When less than four hours of such tour fall between 6 postmeridian and 6 antemeridian, the nurse shall be paid the differential for each hour of service performed between those hours.

(3) A nurse performing service on a tour of duty, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, shall receive additional pay for each hour of service on such tour at a rate equal to 25 per centum of such nurse's hourly rate of basic pay.

(4) A nurse performing service on a holiday designated by Federal statute or Executive order shall receive for each hour of such service the nurse's hourly rate of basic pay, plus additional pay at a rate equal to such hourly rate of basic pay, for that holiday service, including overtime service. Any service required to be performed by a nurse on such a designated holiday shall be deemed to be a minimum of two hours in duration.

(5) A nurse performing officially ordered or approved hours of service in excess of forty hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service; the overtime rates shall be one and one-half times such nurse's hourly rate of basic pay not to exceed one and one-half times the hourly rate of basic pay for the minimum rate of intermediate grade of the Nurse Schedule. For the purposes of this paragraph, overtime must be of at least fifteen minutes duration in a day to be creditable for overtime pay. Compensatory time off in lieu of pay for service performed under the provisions of this paragraph shall not be permitted, except as voluntarily requested in writing by the nurse in question. Any excess service performed under this paragraph on a day when service was not scheduled for such nurse, or for which such nurse is required to return to her place of employment, shall be deemed to be a minimum of two hours in duration. *For the purposes of this paragraph, the period of a nurse's officially ordered or approved travel away from such nurse's duty station may not be considered to be hours of service unless—*

(A) such travel occurs during such nurse's tour of duty; or

(B) such travel (i) involves the perform-

ance of services while traveling, (ii) is incident to travel that involves the performance of services while traveling, (iii) is carried out under arduous conditions as determined by the Administrator, or (iv) results from an event which could not be scheduled or controlled administratively.

(6) For the purpose of computing the additional pay provided by paragraph (2), (3), (4), or (5) of this subsection, a nurse's hourly rate of basic pay shall be derived by dividing such nurse's annual rate of basic pay by two thousand and eighty.

(7) When a nurse is entitled to two or more forms of additional pay under paragraph (2), (3), (4), or (5) for the same period of service, the amounts of such additional pay shall be computed separately on the basis of such nurse's hourly rate of basic pay, except that no overtime pay as provided in paragraph (5) shall be payable for overtime service performed on a holiday designated by Federal statute or Executive order in addition to pay received under paragraph (4) for such service.

(8) A nurse who is officially scheduled to be on call outside such nurse's regular hours *or on a holiday designated by Federal statute or Executive order* shall be paid for each hour of such on-call duty, except for such time as such nurse may be called back to work, at a rate equal to 10 per centum of the hourly rate for excess service as provided in paragraph (5) of this subsection.

(9) Any additional pay paid pursuant to this subsection shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of subchapter IX of chapter 55, chapter 81, 83, or 87 of title 5, or other benefits based on basic pay.

(10) Notwithstanding any other provision of law, if the Administrator determines it to be necessary in order to obtain or retain the services of nurses entitled to additional pay under this subsection, the Administrator may increase the amount of additional pay authorized under this subsection to be paid to nurses at any specific Veterans' Administration health-care facility in order to provide additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area as such Veterans' Administration health-care facility (as determined by a reasonably representative sampling of such non-Federal facilities).

(f) Under standards which the Administrator shall prescribe in regulations, physician assistants and expanded-function dental auxiliaries shall be compensated by use of Nurse Schedule grade titles and related pay ranges and shall be entitled to additional pay on the same basis as provided for nurses in paragraphs (2) through (8) of subsection (e) of this section.

(g)(1) Notwithstanding any other provision of law but subject to paragraphs (2), (3), and (4) of this subsection, when the Administrator determines it to be necessary in order to obtain or retain the services—

(A) of physicians, dentists, podiatrists, optometrists, nurses, physician assistants, or expanded-function dental auxiliaries appointed under this subchapter; or

(B) of health-care personnel who—

(i) are employed in the Department of Medicine and Surgery (other than administrative, clerical, and physical plant maintenance and protective services employees);

(ii) are paid under the General Schedule pursuant to section 5332 of title 5;

(iii) are determined by the Administrator to be providing either direct patient-care services or services incident to direct patient-care services; and

(iv) would not otherwise be available to provide medical care and treatment for veterans, the Administrator may increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations. Any increase in such rates of basic pay may be made on a nationwide, local, or other geographic basis, for one or more of the grades listed in the schedules in subsection (b)(1) of this section, for one or more of the health personnel fields within such grades, or for one or more of the grades of the General Schedule under section 5332 of such title.

(2) Increases in rates of basic pay may be made under paragraph (1) of this subsection only in order—

(A) to provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of health-care personnel at non-Federal health-care facilities in the same labor market;

(B) to achieve adequate staffing at particular facilities; or

(C) to recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

(3) The amount of any increase under paragraph (1) of this subsection in the maximum rate for any grade may not (except in the case of nurse anesthetists) exceed the amount by which the maximum for such grade (under applicable provisions of law other than this subsection) exceeds the minimum for such grade (under applicable provisions of law other than this subsection), and the maximum rate as so increased may not exceed the rate paid for individuals serving as Assistant Chief Medical Director.

(4) In the exercise of the authority provided in paragraph (1) of this subsection to increase the rates of basic pay for any category of personnel not appointed under this subchapter, the Administrator shall, not less than ninety days prior to the effective date of a proposed increase, notify the President of the Administrator's intention to provide such an increase. If, prior to such effective date, the President disapproves such increase and provides the appropriate committees of the Congress with a written statement of the President's reasons for such disapproval, such proposed increase shall not take effect.

§ 4108. Personnel administration

(a) * * *

* * * * *

[(b) As used in this section, the term "affiliated institution" means any medical school or other institution of higher learning with which the Administrator has a contract or agreement as referred to in section 4112(b) of this title for the training or education of health manpower.

[(c) As used in this section, the term "remuneration" means the receipt of any amount of monetary benefit from any non-Veterans' Administration source in payment for carrying out any professional responsibilities.]

(b) Any person serving as a Chief of Staff of a Veterans' Administration health-care facility shall be appointed on a full-time basis.

(c) As used in this section:

(1) The term "affiliated institution" means any medical school or other institution of higher learning with which the Administrator has a contract or agreement as referred to in section 4112(b) of this title for the training or education of health personnel.

(2) The term "remuneration" means the receipt of any amount of monetary benefit from any non-Veterans' Administration source in payment for carrying out any professional responsibilities.

(d) Notwithstanding any other provision of law, the Administrator may prescribe regulations establishing conditions under which officers and employees of the Department of Medicine and Surgery who are nationally recognized principal investigators in medical research may be permitted, in connection with their attendance at meetings or in performing advisory services concerned with the functions or activities of the Veterans' Administration, or in connection with acceptance of significant awards or with activity related thereto concerned with functions or activities of the Veterans' Administration, to accept payment, in cash or in kind, from non-Federal agencies, organizations, and individuals, for travel and such reasonable subsistence expenses as are approved by the Administrator pursuant to such regulations, to be retained by such officers and employees to cover the cost of such expenses or deposited to the credit of the appropriation from which the cost of such expenses is paid, as may be provided in such regulations.

§ 4109. Retirement rights

[Persons] (a) *Except as provided in subsection (b) of this section, persons* appointed to the Department of Medicine and Surgery shall be subject to the provisions of and entitled to benefits under chapter 83 of title 5.

(b) Notwithstanding any other provision of law, an individual retiring on or after October 1, 1981, who served at any time in a position in the Department of Medicine and Surgery to which such individual was appointed under this subchapter shall receive service credit for purposes of section 8339 of title 5 for any period of service in such Department served on less than a full-time basis on a proportionate basis equal to the fraction that such service bears to full-time service. In computing the annuity of any individual whose service is so credited, the full annual rate of basic pay shall be deemed to be the individual's rate of basic pay for the purpose of determining average pay, as defined by section 8331(4) of title 5.

§ 4112. Special medical advisory group and other advisory bodies

(a) The Administrator shall establish a special medical advisory group composed of members of the medical, dental, podiatric, optometric, and allied scientific professions and a disabled veteran, nominated by the Chief Medical Director, whose duties shall be to advise the Administrator, through the Chief Medical Director, and the Chief Medical Director direct, relative to the care and treatment of disabled veterans, and other matters pertinent to the Department of Medicine and Surgery. The special medical advisory group shall meet on a regular basis as prescribed by the Administrator and, not later than February 1 of each year, shall submit to the Administrator and the Congress a report on its activities during the preceding fiscal year. The number, terms of service, pay, and allowances to members of such advisory group shall be in accord with existing law and regulations.

(b) In each case where the Administrator has a contract or agreement with any school, institution of higher learning, medical center, hospital, or other public or nonprofit agency, institution, or organization, for the training or education of health manpower, the Administrator shall establish an advisory committee (that is, deans committee, medical advisory committee, or the like). Such advisory committee shall advise the Administrator and the Chief Medical Director with respect to policy matters arising in connection with, and the operation of, the program with respect to which it was appointed and may be established on an institutionwide, multidisciplinary basis or on a regional basis whenever such is found to be feasible. Members of each such advisory committee shall be appointed by the Administrator and shall include personnel of the Veterans' Administration *(including appropriate representation from the full-time staff)* and the entity with which the Administrator has entered into such contract or

agreement. The number of members and terms of members of each advisory committee shall be prescribed by the Administrator.

* * * * *

§ 4114. Temporary full-time, part-time, and without compensation appointments; residences and internships

(a)(1) * * *

* * * * *

(f) No person may be appointed under this subsection after the effective date of this subsection to an occupational category described in section 4104(1) of this title or in subsection (b) of this section unless such person meets the requirements established in section 4105(c) of this title and regulations prescribed thereunder.

(g) In accordance with the provisions of section 4119 of this title, the provisions of chapter 34 of title 5 shall not apply to part-time appointments under this section.

* * * * *

§ 4118. Special pay for physicians and dentists

(a)(1) Notwithstanding the provisions of section 4107(d) or any other provision of law, in order to recruit and retain highly qualified physicians and dentists in the Department of Medicine and Surgery, the Administrator, pursuant to the provisions of this section and regulations which the Administrator shall prescribe [hereunder] *to carry out this section* shall provide, in addition to any pay or allowance to which such physician or dentist is entitled, special pay in an amount *that (except as provided under subsection (d) of this section) is* not more than (A) [$13,500] *$22,500* per annum to any physician employed in the Department of Medicine and Surgery *on a full-time basis (or in the case of a physician employed on a part-time basis, a proportional amount of the maximum amount that would be paid under this section to such physician if such physician were employed on a full-time basis, calculated on the basis of the proportion which the part-time employment of such physician in the Department of Medicine and Surgery bears to full-time employment)*, or (B) [$6,750] *$10,000* per annum to any dentist so employed *on a full-time basis (or in the case of a dentist employed on a part-time basis, a proportional amount of the maximum amount that would be paid under this section to such dentist if such dentist were employed on a full-time basis, calculated on the basis of the proportion which the part-time employment of such dentist in the Department of Medicine and Surgery bears to full-time employment)*, except as provided in paragraphs (2) and (3) of this subsection, upon the execution, and for the duration of a written agreement by such physician or dentist to complete a specified period of service in the Department.

(2) Special pay may not be paid under this section to any physician or dentist who—

(A) is employed on less than a half-time or intermittent basis,

(B) occupies an internship or residency training position, or

(C) is a reemployed annuitant.

(B) Special pay may be paid under this section to a physician or dentist who is a reemployed annuitant if such physician or dentist was automatically separated before September 30, 1978, under section 8335(a) of title 5, as in effect before such date, for having become 70 years of age.

(3) The Chief Medical Director, in accordance with such regulations, may determine categories of positions applicable to both physicians and dentists in the Department of Medicine and Surgery as to which there is no significant recruitment and retention problem. Physicians and dentists serving in such positions shall not be eligible for special pay under this section. Not later than one year after making any such recruitment and retention determination and each year thereafter, the Chief Medical Director shall make a redetermination in accordance with such regulations, and, in the event any such determination was made more than one year prior to the date of enactment of this sentence, the Chief Medical Director shall make such redetermination not later than ninety days after such enactment date.

(b) The Administrator shall exercise the authority contained in this section to provide—

(1) the maximum amount of such special pay to the Chief Medical Director and Deputy Chief Medical Director;

(2) primary special pay of [$5,000] *$7,000* to any eligible full-time physician, or $2,500 to any eligible full-time dentist, appointed under this chapter; and

(3) a proportional amount of primary special pay of [$5,000] *$7,000* to any eligible part-time physician, or of $2,500 to any eligible part-time dentist, appointed under this chapter, which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such physician or dentist bears to full-time employment.

(c)*(1)* [The] *In the case of eligible full-time physicians appointed under this chapter, the* Administrator shall [, in accordance with such regulations,] provide, in addition to the primary special pay provided for in subsection (b)(2) of this section *and in accordance with regulations prescribed to carry out this section,* incentive special pay of [no] *not* more than [$8,500] *$15,500* to any eligible physician [, or $4,250 to any eligible dentist, described in clauses (2) and (3) of subsection (b) of this section]. In prescribing *such* regulations to carry out this [subsection] *paragraph,* the Administrator shall take into account only the following factors and may pay no more than the following per annum amounts of incentive special pay to any full-time physician eligible therefor [, one-half the following per annum amounts, as applicable, to any full-time dentist eligible therefor (except that the full amount as specified in clause (1)(A)(iii) may be paid), or a proportional amount of the following per annum amounts to any part-time physician or, as applicable, dentist to the extent eligible therefor, which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such physician or dentist bears to full-time employment]:

[(1)](A)(i) *For* full-time status, [$2,000,] *$6,000;*

(ii) *For* tenure of service within the Department of Medicine and Surgery [as follows:]—

[(aa) completion of probationary period or three years, whichever is the lesser, $1,000, or

[(bb) completion of seven years, $2,000; and

[(iii) scarcity of medical or dental specialty, $2,000; or

[(B) professional responsibility as follows:]

(I) of two years but less than five years, $1,000;

(II) of five years but less than eight years, $2,000; and

(III) of eight years or more, $3,000.

(iii) For service in a medical specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $4,000 nor more than $15,500.

(B) For service—

(i) *as a* Service Chief [not in a scarce medical or dental specialty, or Associate Chief of Staff, $5,500,] *(or in a comparable position as determined by the Chief Medical Director), $9,900;*

[(ii) Service Chief in a scarce medical or dental specialty, $7,000,]

[(iii)] *(ii) as a* Chief of Staff or *in an* Executive Grade, [$7,000,] *$12,600;*

[(iv)] *(iii) as a* [Director Grade or] Deputy Service Director [, $7,250,] *or in a Director Grade, $13,000;*

[(v)] *(iv) as a* Service Director, [$7,500,] *$13,500;*

[(vi)] *(v) as a* Deputy Assistant Chief Medical Director, [$8,000,] *$14,440; or*

[(vii)] *(vi) as an* Associate Deputy Chief Medical Director or Assistant Chief Medical Director, [$8,500; and] *$15,300.*

[(2) continuing education certification, $500;

[(3) for general or first board certification of a physician, $2,000; or for specialty or secondary board certification of a physician, $2,500; and

[(4) for service by a physician (i) in a specific geographic location in which the Chief Medical Director determines, pursuant to regulations which the Administrator shall prescribe, there are extraordinary difficulties in the recruitment and retention of qualified physicians in a specific category of physicians, or (ii) in the Central Office of the Department of Medicine and Surgery, an amount, as determined by the Chief Medical Director pursuant to regulations which the Administrator shall prescribe, not less than $3,500 and not more than $5,000.]

(C) For—

(i) specialty or first board certification, $2,000; or

(ii) subspecialty or secondary board certification, $2,500.

(D) For service (i) in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians in the specific category of physicians, or (ii) in the Central Office of the Department of Medicine and Surgery, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $2,000, nor more than $5,000.

(2) In the case of eligible full-time dentists appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(2) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $7,500 to any eligible dentist. In prescribing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than the following per annum amounts of incentive special pay to any full-time dentist eligible therefor:

(A)(i) For full-time status, $1,000.

(ii) For tenure of service within the Department of Medicine and Surgery—

(I) of two years but less than seven years, $500; and

(II) of seven years or more, $1,000.

(iii) For service in a dental specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $2,000 nor more than $7,500.

(B) For service—

(i) as a Service Chief (or in a comparable position as determined by the Chief Medical Director), $2,750;

(ii) as a Chief of Staff or in an Executive Grade, $3,500;

(iii) as a Deputy Service Director or in a Director Grade, $3,625;

(iv) as a Service Director, $3,750;

(v) as a Deputy Assistant Chief Medical Director, $4,000, or

(vi) as an Assistant Chief Medical Director, $4,250.

(C) For service in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists in the specific category of dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,750 nor more than $2,500.

(3) In the case of eligible part-time physicians appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(3) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $15,500 to any eligible physician. In prescribing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than a proportional amount of the following per annum amounts of incentive special pay to any part-time physician eligible therefor, which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such physician bears to full-time employment:

(A)(i) For tenure of service within the Department of Medicine and Surgery—

(I) of more than two years but less than five years, $750;

(II) of five years but less than eight years, $1,500; and

(III) of eight years or more, $2,250.

(ii) For service in a medical specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians, an amount to be determined by the Chief Medical Director pursuant (to such regulations) of less than $3,000 nor more than $12,375.

(B) For service—

(i) as a Service Chief (or in a comparable position as determined by the Chief Medical Director), $7,220; or

(ii) as a Chief of Staff or in an Executive Grade, $9,190.

(C) For—

(i) specialty or first board certification, $1,500; or

(ii) subspecialty or secondary board certification, $1,875.

(D) For service (i) in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians in the specific category of physicians, or (ii) in the Central Office of the Department of Medicine and Surgery, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,500 nor more than $4,000.

(4) In the case of eligible part-time dentists appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(3) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $7,500 to any eligible dentist. In prescribing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than a proportional amount of the following per annum amounts of incentive special pay to any dentist eligible therefor, which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such dentist bears to full-time employment:

(A)(i) For tenure of service within the Department and Surgery—

(I) of more than two years but less than seven years, $500; and

(II) of seven years or more, $1,000.

(ii) For service in a dental specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,500 nor more than $5,625.

(B) For service—

(i) as a Service Chief (or in a comparable position as determined by the Chief Medical Director), $2,750; or

(ii) as a Chief of Staff or in an Executive Grade, $3,500.

(C) For service in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists in a specific category of dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,310 nor more than $1,875.

(5)(A) Except as provided in subparagraph (B) of this paragraph, a physician or dentist may not be provided incentive special pay under both clauses (A) and (B) of paragraph (1), (2), (3), or (4) (whichever is applicable) of this subsection.

(B)(i) A physician or dentist serving as a Service Chief (or in a comparable position as determined by the Chief Medical Director) on a full-time basis may be provided incentive special pay under subclauses (i) and (iii) of clause (A) as well as under clause (B) of paragraph (1) or (2) (whichever is applicable) of this subsection.

(ii) A physician or dentist serving as a Chief of Staff on a full-time basis may be provided incentive special pay under clause (A)(i) as well as under clause (B) of paragraph (1) or (2) (whichever is applicable) of this subsection.

[(d) No part-time physician may be paid an aggregate amount of basic pay, pursuant to the rate applicable on the effective date of this section to physicians employed under this title, and special pay under this section in excess of $42,000 per annum, and no part-time dentist may be paid an aggregate amount of basic pay, pursuant to the rates applicable on the effective date of this section to dentists employed under this title, and special pay under this section in excess of $37,000 per annum.]

(d) In determining—

(1) the total amount of special pay provided under this section to any physician or dentist for the purpose of determining the applicability to the special pay of such physician or dentist of the limitation specified in subsection (a) of this section on the total amount of such special pay; and

(2) the total amount of incentive special pay provided under subsection (c) of this section to any physician or dentist for the purpose of determining the applicability to the incentive special pay of such physician or dentist of the limitation specified in such subsection on the total amount of such incentive special pay,

there shall be excluded any special pay provided to such physician or dentist under subsection (c)(1)(D), (c)(2)(C), (c)(3)(D), or (c)(4)(C) of this section for service in certain geographic locations.

(e)(1) Any agreement entered into by a physician or dentist under this section shall be with respect to a period of one year of service in the Department of Medicine and Surgery unless the physician or dentist requests an agreement for a longer period of service not to exceed four years. Any physician or dentist who entered into an agreement under this section and has not failed to refund any amount which such physician or dentist became obligated to refund under any such agreement shall be eligible to enter into a subsequent agreement under this section. [Notwithstanding the provisions of the preceding two sentences, no agreement entered into under this section shall extend beyond September 30, 1981, and any agreement entered into under this section after September 30, 1980, may be for a period of less than one year if the expiration date thereof is September 30, 1981.]

(2)(A) Any such agreement shall provide that the physician or dentist, in the event that such physician or dentist voluntarily, or because of misconduct, fails to complete at least one year of service, or such lesser period of service as provided for in the final sentence of paragraph (1) of this subsection, pursuant to such agreement, shall be required to refund the total amount received under this section, unless the Chief Medical Director determines, in accordance with regulations prescribed under subsection (a) of this section, that such failure is necessitated by circumstances beyond the control of the physician or dentist.

(B) Any such agreement shall specify the terms under which the Veterans' Administration and the physician or dentist may elect to terminate such agreement.

(3) Any amount of special pay payable under this section shall be paid in biweekly installments.

(4)(A) Any physician or dentist who is employed in the Department of Medicine and Surgery on or before the effective date of this section and who enters into an agreement under this section during the forty-five-day period beginning on the date of the enactment of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975 is entitled to special pay beginning on the effective date of this section.

(B) Any physician or dentist who becomes employed in the Department of Medicine and Surgery after the effective date of this section and who enters into an agreement under this section before the close of the forty-five-day period beginning on the date of the enactment of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975 is entitled to special pay beginning on the date on which the physician or dentist becomes employed.

(C) Any physician or dentist who becomes employed in the Department of Medicine and Surgery after the close of the forty-five-day period beginning on the date of the enactment of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975, or who does not enter into any agreement under this section before the close of such 45-day period, and who thereafter enters into an agreement under this section is entitled to special pay beginning on the date on which the agreement is entered into, or the date on which the physician or dentist becomes employed, whichever date is later.

(f)(1) [Any] *Except as provided in paragraph (2) of this subsection, any* additional compensation provided as special pay under this section shall not be considered as basic pay for the [purposes] *purpose* of subchapter VI and section 5595 of chapter 55, chapter 81 [83, or 87] *or 83* of title 5, or other benefits related to basic pay.

(2) Additional compensation paid as special pay under this section after September 30, 1980, to any full-time employee shall be included in basic pay for purposes of chapter 83 of title 5. Notwithstanding the

preceding sentence, special pay paid to any full-time employee after September 30, 1980, shall be included in average pay, as defined in section 8331(4) of such title, for the purposes of computing an annuity under such chapter only if—

(A) the annuity is paid under section 8337 of title 5 or under subsection (d) or (e) of section 8341 of such title; or

(B) the employee has completed not less than 15 years of full-time service in the Department of Medicine and Surgery (except that, regardless of the length of such employee's service, no special pay may be included in average pay in computing an annuity that commences before October 1, 1985, and only one-half of any special pay paid after September 30, 1980, may be included in average pay in computing an annuity that commences on or after October 1, 1985, but before October 1, 1990).

(3) Any additional compensation provided as special pay under this section shall be considered as annual pay for the purposes of chapter 87 of title 5, relating to life insurance for Federal employees.

(g)(1) It is the policy of Congress to assure that the levels of total pay for Veterans' Administration physicians and dentists are fixed at levels reasonably comparable (A) with the levels of total pay of physicians and dentists employed by or serving in other departments and agencies of the Federal Government, and (B) with the income of non-Federal physicians and dentists, so as to make possible the recruitment and retention of a well-qualified employee work force of physicians and dentists capable of providing quality care for eligible veterans.

(2) To assist the Congress and the President in carrying out the policy stated in paragraph (1) of this subsection, the Administrator shall—

(A) define the bases for pay distinctions, if any, among various categories of physicians and dentists including between physicians and dentists employed by the Veterans' Administration and physicians and dentists employed by other departments and agencies of the Federal Government and between all Federal sector and non-Federal sector physicians and dentists;

(B) obtain measures of income from the employment or practice of physicians and dentists in the non-Veterans' Administration sector, including Federal and non-Federal sectors, for use as guidelines for setting and periodically adjusting the amounts of special pay for Veterans' Administration physicians and dentists;

(C) submit a report to the President, on such date as the President may designate but not later than December 31, 1982, and once every two years thereafter, recommending appropriate amounts of special pay to carry out the policy set forth in paragraph (1) of this subsection with respect to the pay of Veterans' Administration physicians and dentists; and

(D) include in such recommendations, when considered appropriate and necessary by the Administrator, modifications of the special pay levels set forth in this section (i) whenever the Veterans' Administration is unable to recruit or retain a sufficient work force of well-qualified physicians and dentists because the incomes of non-Veterans' Administration physicians and dentists performing comparable types of duties are significantly in excess of the levels of total pay (including basic pay and special pay) of Veterans' Administration physicians and dentists, or (ii) whenever other extraordinary circumstances are such that special pay levels are needed to recruit or retain a sufficient number of well-qualified physicians and dentists.

(3) The President shall include in the Budget next transmitted to the Congress under section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), after the submission of each report of the Administrator under paragraph (2)(C) of this subsection recommendations with respect to the exact rates of special pay for physicians and dentists under this section.

(4) Not later than April 30 of each year, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding the implementation of this section. Each such report shall include—

(A) a review of the implementation of this section (including the Administrator's and Chief Medical Director's actions, findings, recommendations, and other activities under this section) to date for the fiscal year during which the report is submitted and for such portion of the preceding fiscal year as was not included in the previous annual report; and

(B) a plan in connection with the implementation of this section for the remainder of the fiscal year during which the report is submitted and for the succeeding fiscal year.

(h) A physician or dentist serving a period of obligated service pursuant to subchapter IV of this chapter is not eligible for incentive special pay under this section during the first three years of such obligated service and may only be paid primary special pay under this section at the discretion of the Administrator upon the recommendation of the Chief Medical Director.

§ 4119. Relationship between this subchapter and other provisions of law

Notwithstanding any other provision of law, no provision of title 5 or any other law pertaining to the civil service system which is inconsistent with any provision of this subchapter shall be considered to supersede, override, or otherwise modify such provision of this subchapter except to the extent that such provision of title 5 or of such other law specifically provides, by specific reference to a provision of this subchapter, for such provision to be superseded, overriden, or otherwise modified.

* * * * *

Subchapter IV—Veterans' Administration Health Professional Scholarship Program

§ 4141. Establishment of program; purpose; duration

(a) There is hereby established a program to be known as the Veterans' Administration Health Professional Scholarship Program (hereinafter in this subchapter referred to as the "Scholarship Program."). The purpose of the Scholarship Program is to assist in providing an adequate supply of trained physicians and nurses for the Veterans' Administration and for the Nation and, if needed by the Veterans' Administration, other health-care professionals appointed under subchapter I of this chapter.

(b) The Administrator may not furnish scholarships to new participants in the Scholarship Program after the last day of the tenth fiscal year beginning after the first such scholarship is approved by the Administrator.

§ 4142. Eligibility; application; written contract

(a) To be eligible to participate in the Scholarship Program, an individual must—

(1) be accepted for enrollment, or be enrolled, as a full-time student (A) in an accredited (as determined by the Administrator) educational institution in a State, and (B) in a course of training offered by such institution and approved by the Administrator, leading to a degree in medicine, osteopathy, dentistry, podiatry, optometry, or nursing or a course of training to become a physician assistant or expanded-function dental auxiliary;

(2) submit an application to the Administrator for participation in the Scholarship Program;

(3) sign and submit to the Administrator, at the time of submission of such application, a written contract (described in subsection (e) of this section) to accept payment of a scholarship and to serve a period of obligated service as provided in section 4143 of this title; and

(4) at the time of submission of such application, not be obligated under any other Federal program to perform service after completion of the course of study or program of such individual referred to in clause (1) of this subsection.

(b)(1) In distributing application forms and contract forms to individuals desiring to participate in the Scholarship Program, the Administrator shall include with such forms—

(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Administrator, including in the summary a clear explanation of the damages to which the United States is entitled under section 4144 of this title if the individual breaches the contract; and

(B) a full description of the terms and conditions that would apply to the individual's participation in the Scholarship Program and service in the Department of Medicine and Surgery.

(2) The Administrator shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Scholarship Program on a date sufficiently early to allow such individuals adequate time to prepare and submit such forms.

(c)(1) In selecting applicants for acceptance in the Scholarship Program, the Administrator shall give priority to the applications of individuals who have previously received scholarships under the Scholarship Program.

(2) Before awarding the initial scholarship in any course of training other than in medicine or nursing, the Administrator, not less than 60 days before awarding such scholarship shall notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the Administrator's intent to award a scholarship in such course of training and of the reasons why the award of scholarships in such course of training is necessary to assist in providing an adequate supply of the personnel in the health profession concerned.

(d)(1) An individual becomes a participant in the Scholarship Program only upon the Administrator's approval of the individual's application submitted under subsection (a)(2) of this section and the Administrator's acceptance of the contract signed by the individual under subsection (a)(3) of this section.

(2) The Administrator shall provide written notice to an individual promptly upon the Administrator's approval under paragraph (1) of this subsection of the individual's participation in the Scholarship Program.

(e) The written contract (referred to in this subchapter) between the Administrator and a participant in the Scholarship Program shall contain—

(1) an agreement that—

(A) subject to clause (2) of this subsection, the Administrator agrees (i) to provide the participant with a scholarship (described in subsection (f) of this section) of from one to four school years during which period the participant is pursuing a course of training described in subsection (a)(1)(B) of this section, and (ii) to afford the participant the opportunity for employment in the Department of Medicine and Surgery (subject to the availability of appropriated funds for such purpose and other qualifications established in accordance with section 4105 of this title); and

(B) subject to clause (2) of this subsection, the participant agrees—

(i) to accept such a scholarship;

(ii) to maintain enrollment and attendance in a course of training described in subsection (a)(1)(B) of this section until the participant completes the course of training;

(iii) while enrolled in such course of training, to maintain an acceptable level of academic standing (as determined by the educational institution offering such course of training under regulations prescribed by the Administrator);

(iv) to serve as a full-time employee in the Department of Medicine and Surgery for a period of time (hereinafter in this subchapter referred to as the "period of obligated service" equal to the greater of—

(I) one calendar year for each school year for which the participant was provided a scholarship under the Scholarship Program, or

(II) two calendar years; and

(v) if the participant's period of obligated service is deferred under section 4143(b)(3)(A) of this title, to serve any additional period of obligated service prescribed by the Administrator under section 4143(b)(4)(B) of this title;

(2) a provision that any financial obligation of the United States arising out of a contract entered into under this subchapter, and any obligation of the participant which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this subchapter;

(3) a statement of the damages to which the United States is entitled under section 4144 of this title for the participant's breach of the contract; and

(4) such other statments of the rights and liabilities of the Administrator and of the participant as may be appropriate and consistent with the provisions of this subchapter.

(f)(1) A scholarship provided to a participant in the Scholarship Program for a school year under a written contract under the Scholarship Program shall consist of—

(A) payment to, or (in accordance with paragraph (2) of this subsection) on behalf of, the participant of the amount of—

(i) the tuition of the participant in such school year; and

(ii) other reasonable educational expenses, including fees, books, and laboratory expenses; and

(B) payment to the participant of a stipend of not in excess of $485 per month (adjusted in accordance with paragraph (3) of this subsection) for each of the 12 consecutive months beginning with the first month of such school year.

(2) The Administrator may contract with an educational institution in which a participant in the Scholarship Program is enrolled for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (1)(A) of this subsection. Payment to such an educational institution may be made without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529).

(3) The amount of the monthly stipend, specified in paragraph (1)(B) of this subsection and as previously adjusted (if at all) in accordance with this paragraph, shall be increased by the Administrator for each school year ending in a fiscal year beginning after September 30, 1980, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5) of the adjusted (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the fiscal year in which such school year ends.

(g) Notwithstanding any other provision of law, participants in the Scholarship Program shall not be considered to be employees of the Federal Government and shall not be counted against any employment ceiling affecting the Department of Medicine and Surgery while they are undergoing a course of training prior to engaging in deferred internship, residency, or other advanced clinical training.

(h) The Administrator shall report to Congress not later than March 1 of each year—

(1) the number of students receiving scholarships under the Scholarship Program and the number of students enrolled in each type of health profession training;

(2) the educational institutions providing such training;

(3) the number of applications filed, by health profession category, under this section during the school year beginning in such year and the total number of such applications so filed for all years in which the Scholarship Program has been in existence;

(4) the number of scholarships accepted, by health profession category, during such school year and the number, by health profession category, which were offered and not accepted, together with a summary of the reasons that such scholarships were not accepted; and

(5) the amount of tuition and other expenses paid, by health profession category, in the aggregate and at each educational institution for the school year beginning in such year and for prior school years.

(i) The Administrator shall prescribe regulations to carry out the Scholarship Program.

§ 4143. Obligated service

(a) Each participant in the Scholarship Program shall provide service in the full-time clinical practice of such participant's profession or in another health-care position, in an assignment or location as determined by the Administrator, as a full-time employee of the Veterans' Administration for the period of obligated service provided in the contract of such participant entered into under section 4142 of this title.

(b)(1) Not later than 60 days prior to the date described in paragraph (3) of this subsection with respect to a participant in the Scholarship Program, the Administrator shall notify the participant of the date described in such paragraph for the beginning of such participant's period of obligated service.

(2) The Administrator shall appoint each participant in the Department of Medicine and Surgery as soon as possible after the date described in paragraph (3) of this subsection.

(3)(A)(i) With respect to a participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, the date for the beginning of the patricipant's period of obligated service is the date upon which the participant becomes licensed to practice medicine, osteopathy, dentistry, optometry, or podiatry, as the case may be, in a State, except that the Administrator may, at the request of such participant, defer such date until the end of the period of time required for the participant to complete an internship or residency or other advanced clinical training. If the participant requests such a deferral, the Administrator shall notify the participant that such deferral could lead to an additional period of obligated service in accordance with paragraph (4) of this subsection.

(ii) No such period of internship or residency or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subchapter.

(B) With respect to a participant receiving a degree from a school of nursing, the date for the beginning of the participant's period of obligated service is the date upon which the participant becomes registered as a graduate nurse in a State.

(C) With respect to a participant receiving a degree from an institution other than a school of medicine, osteopathy, dentistry, optometry, podiatry, or nursing, the date for the beginning of the participant's period of obligated service is the date upon which the participant completes the course of training leading to such degree.

(4) Any participant whose period of obligated service is deferred under paragraph (3)(A) of this subsection—

(A) shall be required to undertake internship or residency or other advanced clinical training in an accredited program in an educational institution which is an affiliated institution (as defined in section 4108(c)(1) of this title) and with respect to which the affiliation agreement provides that all or part of the internship or residency or other advanced clinical training will be undertaken in a Veterans' Administration health-care facility; and

(B) may, at the discretion of the Administrator and upon the recommendation of the Chief Medical Director, incur an additional period of obligated service—

(i) at the rate of one-half of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is in a medical specialty necessary to meet the health care requirements of the Veterans' Administration (as determined under regulations prescribed by the Administrator); or

(ii) at the rate of three-quarters of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is not in a medical specialty necessary to meet the health care requirements of the Veterans' Administration (as determined under regulations prescribed by the Administrator).

(c) A participant in the Scholarship Program shall be considered to have begun serving a period of obligated service on the date such participant, in accordance with subsection (a) of this section, is appointed under this chapter as a full-time employee in the Department of Medicine and Surgery.

§ 4144. Breach of contract; liability; waiver

(a) A participant in the Scholarship Program (other than a participant described in subsection (b) of this section) who fails to accept payment, or instructs the educational institution in which the participant is enrolled not to accept payment, in whole or in part, of a scholarship under the contract entered into under section 4142 of this title, shall, in addition to any period of obligated service or other obligation or liability under the contract, be liable to the United States for the amount of $1,500 as liquidated damages.

(b) A participant who—

(1) fails to maintain an acceptable level of academic standing in the educational institution in which the participant is enrolled (such level determined by the educational institution under regulations prescribed by the Administrator);

(2) is dismissed from such educational institution for disciplinary reasons;

(3) voluntarily terminates the course of training in such educational institution before the completion of such course of training; or

(4) fails to become licensed to practice medicine, osteopathy, dentistry, podiatry, or optometry in a State, fails to become registered as a graduate nurse in a State, or fails to meet any applicable licensure requirement in the case of a physician assistant or expanded-function dental auxiliary, during a

period of time determined under regulations prescribed by the Administrator;

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to or on behalf of the participant under the contract.

(c) If a participant breaches the written contract by failing (for any reason) to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula:

$$A = 3\phi\left(\frac{t-s}{t}\right)$$

in which "A" is the amount the United States is entitled to recover; "Φ" is the sum of the amounts paid under this subchapter or on behalf of the participant and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the participant's period of obligated service, including any additional period of obligated service in accordance with section 4143(b)(4)(B) of this subchapter; and "s" is the number of months of such period served by the participant in accordance with section 4143 of this title. Any amount of damages which the United States is entitled to recover under this section will, within the one-year period beginning on the date of the breach of the written contract, be paid to the United States.

(d)(1) Any obligation under the Scholarship Program (or a written contract thereunder) of a participant in the Scholarship Program for service or payment of damages shall be canceled upon the death of the participant.

(2) The Administrator shall prescribe regulations providing for the waiver or suspension of any obligation of a participant for service or payment under such Program (or a contract thereunder) whenever compliance by the participant is impossible due to circumstances beyond the control of the participant or whenever the Administrator determines that the waiver or suspension of compliance would be in the best interest of the Veterans' Administration.

(3) Any obligation of a participant under such Program (or a contract thereunder) for payment of damages may not be released by a discharge in bankruptcy under title 11 before the expiration of the five-year period beginning on the first date that payment of such damages is due.

(e) The Administrator, in cooperation with and with the consent of the heads of other relevant departments and agencies and with the consent of the participant or individual involved, may permit—

(1) any period of obligated service required to be performed under this subchapter to be performed in another Federal department or agency or in the Armed Forces; and

(2) any period of obligated service required to be performed in another Federal department or agency or in the Armed Forces under another Federal health personnel scholarship program to be performed in the Department of Medicine and Surgery.

§ 4145. Exemption of scholarship payments from taxation

Notwithstanding any other law, any payment to, or on behalf of, a participant in the Scholarship Program for tuition, education expenses, or a stipend under this subchapter shall be exempt from taxation.

§ 4146. Program subject to availability of appropriations

The authority of the Administrator to make payments under this subchapter is effective for any fiscal year only to the extent that appropriated funds are available for such purposes.

* * * * *

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

* * * * *

Chapter 82—ASSISTANCE IN ESTABLISHING NEW STATE MEDICAL SCHOOLS; GRANTS TO AFFILIATED MEDICAL SCHOOLS; ASSISTANCE TO HEALTH MANPOWER TRAINING INSTITUTIONS

* * * * *

Subchapter II—Procurement and Supply

* * * * *

§ 5021. Revolving supply fund

(a) The revolving supply fund established for the operation and maintenance of a supply system for the Veterans' Administration (including procurement of supplies, equipment, and personal services and the repair and reclamation of used, spent, or excess personal property) shall be—

(1) available without fiscal year limitations for all expenses necessary for the operation and maintenance of such supply system;

(2) reimbursed from appropriations for the cost of all services, equipment, and supplies furnished, at rates determined by the Administrator on the basis of estimated or actual direct cost (*which may be based on the cost of recent significant purchases of the equipment or supply item involved*), and indirect cost; and

(3) credited with advances from appropriations for activities to which services or supplies are to be furnished, and all other receipts resulting from the operation of the fund, including property returned to the supply system when no longer required by activities to which it had been furnished, the proceeds of disposal of scrap, excess or surplus personal property of the fund, and receipts from carriers and others for loss of or damage to personal property.

[At the end of each fiscal year, any net income of the fund, after making provision for prior losses, shall be covered into the Treasury of the United States as miscellaneous receipts.]

At the end of each fiscal year, there shall be covered into the Treasury of the United States as miscellaneous receipts such amounts as the Administrator determines to be in excess of the requirements necessary for the maintenance of adequate inventory levels and for the effective financial management of the revolving supply fund.

* * * * *

§ 5022. Authority to procure and dispose of property and to negotiate for common services

(a)(1) The Administrator may lease for a term not exceeding three years lands or buildings, or parts or parcels thereof, belonging to the United States and under the Administrator's control. Any lease made pursuant to this subsection to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Notwithstanding section 321 of the Act entitled "An Act making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1933, and for other purposes", approved June 30, 1932, (40 U.S.C. 303b), or any other provision of law, a lease made pursuant to this subsection to any public or nonprofit organization may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease. Prior to the execution of any such lease, the Administrator shall give appropriate public notice of the Administrator's intention to do so in the newspaper of the community in which the lands or buildings to be leased are located. The proceeds from such leases, less expenses for maintenance, operation, and repair of buildings leased for living quarters, shall be covered into the Treasury of the United States as miscellaneous receipts.

(2)(A) Before entering into a transaction described in subparagraph (B) of this paragraph with respect to any real property owned by the United States and administered by the Veterans' Administration which has an estimated value in excess of $50,000, the Administrator shall submit a report of the facts concerning the proposed transaction to the Committees on Veterans' Affairs of the Senate and House of Representatives, and such transaction may not then be entered into until after the expiration of 30 days from the date upon which the report is submitted.

(B) Subparagraph (A) of this paragraph applies to (i) any transfer of an interest in real property to another Federal agency or to a State (or any political subdivision of a State), and (ii) any report to a Federal disposal agency of excess real property.

(C) A statement in an instrument of conveyance, including a lease, that the requirements of this paragraph have been met, or that the conveyance is not subject to this paragraph, is conclusive for the purposes of all matters pertaining to the ownership of any right or interest in the property conveyed by such instrument.

* * * * *

Subchapter III—State Home Facilities for Furnishing Domiciliary, Nursing Home, and Hospital Care

* * * * *

§ 5034. General regulations

Within six months after the date of enactment of this section or any amendment to it with respect to such amendment, the Administrator shall prescribe the following by regulation:

(1) The number of beds required to provide adequate nursing home care to veterans residing in each State [which number shall not exceed two and one-half beds per thousand veterans population in the case of any State].

(2) General standards of construction, repair, and equipment for facilities constructed with assistance received under this subchapter.

(3) General standards for the furnishing of care in facilities which are constructed with assistance received under this subchapter, which standards shall be no less stringent than those standards prescribed by the Administrator pursuant to section 620(b) of this title. The Administrator may inspect any State facility constructed with assistance received under this subchapter at such times as the Administrator deems necessary to insure that such facility meets such standards.

Chapter 82—ASSISTANCE IN ESTABLISHING NEW STATE MEDICAL SCHOOLS; GRANTS TO AFFILIATED MEDICAL SCHOOLS; ASSISTANCE TO HEALTH MANPOWER TRAINING INSTITUTIONS

* * * * *

§ 5070. Coordination with public health programs; administration

(a) * * *

* * * * *

(e) In carrying out the purposes of this chapter, the Administrator may lease to any eligible institution for such consideration and under such terms and conditions as the Administrator deems appropriate, such lands, buildings, and structures (including equipment therein) under the control and jurisdiction of the Veterans' Administration as may be necessary. The three-year limitation on the term of a lease prescribed in section

5012(a) of this title shall not apply with respect to any lease entered into pursuant to this chaper, *but no such lease may be for a period of more than 50 years.* Any lease entered into pursuant to this chapter may be entered into without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Notwithstanding section 321 of the Act entitled "An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes", approved June 30, 1932 (40 U.S.C. 303b), or any other provision of law, a lease entered into pursuant to this chapter may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration of the lease.

* * * * *

Subchapter III—Assistance to Public and Nonprofit Institutions of Higher Learning, Hospitals and Other Health Manpower Institutions Affiliated With the Veterans' Administration to Increase the Production of Professional and Other Health Personnel

* * * * *

§ 5093. Grants

(a) Any eligible institution may apply to the Administrator for a grant under this subchapter to assist such institution to carry out, through the Veterans' Administration medical facility with which it is, or will become affiliated, educational and clinical projects and programs, matching the clinical requirements of the facility to the health manpower training potential of the eligible institution, for the expansion and improvement of such institution's capacity to train health manpower, including physicians' assistants, nurse practitioners, and other new types of health personnel in furtherance of the purposes of this subchapter. Any such application shall contain a plan to carry out such projects and programs and such other information in such detail as the Administrator deems necessary and appropriate.

(b) An application for a grant under this section may be approved by the Administrator only upon the Administrator's determination that—

(1) the proposed projects and programs for which the grant will be made will make a significant contribution to improving the education (including continuing education) or training program of the eligible institution [and will result in a substantial increase in the number of students trained at such institution, provided there is reasonable assurance from a recognized accrediting body or bodies approved for such purposes by the Commissioner of Education of the Department of Health, Education, and Welfare that the increase in the number of students will not threaten any existing accreditation or otherwise compromise the quality of the training at such institution];

(2) the application contains or is supported by adequate assurance that any Federal funds made available under this subchapter will be supplemented by funds or other resources available from other sources, whether public or private;

(3) the application sets forth such fiscal control and accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds expended under this subchapter; and

(4) the application provides for making such reports, in such form and containing such information, as the Administrator may require to carry out the Administrator's functions under this subchapter, and for keeping such records and for affording such access thereto as the Administrator may find necessary to assure the correctness and verification of such reports.

* * * * *

PUBLIC LAW 94-123

* * * * *

[SEC. 3. The Administrator of Veterans' Affairs shall submit a report each year to the Committees on Veterans' Affairs of the House of Representatives and the Senate regarding the operation of the special pay program authorized by section 4118 of title 38, United States Code, as added by section 2(d)(1) of this Act. The report shall be on a fiscal year basis and shall contain—

(1) a review of the program to date for the fiscal year during which the report is submitted and for such portion of the preceding fiscal year as was not included in the previous annual report; and

(2) any plan in connection with the program for the remainder of such fiscal year and for the succeeding fiscal year.

This report shall be submitted no later than April 30 of each year.]

* * * * *

SEC. 6. (a) [1] The amendments made by section 2 of this Act shall become effective on October 12, 1975.

[(2) No agreement to provide special pay may be entered into pursuant to section 4118 of title 38, United States Code (as added by section 2(d)(1) of this Act), after September 30, 1981.]

(b) Except as provided in subsection (a)(1) of this section, the amendments made by this Act shall become effective beginning the first pay period following thirty days after the date of the enactment of this Act.

PUBLIC LAW 95-520

* * * * *

SEC. 8. (a) Not later than February 1, [1980] *1981,* the Administrator of Veterans' Affairs shall submit a report to the Congress and to the President on the furnishing by the Veterans' Administration of hospital care and medical services in the Commonwealth of Puerto Rico and in the Virgin Islands. The Administrator shall include in such report—

(1) a comprehensive assessment of the health-care needs of veterans in the Commonwealth of Puerto Rico and in the Virgin Islands;

(2) a detailed report on the hospital care and medical services furnished or to be furnished to such veterans during fiscal years 1975 through 1981, with information in such report shown with respect to the number of veterans treated or to be treated, the facilities at which such care and services are furnished or to be furnished, and the extent to which such care and services are furnished or are to be furnished for the treatment of veterans for service-connected disabilities of any degree and of veterans with service-connected disabilities rated at 50 per centum or more; and

(3) recommendations as to how the health-care needs of such veterans can best be addressed within the existing authority of the Administrator of Veterans' Affairs and what additional authority, if any, is necessary and desirable to meet such needs.

(b) In making recommendations under subsection (a)(3), the Administrator shall take into consideration—

(1) the state of the economy in the Commonwealth of Puerto Rico and in the Virgin Islands;

(2) alternative sources of health-care services that would be available to veterans in the Commonwealth of Puerto Rico and in the Virgin Islands if the health-care services furnished by the Veterans' Administration for non-service-connected disabilities were substantially reduced;

(3) the desirability of equitable distribution of Veterans' Administration health-care resources; and

(4) the higher priority established by law for the care and treatment of service-connected disabilities.●

Mr. THURMOND. Mr. President, I rise in support of H.R. 7102, as amended, the Veterans' Administration Health-Care Amendments Act of 1980. This measure contains S. 2534 which this body passed unanimously on June 5, 1980, and subsequently was incorporated by the House into H.R. 7102 on July 31, 1980. H.R. 7102, as amended, will address several areas of vital concern within the VA health care delivery system.

Title I is directed toward the resolution of many problems the VA is experiencing in recruiting and retaining qualified health care personnel. The heart of the VA is its health care system. With 172 hospitals, 282 outpatient clinics, and numerous support facilities, the VA has become the largest provider of health care in the world.

In an effort to continue the quality work that is being performed in the VA hospital system, it is imperative that the compensation that these highly qualified medical professionals receive is equivalent or competitive with the non-VA sector. Title I would address this issue by establishing a permanent special pay authority for VA physicians, dentists, and other health care professionals. This authority would replace the stopgap authority which has been in effect since 1975 and should encourage the individuals considering VA service as a career to make their decisions earlier and with some degree of certainty about their future.

Also, title I would exempt top personnel within the Department of Medicine and Surgery who are employed under title 38 from the provision of title 5 of the United States Code relating to Senior Executive Service. I believe that it is very important to the integrity of the VA health care system that its top employees are VA personnel and not subject to the practices of the Office of Personnel Management.

Several issues relating to the appropriate balance between full-time and part-time physicians at VA facilities, improved personnel management relating to the Nursing Service, and other employment benefits issues are authorized by title I of H.R. 7102.

Mr. President, the importance of the care that the VA renders and is capable of rendering to our older veterans cannot be overemphasized. Title III of H.R. 7102 will incorporate the major provisions of S. 1523, a bill which I introduced on July 16, 1979, and addresses the long range care of our Nation's aging veterans population. There are presently 6 million U.S. veterans aged 60 and older. By 1985, this number will increase to 9 million and will eventually reach 11 million by 1995.

Title III will address the problem presented by the phenomenon of the aging veteran by authorizing the institution of a pervasive and intensive program within the VA's Department of Medicine and Surgery to study and do research in the field of geriatrics. Specifically, this legislation would authorize

up to 15 VA hospitals as locations for demonstration centers of research, education, and clinical operations in geriatrics. These demonstration centers would be authorized for a period of 4 years and would be supervised by a newly created position of Assistant Chief Medical Director for Extended Care within the VA's Department of Medicine and Surgery.

Mr. President, this provision would significantly enhance the quality of geriatric care now provided in VA hospital facilities and, ultimately, would provide a meaningful effort by our Government to address the needs of the 32 million elderly persons who will live in this country by the year 2000. It is far reaching and proposes to address a future problem with a view of finding viable solutions now.

Mr. President, I believe H.R. 7102, as amended, is a reasonable and fair measure that will further our Nation's commitment to veterans by having a quality VA health care delivery system. I urge my colleagues to support H.R. 7102, as amended.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CRANSTON, I move that the Senate concur in the House amendment.

Mr. TOWER. Mr. President, the appropriate Senators on this side of the aisle have cleared this, and therefore I have no objection.

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

The motion was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

FIFTH ANNIVERSARY OF THE HELSINKI ACCORDS—HOUSE CONCURRENT RESOLUTION 391

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on House Concurrent Resolution 391.

The PRESIDING OFFICER laid before the Senate House Concurrent Resolution 391, concerning the fifth anniversary of the Helsinki accords and calling for prominent attention to human rights concerns at the Madrid conference.

Mr. TOWER. Mr. President, this resolution has been cleared with the appropriate Senators on this side of the aisle, and there is no objection.

● Mr. PELL. Mr. President, representatives of the 35 nations which signed the 1975 Helsinki accords—the United States, Canada, the Soviet Union, and 32 European nations—will meet in Madrid in November to review the status of implementation of the Helsinki agreements and to discuss new measures to advance security and cooperation in Europe.

Since today—August 1—marks the fifth anniversary of the signing of the Helsinki accords, it is especially appropriate to reaffirm congressional support for full implementation of all provisions of the Helsinki Final Act, as well as to express the interest of the Congress in seeing that human rights concerns are given prominent attention at Madrid.

The proposed concurrent resolution is identical to one that I introduced in the Senate and which has 18 Senate cosponsors—Senate Concurrent Resolution 111. Each resolution specifically urges the U.S. delegation to Madrid to raise violations of human rights, especially those involving members of Helsinki monitoring groups, in a firm, forthright and specific manner. It also calls upon the delegation to seek a continuation of the review process and thus maintain a forum in which to influence the Soviets and others to implement the agreement by setting the time and place of the next review meeting within 2 years.

Because of the emphasis by many signatory nations on military issues, including several proposals to convene a conference on European disarmament after Madrid, and the desire on the part of some countries to sidestep human rights, it is important at this time to express the strong conviction of the Congress that the U.S. delegation insist on a balanced agenda and a balanced conference. This means a fair review of every element of the Helsinki agreement, with proper attention to military matters, but not at the expense of other subjects.

The Soviet bloc is waging an energetic and concerted campaign designed to avoid discussion of Afghanistan and human rights issues at the Madrid meeting. Both the Soviet Union and its Warsaw Pact allies are warning that if so-called disagreeable issues are stressed by the United States and the Western powers, the conference could end in disaster.

There is no reason to submit to such blackmail. Every nation which signed the Helsinki accords 5 years ago, including the Soviet Union, has a stake in furthering the review process in the interest of promoting security and cooperation in Europe.

A congressional statement of support for full discussion of all issues, and for progress in human rights, will help strengthen the position of the U.S. delegation in its preparatory meetings with our Western allies before the Madrid conference. I, therefore, urge the adoption of this resolution.●

The concurrent resolution was agreed to. The preamble was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, for not to exceed 1 hour, and that Senators may speak therein up to 5 minutes each.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for routine morning business be extended 10 minutes and Senators may speak therein up to 5 minutes each.

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

VISIT TO THE SENATE BY MEMBERS OF THE EUROPEAN PARLIAMENT OF THE UNITED KINGDOM

Mr. TOWER. Mr. President, I wish to introduce two distinguished visitors to the Senate today, two members of the European Parliament of the United Kingdom representing Sussex and Mid-Scotland, the Right Honorable Dr. Madron Seligman and Mr. John R. Purvis, members of the European Parliament.

[Applause.]

RECESS

Mr. TOWER. Mr. President, I ask unanimous consent that the Senate stand in recess for 1 minute so that Members might meet our friends from the United Kingdom.

There being no objection, the Senate at 3:17 p.m. recessed until 3:18 p.m.

Whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. EXON).

HUMAN RIGHTS

Mr. HAYAKAWA. Mr. President, I rise in support of House Concurrent Resolution 399, which specifically urges the U.S. delegation to the Madrid Review Conference to seek compliance with the Helsinki accords and to raise questions regarding violations of human rights.

Five years ago today the leaders of 33 East and West European nations, Canada, and the United States met in Helsinki to sign the Conference on Security and Cooperation in Europe Final Act. Originally the conference was promoted by the Soviets as a means to gain formal acceptance of East European political borders, but in the process of the long negotiations the West was able to expand the document to include humanitarian concerns such as the freer movement of people, ideas, and information; family reunification and visits; binational marriages; travel; access to printed, broadcast, and filmed information; improved working conditions for journalists; and increased cultural and educational exchanges.

An unforeseen development resulted from the inclusion of these human rights principles in the Helsinki accords. Monitoring groups within the Soviet Union and some Eastern European countries began to form in 1976 with the aim of

demanding the full implementation of the pledges made by their governments.

The groups, particularly in the Soviet capital as well as in the Ukraine, Lithuania, Georgia, Armenia, and Czechoslovakia, produced documents evidencing numberous and extensive human rights violations by their governments.

The governments of the Soviet Union, Czechoslovakia and other Eastern European countries subsequently mobilized their punitive machinery. All the founding members of the Lithuanian, Armenian, and Georgian groups have been either arrested or exiled to the West.

Of the 11 original members in the Moscow group, all but 1 have received criminal sentences. In the Ukrainian group only 3 of the original 11 members have not been punished. In addition, in this last group, four members who joined later have also been arrested. Despite this, the ranks of the Ukranian, Russian, Lithuanian, and Armenian groups have been augmented by new members who continue their activities under the constant threat of severe punishment.

Mr. President, the members of these persecuted monitoring groups are looking to this country in the hope that we will take cognizance not only of their situation but of all their compatriots who are denied the freedom of thought, conscience, and religion. The least Congress can do is to demonstrate to these courageous people that they have friends in the West who are deeply concerned about their plight.

Mr. President, I therefore join my colleagues in urging the immediate passage of Senate Concurrent Resolution 111. At the same time, I ask unanimous consent that the following editorial from the New York Times of July 31 be printed in the RECORD.

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

MOSCOW VS. RIGHTS

(By Jeri Laber)

Five years after the signing of the Helsinki accords, with the second Helsinki review conference scheduled for November in Madrid, articles have appeared recently on the editorial pages of several leading American newspapers suggesting that the United States boycott the Madrid conference, thus abrogating its Helsinki commitments.

Soviet-American relations are worse today than they have been in several decades; the Soviet thrust into Afghanistan, the American boycott of the Moscow Olympic Games and the failure to ratify SALT II are recent reflections of that tension. Moreover, well before Afghanistan, Soviet leaders, who freely invoke the peaceful "spirit of Helsinki" when it suits their purposes; had made a mockery of the human rights provisions of the Helsinki accords.

I had a chance to see the "Helsinki spirit" in action last fall in Moscow when I met with members of the Moscow Helsinki Watch Group in Andrei D. Sakharov's apartment. The room was "bugged," of course; this was openly acknowledged. Yet the people who had assembled there to meet a Helsinki colleague from the West spoke openly and without fear about their troubles and hopes. Only one word caused them to pause and lower their voices to a whisper—that word was "Helsinki."

There were 12 of them waiting for me in the Sakharov living room on the September afternoon, a plucky but dispirited group, more women than men and most of them quite elderly. They were the survivors of a citizens' movement steadily eroded by the arrest and exile of its most dynamic members—people like Yuri F. Orlov, Anatoly B. Shcharansky, Alexsandr Ginzburg and Vladimir Slepak.

Now, less than a year later, only five of those people remain in Moscow, and they are subject to severe harassment. The rest have been dispersed in a variety of ways: the Sakharovs to the closed city of Gorky, others to prison or internal exile, still others expelled to the West. Oksana Meshko, a handsome, 75-year-old woman who survived Stalin's gulag and whose son is now a political prisoner, was recently forced into a psychiatric hospital.

Monitoring the Soviet monitors has become a tragic numbers game with a constantly rising tally: as of this writing, 43 are in prison or exile for attempting to exercise the rights that we, their American counterparts, take for granted in our imperfect United States. This figure does not include the many Soviet Helsinki monitors who have been forced to emigrate, to say nothing of those who were so intimidated that they did not join in the first place. Nor does it include Helsinki watchers in Eastern Europe, where governments have followed the Soviet lead.

Should we, then, sit down at the conference table with Soviet leaders this fall for a discussion of Helsinki compliance among the 35 signers? Would it not be morally and politically consistent for us to boycott the review conference as we have boycotted the Olympics? Wouldn't this be the most effective way for us to show the Soviet Union that it will be held accountable for violating international agreements it has signed? So goes one set of arguments.

On the other side we find a responsible diplomat like Albert W. Sherer Jr., who was in charge of American preparations for the first review conference in Belgrade in 1977, arguing in the summer issue of Foreign Policy that we should not repeat the mistakes of Belgrade by "hammering away at the cause of Soviet dissidents." Mr. Sherer urges that the superpowers at Madrid "cooperate rather than confront." One wonders to what end.

If we are to go to Madrid, and I believe that we *should*, it is certainly not to mollify the Soviet Union within a Helsinki framework. The Russians will attempt to focus attention at Madrid on questions of military and economic security. They conveniently forget that the accords are unique in recognizing that a country's human rights accord is an international affair intrinsically linked to military and economic stability. We must force them to remember this at Madrid. The American delegation, while freely acknowledging its own shortcomings in complying with the Helsinki accords, should enlist all the support it can get to demand that the Soviet Union and Czechoslovakia release their imprisoned Helsinki monitors as well as countless others being punished for their religious or political beliefs.

There may be room for quiet negotiation as well, but only if we make our position known now—over and over again—*before* Madrid and *at* Madrid. We must take this initiative, even if—especially if—this is our last opportunity.

ORDER OF PROCEDURE ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, do we have any orders for the recognition of Senators on Monday?

The PRESIDING OFFICER. The Chair advises the majority leader that we have several special orders for Monday.

The following Senators are recognized under the special order: The majority leader, Senator BUMPERS, Senator HART, Senator PELL, Senator MCGOVERN, and Senator CULVER each for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The majority leader will state the parliamentary inquiry.

Mr. ROBERT C. BYRD. Mr. President, what will take precedence on Monday, the completion of the orders for the recognition of Senators or the establishment of a quorum under the cloture rule?

The PRESIDING OFFICER. The latter will take precedence.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the orders for the recognition of Senators take precedence, because each will be counting on his 15 minutes' time.

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

Mr. ROBERT C. BYRD. Mr. President, this will not delay the Senate very long in getting to the vote.

I ask unanimous consent that the time of the two leaders on Monday, because of the particular circumstances, be limited to 5 minutes, to be equally divided between the two leaders or their designees.

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

Mr. ROBERT C. BYRD. Mr. President, does Mr. JEPSEN wish to have the floor?

Mr. JEPSEN. Yes.

Mr. ROBERT C. BYRD. Mr. President, how much time remains in morning business?

The PRESIDING OFFICER. Twenty-three minutes remain in morning business.

Mr. ROBERT C. BYRD. I thank the Chair. I yield the floor for the moment.

The PRESIDING OFFICER. The Senator from Iowa (Mr. JEPSEN).

ERISA

Mr. JEPSEN. Mr. President, on Tuesday evening, I voted against S. 1076, the Multiemployer Pension Plan Amendments of 1980. I did so for a number of reasons.

First, I felt that it was unreasonable for the Senate to have to vote on such complicated and far-reaching legislation without the benefit of a committee report or sufficient time for those of us who are not members of the committees with jurisdiction to study the issues. I think that experience clearly shows that when Congress rushes through major legislation, bad laws inevitably result. A good example is carryover basis, which was tacked on to the Tax Reform Act of 1976 in the wee hours of the 94th Congress. The result is that the 96th Congress had to repeal this section of the bill.

Second, I have serious doubts about the effect of bringing multiemployer pension plans under ERISA, given the

experience with ERISA on single-employer plans thus far. The large costs associated with complying with ERISA regulations—which in many cases overlap among the IRS, the Labor Department, and the Pension Benefit Guaranty Corporation—encouraged many small firms to simply drop their pension plans rather than comply with all the redtape. In the 5 years since implementation of ERISA, 59,365 pension plans were terminated, compared to only 17,895 during the previous 5 years. Thus, the ratio between new pension plans and terminated plans has fallen from 13.5 to 1 before ERISA to 4 to 1 since ERISA.

What this means is that millions of Americans have lost the security of an employer-provided pension plan and must make their own arrangements.

I fear that the same thing will happen to those Americans covered by multiemployer pension plans as well as a result of S. 1076. As Robert Merry wrote in Thursday's Wall Street Journal, the multiemployer pension bill "could contribute to the eventual demise of multi-employer pension plans, which in turn would threaten the financial well-being of millions of current and future retirees."

In my view, ERISA is just another example of good intentions gone wrong. There were pension abuses that needed correction and some aspects of ERISA are desirable. But the total effect of all the regulations and requirements of ERISA has been to eliminate pension coverage for millions of Americans.

I ask unanimous consent that Robert Merry's article from the Wall Street Journal be printed in the RECORD at this point.

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

BILL INSURING MULTI-EMPLOYER PENSIONS COULD CAUSE WIDE AVERSION TO SUCH PLANS

(By Robert W. Merry)

WASHINGTON.—Congress is poised to pass legislation that could contribute to the eventual demise of multi-employer pension plans, which in turn would threaten the financial well-being of millions of current and future retirees.

After years of delay and months of wrangling, the lawmakers may today clear a bill guaranteeing retirement benefits of pension funds in which many companies join to provide benefits through union-negotiated plans. Although both the House and Senate have passed a bill, they have yet to work out the differences between their separate versions.

Essentially, the legislation would:

Impose a stiff "withdrawal liability" on most employers who abandon a multi-employer pension plan. This liability, based on the employer's share of his plan's unfunded vested benefits, would equal the departing employer's current annual obligation for up to 20 years—or until current vested benefits are fully funded. Most construction-company withdrawals are excluded from the liability because of the mobile nature of that industry.

Increase multi-employer pension plans' premium payments to the Pension Benefit Guaranty Corp., the federal agency that insures pension plans. Under the bill, these annual insurance premiums would increase to $1.40 for each participating plan from the current 50 cents. The premiums could then rise further after four years, reaching after eight years a maximum of $2.60, which is the current premium rate for single-employer plans.

Scale back guaranteed benefit levels. Under the bill, the PBGC would guarantee 100% of the first $5 of monthly benefits per year of an employe's service. The next $15 per year of service would be guaranteed at 75% for strong plans and 65% for weaker plans. At most, this would amount to a little more than half of the maximum $1,159 a month guaranteed to employes in single-employer plans.

While the ramifications of the legislation haven't received wide attention, some pension specialists think it could generate great employer aversion to such plans.

SHRIVELING OF PLANS FORECAST

If that happens, companies not currently in multi-employer plans would probably try to stay out, and those in them could begin seeking ways to escape. The possible result: an eventual shriveling of the 2,000 U.S. multi-employer plans, now common in trucking, construction, coal, food retailing and some other industries.

"I think we may be looking at dinosaurs here," says one congressional aide with experience in the pension area.

Not everyone agrees. "I think it remains to be seen" whether multi-employer plans eventually fade away, says Robert Nagle, director of the PBGC. He contends that the bill actually could encourage employers to participate.

The idea behind the legislation is to shore up multi-employer pension plans so they can be brought under the 1974 Employe Retirement Income Security Act. That act was designed to insure the benefits of retirement-plan participants against the financial collapse of their plans and to guarantee that promised retirement benefits are paid. It has been applied to single-employer retirement plans since 1975, but its application to multi-employer plans has been delayed repeatedly by Congress the past three years.

Although the assumption in 1974 was that mutli-employer plans were universally sound, it has become clear that many of them—especially those in declining or geographically shifting industries—are in serious financial trouble.

EMPLOYERS' LIABILITIES

Most employers are only dimly aware of the pension liabilities they face. That's because the labor contracts they signed over the years generally concentrated on their "cents-per-hour" pension-fund contributions, which were thrown into a central pot to be distributed by labor-management trustees. Most employers thought their obligations ended with those monthly payments.

But ERISA establishes that employers are liable for payment of promised benefits, not just contributions. While nobody knows precisely how large this collective liability is, most agree it is huge.

So the problem facing Congress the past two years has come down to what one pension specialist, Washington lawyer Michael Gordon, calls "an exquisite question of competing equities." It is this: how to strike a balance that protects existing pension funds by discouraging employer withdrawals, assures workers of getting pensions at least close to what they have been promised and protects the PBGC from having to provide enormous guarantees that bankrupt the system.

But some critics argue that there's little balance in the current legislation. Mr. Gordon thinks the bill would place an onerous burden on employers, many of whom would find themselves with pension liabilities exceeding the net worth of their companies. Others, including Karen Ferguson of the Washington-based Pension Rights Center, think the bill tramples on the rights of pensioners, whose benefit guarantees would be scaled down sharply.

Still others question whether the PBGC will ultimately be able to guarantee the growing unfunded liability of multi-employer pension funds. "I don't think the PBGC can survive this," says a congressional expert.

"YOU CAN GET CHEWED"

Hovering over all these fears and objections is the specter that the legislation could undermine employer interest in participating in multi-employer plans. "The bill puts teeth in the program, so you can get chewed pretty badly if you try to get out," says Paul Jackson, a pension consultant for Wyatt Co. here. "The result is that people without them just won't get them." Adds the congressional pension expert: "It will take a while for employers to figure out how to get around this law, but not too long."

But the PBGC's Mr. Nagle argues that by discouraging withdrawals, the legislation will assure a plan's participating employers that they won't get stuck with the liabilities left behind by departing companies. Besides, he adds, the incentives that lead to the emergence of multi-employer plans in the first place—shared liability, administrative convenience and competitive stability—still will exist.

About eight million American workers now stand to benefit from multi-employer pension plans. Some of these workers are in programs so huge and diversified—the Teamsters' western conference plan is an oft-cited example—that it's considered next to impossible that they could ever go under.

But most of the funds aren't in that category and are vulnerable to the vicissitudes of a fluctuating and changing economy. In the past few years, funds in the dyeing, hatmaking and milk-delivery industries have failed, and the construction-industry recession has encouraged many contractors to abandon their union-negotiated pension plans.

Nobody knows precisely how widespread these withdrawals have been, either in construction or in other industries. But some specialists say those companies that did get out probably made a wise business decision. Under the 1974 pension act, which was due to apply to multi-employer plans, a company that terminates its participation in a plan isn't stuck with any liability unless the plan goes under within five years of the withdrawal. And if one employer dropped out with the idea of escaping liability, others might start thinking seriously of doing likewise.

So the possibilities loomed large for a stampede that could lead to mass pension-plan failures—and eventual bankruptcy of the PBGC.

It was against this grim backdrop that the current legislation was conceived. The guiding force behind it was Robert Georgine, president of the AFL-CIO Building and Construction Trades Department, who found himself in rare agreement with such business groups as the U.S. Chamber of Commerce and the National Association of Manufacturers.

As passed by the House, the pension bill made certain concessions to employers. The Senate then acted to scale down some of the House-approved provisions considered the most onerous to small businesses. Among other things, it moved to protect from claims the personal assets of sole proprietors and business partners, to limit the liability in pension-plan withdrawals stemming from the sale of an employer's assets and to exempt more small concerns from the withdrawal liability.

But some involved in the pension controversy think these concessions don't go far enough. This view holds that pensioners and small and medium-sized companies will end up shouldering a disproportionate share of the total burden and that the large multi-employer plans can afford to pay more in higher premiums to help bail out the more

troubled smaller plans. But legislators familiar with the bill's progress say that such a distribution of the burden wasn't politically possible.

Mr. JEPSEN. I thank the Chair. I yield back my time.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 1 hour and that Senators may speak therein.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate, by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

PROTOCOL OF THE TRADE AGREEMENT RELATING TO CUSTOMS VALUATION—MESSAGE FROM THE PRESIDENT—PM 230

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers, which was referred to the Committee on Finance:

To the Congress of the United States:

I am today transmitting to the Congress, pursuant to Section 102 of the Trade Act of 1974, the text of a trade agreement negotiated in the Tokyo Round of the Multilateral Trade Negotiations and entered into Geneva, Switzerland on May 28, 1980. This agreement is a protocol which will make a minor amendment to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, known as the Customs Valuation Agreement. The Customs Valuation Agreement was approved by Congress in the Trade Agreements Act of 1979.

The new agreement will amend the Customs Valuation Agreement to eliminate one of the four tests under that agreement by which related parties can establish a transaction value for customs purposes. This amendment will have little impact on United States law but will greatly facilitate acceptance of the Customs Valuation Agreement by a significant number of developing countries. All of the developed country signatories to the Customs Valuation Agreement support the protocol.

I am also transmitting to Congress, as is required by section 102 of the Trade Act of 1974, an implementing bill and a statement of Administrative Action. This bill approves the protocol and makes changes in our customs valuation law which are necessary or appropriate to implement the protocol. The legislation will also make certain technical amendments to Title II of the Trade Agreements Act of 1979, relating to customs valuation.

I urge the early approval and implementation of the protocol to the Customs Valuation Agreement by the Congress.

JIMMY CARTER.

THE WHITE HOUSE, *August 1, 1980.*

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 9:14 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 2995. An act to allow the transfer of certain funds to fund the heat crisis program; and

H.R. 6613. An act to amend the Shipping Act, 1916, to exempt collective bargaining and related agreements from regulation by the Federal Maritime Commission.

The enrolled bills were subsequently signed by the President pro tempore (Mr. MAGNUSON).

At 11:07 a.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 7664) to amend the National School Lunch Act and the Child Nutrition Act of 1966 to extend the authorizations of appropriations contained in such acts, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; that Mr. PERKINS, Mr. FORD of Michigan, Mr. ANDREWS of North Carolina, Mr. MILLER of California, Mr. MURPHY of Pennsylvania, Mr. CORRADA, Mr. KILDEE, Mr. WILLIAMS of Montana, Mr. HAWKINS, Mr. MYERS of Pennsylvania, Mr. KOGOVSEK, Mr. GOODLING, Mr. BUCHANAN, Mr. ERDAHL, Mr. DANIEL B. CRANE, Mr. HINSON, and Mr. ASHBROOK were appointed as managers of the conference on the part of the House solely for consideration of titles I, II, and III of the Senate amendment and modifications committed to conference; that Mr. CLAY and Mr. JEFFORDS be the managers of the conference on the part of the House solely for consideration of title III of the Senate amendment and modifications committed to conference; and that Mr. FOLEY, Mr. DE LA GARZA, Mr. ZABLOCKI, Mr. BOWEN, Mr. WAMPLER, and Mr. BROOMFIELD be the managers of the conference on the part of the House solely for consideration of title IV of the Senate amendment and modifications committed to conference.

The message also announced that the House has passed the bill (S. 2680) to improve the administration of the Historic Sites, Buildings, and Antiquities Act of 1935 (49 Stat. 666), with an amendment in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 7724. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1981, and for other purposes; and

H.J. Res. 551. A joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning October 5, 1980, as "National Port Week," and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 387. A concurrent resolution with respect to the independence and integrity of the people and Government of Jamaica; and

H. Con. Res. 391. A concurrent resolution concerning the fifth anniversary of the Helsinki Accords and calling for prominent attention to human rights concerns at the Madrid conference.

The message further announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 112. A concurrent resolution relative to adjournment to a date certain during the remainder of the 96th Congress; and

S. Con. Res. 113. A concurrent resolution providing for a recess of the Senate from August 6 to August 18, 1980, and an adjournment of the House of Representatives from August 1 to August 18, 1980.

ENROLLED BILL SIGNED

At 11:48 a.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the Speaker has signed the following enrolled bill:

H.R. 827. An act to establish dispute resolution procedures to settle disputes between supervisors and the United States Postal Service.

The enrolled bill was subsequently signed by the President pro tempore (Mr. MAGNUSON).

HOUSE MEASURES REFERRED

The following bill and joint resolution were read twice by their titles and referred as indicated:

H.R. 7724. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1981, and for other purposes; to the Committee on Appropriations.

H.J. Res. 551. Joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning October 5, 1980, as "National Port Week," and for other purposes; to the Committee on the Judiciary.

The following concurrent resolution was read by title and referred as indicated:

H. Con. Res. 387. A concurrent resolution with respect to the independence and integrity of the people and Government of Jamaica; to the Committee on Foreign Relations.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, August 1, 1980, he had presented to the President of the United States the following enrolled bill:

S. 2995. An act to allow the transfer of certain funds to fund the heat crisis program.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–4326. A communication from the Assistant Secretary of the Air Force for Research, Development, and Logistics, transmitting, pursuant to law, a report that a study has been conducted with respect to converting the custodial services function at the Air Force Academy, Colo., and a decision that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC–4327. A communication from the Acting Assistant Secretary of the Army (Installations, Logistics and Financial Management), transmitting, pursuant to law, a report that a study has been conducted with respect to converting the custodial function at Seneca Army Depot. Romulus, N.Y., and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC–4328. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend section 709 of title 32, United States Code, to eliminate the requirement that thirty days notice of termination be given a National Guard technician who serves under temporary appointment, or who voluntarily ceases to be a National Guard member; to the Committee on Armed Services.

EC–4329. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report with respect to a transaction involving U.S. imports to Spain; to the Committee on Banking, Housing, and Urban Development.

EC–4330. A communication from the Secretary of Commerce, transmitting, pursuant to law, the annual report on the activities of the United States Travel Service, Department of Commerce, for fiscal year 1979; to the Committee on Commerce, Science, and Transportation.

EC–4331. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on actions taken under the Alaska Native Claims Settlement Act during calendar year 1979; to the Committee on Energy and Natural Resources.

EC–4332. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report on the enforcement of the Horse Protection Act during calendar year 1979; to the Committee on Environment and Public Works.

EC–4333. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Evaluation of U.S. Efforts To Promote Nuclear Non-Proliferation Treaty;" to the Committee on Foreign Relations.

EC–4334. A communication from the Deputy Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that, in order to maintain in the second quarter of fiscal year 1980 the budgeted level of operation for Radio Free Europe/Radio Liberty, Incorporated, $1,460,262 is needed because of the downward fluctuations in foreign currency exchange rates; to the Committee on Foreign Relations.

EC–4335. A communication from the Assistant Secretary for Congresisonal Relations, Department of State, transmitting, pursuant to law, an agreement between the Department of Energy (DOE) and the American Institute in Taiwan (AiT); to the Committee on Foreign Relations.

EC–4336. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Examination of United States Railway Association's Financial Statements, Fiscal Year 1979," July 31, 1980; to the Committe on Governmental Affairs.

EC—4337. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Federal Executive Pay Compression Worsens," July 31, 1980; to the Committee on Government Affairs.

EC–4338. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Need for Tighter Controls Over Fuel Purchased by the Postal Service," July 31, 1980; to the Committee on Governmental Affairs.

EC–4339. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "The AID Excess Property Program Should be Simplified," July 31, 1980; to the Committee on Governmental Affairs.

EC–4340. A communication from the Deputy Assistant Secretary of Defense, transmitting, pursuant to law, a report on a new system of records; to the Committee on Governmental Affairs.

EC–4341. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, D.C. Act 3–229, "District of Columbia Funds Control Act of 1980" and report, adopted by the Council on July 29, 1980; to the Committee on Governmental Affairs.

EC–4342. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, D.C. Act 3–236, "Closing of a Portion of a Public Alley in Square 221 Act of 1980" and report, adopted by the Council on July 29, 1980; to the Committee on Governmental Affairs.

EC–4343. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, D.C. Act 3–232, "Security Alarm Systems Regulations Act of 1980" and report, adopted by the Council on July 29, 1980; to the Committee on Governmental Affairs.

EC–4344. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of legislation adopted by the Council on July 29, 1980; to the Committee on Governmental Affairs.

EC–4345. A communication from the Assistant Secretary of Housing and Urban Development for Administration, transmitting, pursuant to law, a proposed change to a system of records for implementing the Privacy Act; to the Committee on Governmental Affairs.

EC–4346. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of legislation adopted by the Council on July 29, 1980; to the Committee on Governmental Affairs.

EC–4347. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, D.C. Act 3–231, "Rental Housing Act of 1977 Extension Act of 1980" and report, adopted by the Council on July 29, 1980; to the Committee on Governmental Affairs.

EC–4348. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, D.C. Act 3–235, "Closing of a Cul-de-Sac in Square 4325 Act of 1980" and report, adopted by the Council on July 29, 1980; to the Committee on Governmental Affairs.

EC–4349. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, D.C. Act 3–230, "Equitable Tax Relief Act of 1980" and report, adopted by the Council on July 15, 1980; to the Committee on Governmental Affairs.

EC–4350. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, D.C. Act 3–234, "Independent Personnel Systems Implementation Act of 1980" and report, adopted by the Council on July 29, 1980; to the Committee on Governmental Affairs.

EC–4351. A communication from the Administrators, Farm Credit Banks of Texas Pension Plan, transmitting, pursuant to law, the annual report for the year ending December 31, 1979; to the Committee on Governmental Affairs.

EC–4352. A communication from the Assistant Attorney General for Legislative Affair, Department of Justice, transmitting a draft of proposed legislation to create a Cuban/Haitian Entrant status, and for other purposes; to the Committee on the Judiciary.

EC–4353. A communication from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, orders in the cases of certain aliens who have been found admissible to the United States under the Immigration and Nationality Act; to the Committee on the Judiciary.

EC–4354. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for the College Housing Program; to the Committee on Labor and Human Resources.

EC—4355. A communication from the Secretary of Education, transmitting, pursuant to law, proposed Family Contribution Schedules for the Basic Educational Opportunity Grant Program for academic year 1981–82; to the Committee on Labor and Human Resources.

EC–4356. A communication from the Deputy General Counsel, Department of Education, transmitting, pursuant to law, final regulations dealing with International Media for the Handicapped; to the Committee on Labor and Human Resources.

EC–4357. A communication from the Secretary of Health and Human Resources, transmitting a draft of proposed legislation to amend the Economic Opportunity Act of 1964 to extend authorizations of appropriations for the Head Start and Native Americans programs, and for other purposes; to the Committee on Labor and Human Resources.

EC–4358. A communication from the President, Legal Services Corporation, transmitting, pursuant to law, a report entitled "The Delivery Systems Study: A Policy Report to the Congress and the President of the United States"; to the Committee on Labor and Human Resources.

EC–4359. A communication from the Administrator, Veterans' Administration, transmitting, pursuant to law, a report on the VA matching program; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROBERT C. BYRD (for Mr. KENNEDY), from the Committee on the Judiciary, without amendment:

S. 2582. A bill to provide for the settlement and payment of claims of civilian and military personnel against the United States for losses in connection with the evacuation of such personnel from a foreign country (Rept. No. 96–881).

H.R. 6086. An act to provide for the resettlement and payment of claims of U.S. civilian and military personnel against the United States for losses resulting from acts of violence directed against the U.S. Government or its representatives in a foreign country or from an authorized evacuation of personnel from a foreign country (Rept. No. 96–882).

By Mr. HOLLINGS, from the Committee on the Budget, without amendment:

S. Res. 487. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 5766.

By Mr. MELCHER, from the Select Committee on Indian Affairs, with an amendment:

S. 2126. A bill relating to certain leases involving the Secretary of the Interior and the Northern Cheyenne Indian Reservation (Rept. No. 96–883).

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation:

Special report entitled "Report of the Committee on Commerce, Science, and Transportation Pursuant to Section 302(b) of the Congressional Budget Act of 1974" (Rept. No. 96–884).

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 762. A bill to permit the vessel Scuba King to be documented for use in the fisheries and coastwide trade of the United States (Rept. No. 96–885).

By Mr. CANNON, from the Committee on Commerce, Science and Transportation, with an amendment:

H.R. 5164. An act to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes (Rept. No. 96–886).

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. Res. 497. An original resolution to authorize payment of back pay and retirement contributions from the contingent fund for former employee Candace M. Hanson.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. MELCHER, from the Select Committee on Indian Affairs:

Thomas W. Fredericks, of Colorado, to be an Assistant Secretary of the Interior.

(The above nomination from the Select Committee on Indian Affairs was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

Mr. MELCHER. Mr. President, today the Select Committee on Indian Affairs ordered favorably reported the nomination of Thomas W. Fredericks to be an Assistant Secretary of the Interior.

I ask unanimous consent that Mr. Fredericks' financial statement and biographical sketch be printed at this point in the RECORD.

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

U.S. SENATE, SELECT COMMITTEE ON INDIAN AFFAIRS—STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Fredericks, Thomas Wade.

Position to which nominated: Assistant Secretary.

Date of nomination: June 18, 1980.

Date of birth: March 9, 1943.

Place of birth: Elbowoods, North Dakota.

Marital status: Married.

Full name of spouse: Judy Marlene Hass.

Name and ages of children: Michelle Catherine, Monique Ranae.

Education; institution: Minot State College; dates attended, 1961–1965; degrees received, BS; dates of degrees, 1965.

Institution: University of Colorado School of Law; date attended, 1969–1972; degrees reecived, J.D.; dates of degrees 1972.

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates:

Bowbells Public School—mathmatics instructor and coach, Bowbells, North Dakota, 1965–1966.

Standing Rock Sioux Tribe—OEO Director—Administrator of Federal Programs, 1966–1969.

Native American Rights Fund—Staff Attorney, Directing Attorney—handled major cases in Indian Law—Chief Executive Officer in charge of staff of 60—1506 Broadway, Boulder, Colorado—1972–1977.

Association Solicitor for Indian Affairs—Chief Lawyer for the Department of Interior on Indian legal matters, 18th and C Sts., NW., Washington, D.C.

Attorney-at-Law—In charge of development of private practice for Thomas W. Fredericks & Associates, 941 Pearl St., Boulder, Colorado, 1979 to present.

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement: Football Scholarship, North Dakota State Indian Scholarship, Special Scholarship Program for Indians in Law.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations:

Colorado Bar Association, 1972 to present.

North Dakota Bar Association, 1972 to present.

Supreme Court Bar, 1976 to present.

Court of Claims Bar Association, 1974 to present.

Minot State College Alumni Association, 1965 to present.

University of Colorado Alumni Association, 1972 to present.

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written. None.

Qualifications: State fully your qualifications to serve in the position to which you have been named (attach sheet).

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Thomas W. Fredericks & Associates will be terminated and all attorney contracts will be assigned to other law firms pursuant to 25 U.S.C. § 81.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I would hope that upon completion of governmental service that I will once again resume the private practice of law and continue to represent some of my present clients pursuant to 25 U.S.C. 470l(*f*) and consistent with the Government's Ethics Laws and my local bar ethic codes.

3. Has anybody made you a commitment to a job after you leave government? No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term? No.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future? No.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated. None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated. None.

QUALIFICATIONS TO SERVE AS ASSISTANT SECRETARY—INDIAN AFFAIRS

Having been born and raised on the Fort Berthold Reservation, North Dakota, I feel I have a good understanding of reservation life. I have also participated in the workings of tribal government as an administrator for the Standing Rock Sioux Tribe. This experience has given me the needed insights into the relationship of tribal government to State and Federal governments.

As an attorney, I have been involved in a number of important pieces of litigation that came before the courts during the 1970s. Also, I have participated in and followed many of the important legislative enactments in the 70s. My experiences in the 70s have given me a better insight as to the problems facing Indian people from a political as well as a legal standpoint.

My experience as Associate Solicitor has provided me the opportunity to understand the inner workings of the Department as well as the Department's relationship with the Congress, the White House and the other departments of the Federal government. As Associate Solicitor, I was also involved in developing the Department's position on all legislation involving Indian affairs.

I feel that these experiences qualify me to serve in the capacity as Assistant Secretary and, if confirmed, look forward to assuming this important position.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated:

I have represented tribal clients before the Department of Interior which are still pending.

4. List and describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or for the purpose of affecting the administration and execution of national law or public policy:

While director of the Native American Rights Fund, Inc., I testified on many of the Indian Bills considered in Congress. I also supervised staff who lobbied extensively.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items:

I will recluse myself from any participation in all matters where a potential conflict of interest may arise.

6. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them:

See Attachment (A).

U.S. SENATE, SELECT COMMITTEE ON INDIAN AFFAIRS—FINANCIAL STATEMENT

Name: Fredericks, Thomas Wade.

Position to which nominated: Assistant Secretary for Indian Affairs, Dept. of Interior.

Provide a complete, current financial net worth statement which itemizes all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) and all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS

Cash on hand and in banks, $2,500.00.

Due from others, $6,600.00.

Real estate interests—add schedule, $332,000.00.

Personal property, $50,900.00.

Credit Union Savings, $1,100.00

Thomas W. Fredericks & Associates, $62,254.00.

Life Insurance Est. Cash Value, $5,500.00.

Total assets, $460,854.00.

LIABILITIES

Notes payable to banks—unsecured, $14,000.00.

Real estate mortgages payable—add schedule, $107,300.00.

Other debts—itemize:

Thomas W. Fredericks & Associates, $24,068.00.

Credit Union, $3,000.00.

Credit Cards, $2,500.00.

Total liabilities, $150,868.00.

Net worth, $309,986.00.

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers: None.

ATTACHMENT A

In accordance with the provisions of 43 C.F.R. 735-14. Department of the Interior Employee Responsibilities and Conduct, Mr. Fredericks will refer to this office any decision which might result in a conflict or appearance of conflict because of prior representation of client Indian Tribes while in private practice of law. This provision is specifically stated in 43 C.F.R. 835-14(b)(3):

An Indian or Alaska Native employee of the Department shall not make nor participate in a substantial manner in any decision of the Department if he has a private direct interest as defined in paragraph 20.735-15(b) in the results of the decision. If the decision is one which the employee would be expected to make if he or she had not direct interest, the matter shall be referred to the next higher authority of the Department which does not have such private interest in an appropriate form but without recommendation by the employee having a private direct interest.—Cecil D. Andrus. Secretary of the Interior.

2. Are any assets pledged? (Add schedule.)

Residence—844 Spring Drive, Boulder, Colorado—1st Mortgage: $37,000; 2nd Mortgage: $3,300.

3. Are you currently a party to any legal action? No.

4. Have you ever declared bankruptcy? No.

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain. Yes.

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit? Yes. The IRS questioned a depreciation schedule on cattle which were sold and not held for breeding purposes. I was required to pay additional taxes in the earlier years.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. McGOVERN (for himself and Mr. DURENBERGER):

S. 3004. A bill to amend the Internal Revenue Code of 1954 to make the investment credit for railroad property refundable; to the Committee on Finance.

By Mr. MATSUNAGA:

S. 3005. A bill to amend the Education Amendments of 1978 to extend the reporting date and the availability of funds for the Commission on Proposals for the National Academy of Peace and Conflict Resolution, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. WALLOP:

S. 3006. A bill to amend the Internal Revenue Code of 1954 to provide a nonrefundable tax credit for investment in qualified industrial energy efficiency and fuel conversion projects; to the Commitee on Finance.

By Mr. HOLLINGS (for himself and Mrs. KASSEBAUM):

S. 3007. A bill entitled the "Methane Transportation Research. Development, and Demonstration Act of 1980"; to the Committee on Commerce, Science, and Transportation.

By Mr. DURENBERGER (for himself and Mr. McGOVERN):

S. 3008. A bill to amend the Internal Revenue Code of 1954 to make the investment credit for railroad property refundable; to the Committee on Finance.

By Mr. GLENN:

S. 3009. A bill to esablish a uranium enrichment fund; to the Committee on Energy and Natural Resources.

By Mr. THURMOND:

S.J. Res. 192. A joint resolution to designate September 21, 1980, as "National Ministers Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WALLOP:

S. 3006. A bill to amend the Internal Revenue Code of 1954 to provide a nonrefundable tax credit for investment in qualified industrial energy efficiency and fuel conversion projects; to the Committee on Finance.

INDUSTRIAL ENERGY EFFICIENCY AND FUEL CONVERSION TAX INCENTIVE ACT OF 1980

Mr. WALLOP. Mr. President, today I am introducing legislation to increase the tax incentives for industrial energy conservation. This legislation will help promote industrial energy conservation as an integral part of a symmetrical energy policy for the 1980's. A symmetrical energy policy must not only recognize the need to increase the production of domestic energy resources, but it must also reflect the role that can be played by an aggressive program to conserve energy in American industry.

Industrial energy conservation should not be viewed in the context of reduced production, slowed economic growth, or a lower standard of living for the average American. This legislation calls for energy conservation that centers on increasing energy efficiency so rapidly as to permit a reduction in our oil imports and an increase in industrial productivity. I must emphasize that decreasing energy use in industry does not require plant closings or less production. Just the opposite is the case. Industrial energy conservation entails costly investments in new equipment and modifications in existing plants to allow more efficient, productive use of our energy resources. Although it demands costly investments, industrial conservation can create significant short-term response to our energy problems.

Mr. President, this legislation focuses on energy conservation in the industrial sector because industry accounts for nearly 40 percent of total U.S. energy requirements. Natural gas and oil comprise 70 percent of the energy consumed by domestic industry. Significantly, six major industries represent 70 percent of the energy used by the entire industrial sector. These industries are cement, metals, chemicals, petroleum refining, and paper. This legislation would provide these major energy users and the less intensive energy industries added incentives to conserve energy and convert to more abundant domestic resources such as coal.

The rising cost of energy is placing pressures on industry to invest in energy conservation, but these investments can go forward only as fast as industry can afford to retire existing equipment and reinvest in energy efficient improvements and in new machinery. Simply stated, Mr. President, energy conservation demands capital. The need for capital to pay for industrial energy conservation is just one aspect of the general capital formation problems facing the Nation's economy. Much of America's investment capital is already directed by Government mandate into nonproductive investments to protect the environment or increase safety. Although these investments are desirable from a public point of view, they leave business with precious little capital to invest in new equipment.

Discretionary capital is allocated to those investments that promise the most attractive return on investment. Energy conservation projects must compete with a long list of possible productivity enhancing investments, and in many instances economics dictates that energy conservation projects be delayed or placed lower on the list of investment options. By providing additional financial incentives for industrial energy conservation this legislation will make more energy conservation investments economically viable. There is a need for general capital formation legislation that can provide industry with the financial ability to invest in productivity enhancing investments.

Energy tax incentives are a necessary supplement to, not a substitute for, broad based capital formation legislation. By making additional capital available for energy conservation, this legis-

lation can accelerate investments in industrial energy conservation, stimulating energy savings for the Nation and higher productivity in industry.

Mr. President, if there is any criticism of programs providing incentives for industrial energy conservation, let me point out that Congress is already committed to industrial incentives to stimulate the production of synthetic fuels. The Nation recognizes that higher energy prices and advances in technology will eventually alow synthetic fuels to be produced with no Government incentive.

However, the need to accelerate the timetable under which synthetic fuels are developed has led Congress to create a $20 billion Synthetic Fuels Corporation and an array of incentives for synfuel production. It is equally important to take bold steps to accelerate industrial investment in energy conservation. If we are willing to stimulate synfuel production with Government subsidies, we should be equally supportive of cost effective industrial conservation projects. This Nation has vast pools of untapped energy in the form of energy savings that can be achieved through industrial conservation. As recommended by the Harvard Business School study, we must recognize that a barrel of energy conserved is as important to the Nation's energy security as a barrel of energy produced.

Mr. President, I am proposing a tax incentive approach to industrial energy conservation that builds upon the industrial energy conservation legislation already enacted by Congress. This bill reflects comments that I have received from a wide array of people. This legislation would provide a 20-percent investment tax credit for three categories of energy property; alternative energy property, specifically defined energy property and qualified conservation property. The tax credit would be allowed in addition to the regular 10-percent investment tax credit.

Under the bill, "alternative energy property" and "specially defined energy property" would be defined in the same way those categories have been defined by Congress in the Energy Tax Act of 1978, as amended by the Crude Oil Windfall Profit Tax Act of 1980. Alternative energy property covers equipment used to convert from the use of oil or natural gas to more abundant domestic resources such as coal. By increasing the energy investment tax credit allowable or alternative property from 10- to 20-percent the bill will accelerate movement toward the use of more abundant domestic natural resources.

Specifically defined energy property includes 12 specific items of energy saving equipment such as recuperators, heat wheels, and automatic energy control systems that substantially reduce the amount of energy used in industrial processes. By increasing the energy investment tax credit to 20 percent, Congress will be able to accelerate the installation and use of these 12 types of energy saving equipment, and other equipment that the Secretary of the Treasury may include in this category.

Mr. President, although existing law does provide limited incentives for certain industrial energy conservation investments, the narrow definitions in existing law appear to have excluded many of the investment projects that possess the greatest energy efficiency potential. By excluding these projects from the incentive program, the Nation has limited artificially and unnecessarily the energy efficiency gains that can be achieved with existing technology through adequate financial incentives. The result is as tragic as leaving easily recoverable domestic oil reserves in the ground, while we continue to import oil from insecure foreign sources.

To cure this defect in present law by stimulating a broader class of industrial energy efficiency investments, the bill creates a new category of qualified conservation property eligible for the 20-percent additional investment tax credit. This category of property is new and has no counterpart in existing law.

In general, this category of qualified property includes property which is used by the taxpayer as an integral part of a modification to, or replacement of, all or part of an existing facility, process, or item of equipment, but only if the modification or replacement results in the utilization of less energy per unit of output and does not increase the amount of oil and natural gas consumed. If these tests are met, the property which qualifies for the credit must either directly result in the energy savings, or be part of, physically attached to, or otherwise directly associated with such energy saving property.

Qualified energy conservation property would be subject to two limitations to assure that the tax incentive applies only to a targeted range of cost effective conservation investments. First, the credit is limited to the lesser of 20 percent of the qualified investment or $55 for each barrel of energy saved by the investment. This limitation assures that the Federal Government will pay no more for barrel of oil saved than it would for a barrel of energy produced from alternative energy resources such as synfuels. The $55 figure represents 20 percent of a projected current cost of one BOE of energy-producing capacity per day from alternative domestic resources.

A second limitation in the bill adds an element of selectivity designed to limit the additional credit for qualified conservation property to those projects most in need of financial incentives. Specifically, the additional credit would not be allowed for this category of property if the dollar amount of the credit is less than $11 for each barrel of oil or oil equivalent saved in 1 year by the project. The rationale for this limitation is that, from a financial point of view, investments are already sufficiently attractive that there is a substantial question whether governmental incentives are in fact necessary. Thus, this revenue-saving future would not appear to jeopardize the ability of the Nation to realize the benefit of energy savings resulting from this category of conservation investments.

Mr. President, this legislation will also result in significant energy savings by encouraging expanded use of recycling waste materials in industry. Converting waste to energy must be recognized as one of the most significant contributors to meeting the Nation's synfuel energy goals. By encouraging the conversion of waste to energy we can provide significant amounts of energy to our Nation's urban centers where the feedstock is generated and the demand is greatest for alternative energy. The extention of these special tax credits to waste-to-energy projects will help offset the risk and large capital investments needed to bring such facilities to commercial energy production. This legislation will help stimulate further equity investments in waste-to-energy projects allowing more of these facilities to be built across the country.

Mr. President, this bill is the culmination of a long analytical process which began with my introduction of S. 1819 last September. The bill reflects the recommendations of a wide array of industrial energy conservation experts who have endeavored to develop a proposal that stimulated industrial energy conservation in a manner consistent with a strong and vigorous national economy. With this period of study and analysis now at an end, the time has come for us to act on legislation that will accelerate investments in industrial energy conservation. Our national energy crisis cannot be resolved unless we have the will to act, and this bill offers us an important opportunity.

Mr. President, I can think of no better explanation of the need for this type of legislation than the editorial written by Profs. Robert Stobaugh and Daniel Yergin which recently appeared in the Wall Street Journal. I ask unanimous consent that this editorial and the bill be reprinted in the RECORD.

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

S. 3006

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Industrial Energy Efficiency and Fuel Conversion Tax Incentive Act of 1980".

SEC. 2. ALLOWANCE OF CREDIT.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits against tax) is amended by inserting after section 44E the following new sections:

"SEC. 44F. INVESTMENT IN QUALIFIED INDUSTRIAL ENERGY EFFICIENCY AND FUEL CONVERSION PROJECTS.

"(a) GENERAL RULE.—There is allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 20 percent of the qualified investment (as determined under section 46 (c) and (d) in section 38 property (determined without regard to the words '(not including a building or its structural components)' in section 48(a)(1)(B)) which is (or, for the purpose of applying section 46(d), will be) qualified industrial energy property.

"(b) CREDIT NOT TO EXCEED TAX LIABILITY.—

"(1) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of

the credits allowable under a section of this part having a lower number or letter designation than this section other than the credits allowable by sections 31, 39, and 43.

"(2) CERTAIN TAXES NOT CONSIDERED TAXES IMPOSED BY THIS CHAPTER.—For purposes of this section, any tax imposed for the taxable year by section 55 (relating to alternative minimum tax for taxpayers other than corporations), section 56 (relating to minimum tax for tax preferences), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 402(e) (relating to tax on lump sum distributions), section 408(f) (relating to additional tax on income from certain retirement accounts), section 409(c) (relating to additional tax on retirement bonds), section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), or section 1378 (relating to tax on certain capital gains of subchapter S corporations), and any additional tax imposed for the taxable year by section 1351(b)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by this chapter for such year.

"(3) CARRYBACK AND CARRYOVER OF UNUSED CREDIT.—

"(A) IN GENERAL.—If the amount of the credit determined under subsection (a) for any taxable year exceeds the limitation provided by paragraph (1) for such taxable year (referred to elsewhere in this section as the 'unused credit year'), the excess shall be—

"(i) an industrial energy conservation investment tax credit carryback to each of the 3 taxable years preceding the unused credit year, and

"(ii) an industrial energy conservation investment tax credit carryover to the following year following the unused credit year,

and, subject to the limitations imposed by paragraph (1), shall be added to the amount allowable as a credit by such section for such years. The entire amount of the unused credit year for an unused credit shall be carried to the earliest of the 4 taxable years to which (by reason of clauses (i) and (ii)) it may be carried, and then to each of the other 3 years to which it may be carried to the extent that, because of the limitation in subparagraph (B), the unused credit may not be added for a prior taxable year.

"(B) LIMITATION.—The amount of the unused credit which may be added under subparagraph (A) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by paragraph (1) for such taxable year exceeds the sum of—

"(i) the credit allowable under this section (determined without regard to this paragraph) for the taxable year, and

"(ii) the amounts which, by reason of this paragraph, are added to the amount allowable for the taxable year and which are attributable to taxable years preceding the unused credit year.

"(c) QUALIFIED INDUSTRIAL ENERGY PROPERTY.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified industrial energy property' means property used as an integral part of a modification to, or replacement of, all or part of an existing manufacturing production, or extraction facility, commercial or industrial process, or item of equipment, but only if such modification or replacement—

"(A) does not increase the total amount of oil and natural gas (other than petroleum coke and waste gases) consumed by such facility, process, or item of equipment per unit of output, and

"(B) either results in—

"(i) the utilization by such facility, process, or item of equipment of less energy per unit of output, or

"(ii) the conversion of such facility, process, or item of equipment to permit the use of an alternate substance as a fuel or feedstock.

"(2) LIMITATIONS.—Property shall be considered as qualified industrial energy property only if such property is tangible property—

"(A) used as an integral part of manufacturing production, or extraction,

"(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

"(C) the useful life of which (determined as of the time such property is placed in service) is 3 years or more,

"(D) the original use of which commences with the taxpayer, and

"(E) either directly results in a utilization or conversion described in paragraph (1)(B), or is—

"(i) part of,

"(ii) physically attached to, or

"(iii) directly associated with or functionally related to,

such property.

Property the installation of which is reasonably necessary for the proper installation, operation, or maintenance of property which directly results in a utilization or conversion described in paragraph (1)(B) shall be treated as property described in subparagraph (E)(iii).

"(3) EXISTING.—The term 'existing' means—

"(A) when used in connection with a facility, a facility, the construction, reconstruction, or erection of which is completed before December 31, 1980,

"(B) when used in connection with an industrial or commercial process, a process which was carried on as of such date, and

"(C) when used in connection with equipment, equipment which was placed in service before such date.

"(4) ALTERNATE SUBSTANCE.—The term 'alternate substance' means any substance other than—

"(A) oil,

"(B) natural gas, or

"(C) any product (other than petroleum coke and waste gases) of oil or natural gas.

"(5) COMPUTATIONS PER UNIT OF OUTPUT.—The determination required by paragraph (1)(A), and, if applicable, the determination required by paragraph (1)(B)(i), shall be made by comparing the Btu content of the oil and gas (or other source of energy in the case of paragraph (1)(B)(i)) used by the facility, commercial or industrial process, or item of equipment per unit of output prior to the modification or replacement, with the Btu content of the oil and natural gas (or other source of energy in the case of paragraph (1)(B)(i)) used by such facility, commercial or industrial process or item of equipment per unit of output upon completion of the modification or replacement. Computations under this subparagraph shall be made in accordance with subsection (d).

"(d) REDUCTION OF CREDIT.—

"(1) IN GENERAL.—Notwithstanding subsection (a), the credit allowable by this section for qualified industrial energy property shall not exceed the amount determined under the following table:

"If the BOE cost of the property is—	The allowable credit is—
Less than $11	Zero
At least $11 but not more than $55	The subsection (a) amount
More than $55	The alternative credit amount.

"(4) DEFINITIONS.—For purposes of paragraph (1)—

"(A) BOE COST.—The term 'BOE cost' means, with respect to any qualified industrial energy property—

"(i) the subsection (a) amount with respect to such property, divided by

"(ii) the annual number of BOE's saved by the modification or replacement of which such property is an integral part.

"(B) ANNUAL BOE'S SAVED.—The term 'annual number of BOE's saved' means an amount equal to—

"(i) the excess of—

"(I) the average number of BOE's utilized by the facility, commercial or industrial process, or item of equipment per unit of output during a representative 12-month period prior to the modification or replacement, over

"(III) the number of BOE's utilized by such facility, commercial or industrial process, or item of equipment per unit of output during any representative 12-month period occurring within the recomputation period,

multiplied by

"(ii) the units of output during such 12-month period prior to the modification of replacement.

For purposes of this subparagraph one BOE shall be equal to 5.8 million Btu's, and determinations with respect to electricity shall be made by employing a heat rate of 10,000 Btu's per kilowatt hour.

"(C) SUBSECTION (a) AMOUNT.—The term 'subsection (a) amount' means the credit allowable under this section determined without regard to this subsection.

"(D) ALTERNATIVE CREDIT AMOUNT.—The term 'alternative credit amount' means, with respect to any qualified industrial energy property, an amount equal to $55 multiplied by the annual number of BOE's saved by the modification or replacement of which such property is an integral part.

"(3) TIME OF APPLICATION OF LIMITATIONS ON AMOUNT OF CREDIT.—

"(A) IN GENERAL.—The provisions of this subsection shall be applied as of the close of the recomputation period.

"(B) RECOMPUTATION PERIOD DEFINED.—For purposes of this paragraph, the term 'recomputation period' means, with respect to any modification or replacement, the period which begins on the date on which the qualified industrial energy property which is an integral part of such modification or replacement is placed in service and ends on the last day of the first taxable year beginning more than 180 days after such date.

"(C) RECAPTURE OF EXCESS CREDIT.—If the amount of the credit allowed under this section (determined without regard to this subsection) with respect to qualified industrial energy conservation property exceeds the credit allowable under this subsection, the tax imposed by this chapter for the recomputation year shall be increased under section 47 by the amount of such excess.

"(d) SPECIAL RULES.—

"(1) CERTAIN OTHERWISE QUALIFIED PROPERTY NOT TO BE TREATED AS QUALIFIED.—No property shall be treated as qualified industrial energy property if—

"(A) the taxpayer claims the energy percentage provided by section 46(a)(2)(C) with respect to that property, or

"(B) in the case of property which replaces an existing productive facility—

"(i) the replaced property is not retired from service, other than for use as a temporary replacement for the qualified industrial energy property which replaced it during periods for which the qualified property is inoperable due to an emergency or on account of repairs or maintenance, or

"(ii) the replacement property is constructed on a site other than the site of the replaced property or reasonably adjacent to that site.

"(2) APPLICATION OF INVESTMENT CREDIT RULES.—

"(A) CREDIT IN ADDITION TO SECTION 38 CREDIT.—The credit allowed by this section is in addition to any amount allowed as a credit under section 38 (other than any amount determined under section 46(a)(2)(C) (relating to the energy percentage)).

"(B) CERTAIN SUBPART B RULES TO APPLY.—

"(i) Except as otherwise provided in this section, the provisions of sections 47 and 48 are hereby made applicable, under regulations prescribed by the Secretary, to the credit allowed by this section, except that—

"(I) the words '(not including a building and its structural components)' contained in section 48(a)(1)(B) shall be disregarded,

"(II) any reference to 'section 38 property' shall be treated as a reference to 'qualified industrial energy property', and

"(III) section 48(a)(10) (relating to boilers fueled by oil or gas) shall not apply.

"(ii) For the purpose of determining the amount of the taxpayer's qualified investment in qualified industrial energy property, the applicable percentage (for purposes of section 46(c)(1)) shall be 100 percent for all items without regard to the useful like of any particular item.

"(iii) For purposes of applying section 47, if qualified industrial energy property is disposed of or converted into property which is not qualified industrial energy property, and if such disposition or conversion occurs before it has been in service for half its useful life, the disposition or conversion shall be treated as having occurred before the close of the third year after the property was placed in service.

"(iv) No credit shall be allowed under this section for property which is public utility property (within the meaning of section 46(f)(5)).

"(v) In the case of a taxpayer which is not a corporation, the credit allowed by subsection (a) shall be allowed with respect to property of which such person is the lessor under the rules applicable to the credit allowed by section 38 set forth in section 46(e)(3) (but without regard to the limitations of section 48(a)(4) and (5)).

"(3) PROPERTY FINANCED BY PUBLIC FUNDS.—Any investment in qualified industrial energy property shall be reduced to the extent that such investment is made directly or indirectly with funds provided for the acquisition or modification of such property by a grant paid by any agency of the United States.

"(4) PROPERTY FINANCED BY INDUSTRIAL DEVELOPMENT BONDS.—In the case of qualified industrial energy property which is financed in whole or in part by the proceeds of an industrial development bond (within the meaning of section 103(b)(2)) the interest on which is exempt from tax under section 103, '10 percent' shall be substituted for '20 percent' in subsection (a).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The Table of sections for such subpart A is amended by inserting after the item relating to section 44E the following new item:

"Sec. 44F. Investment in qualified industrial energy efficiency and fuel conservation projects.".

(2) Paragraph (8) of section 46(f) of such Code is amended by striking out "and the Revenue Act of 1978" and inserting in lieu thereof "the Revenue Act of 1978, and the Industrial Energy Efficiency and Fuel Conversion Tax Incentive Act of 1980".

(3) Section 6096(b) of such Code (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44E", and inserting in lieu thereof "44E, and 44F".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to qualified industrial energy property which is placed in service not later than December 31, 1986, and

(A) which is acquired by the taxpayer after July 31, 1980, or

(B) the construction, reconstruction, or erection of which is commenced by the taxpayer after July 31 1980.

(2) AFFIRMATIVE COMMITMENTS.—For the purpose of applying the provisions of paragraph (1) with respect to property which is part of a project with a normal construction period of two years or more (within the meaning of section 46(d)(2)(A)(i) of the Internal Revenue Code of 1954), "December 31, 1994" shall be substituted for "December 31, 1986" if—

(A) before January 1, 1987, the taxpayer has completed all engineering studies in connection with the commencement of the construction project, and has applied for all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project, and

(B) before January 1, 1990, the taxpayer has entered into binding contracts for the acquisition, construction, reconstruction, or erection of equipment specially defined for the project and the aggregate cost to the taxpayer of that equipment is at least 50 percent of the reasonably estimated cost for all such equipment which is to be placed in service as part of the project upon its completion.

SEC. 3. INCREASED CREDIT FOR CERTAIN ITEMS OF ALTERNATIVE ENERGY PROPERTY AND SPECIALLY DEFINED ENERGY PROPERTY.

(a) IN GENERAL.—The table contained in clause (i) of section 46(a)(2)(C) of the Internal Revenue Code of 1954 (relating to energy percentage) is amended by adding at the end thereof following new subclause:

"VII. Certain alternative energy property and specially defined energy property.—Property described in section 48(l)(2)(A)(iv), 48(l)(3) (other than clause (viii) or (ix) of subparagraph (A) thereof), or 48 (l) (5).	20 percent.	The date of the enactment of the Industrial Energy Efficiency and Fuel Conversion Tax Incentive Act of 1980.	December 31, 1986.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending on or after the date of enactment of this Act.

INDUSTRIAL CONSERVATIONS INCENTIVE

(By Robert Stobaugh and Daniel Yergin)

For a variety of reasons, a free market has not been used in the United States to achieve an appropriate balance between energy consumption and energy conservation. This will be true even after domestic oil is decontrolled in September. Thus, American industry, as well as other sectors, is subject to a continuing "consumption bias."

This bias has very serious implications for both the individual company and the nation. It means that conservation is not being achieved at anything like an economic rate. In effect, the industrial sector is seriously underinvesting in energy efficiency. As a consequence, both the country and the private concern will be subject to much higher but unnecessary energy costs in the years ahead.

Much greater effort should be put into stimulating conservation investments in the industrial sector, for this sector is capable of achieving substantial conservation savings quickly. Unfortunately, this sector has received little attention for public policymakers.

One reason that the special problems of industry have received relatively little attention is because industry's record is much better than that of other sectors. Between 1973 and 1978, industrial energy use decreased by 12 percent per unit of output, whereas there was a 1 percent increase in per capita energy use in the residential and commercial sector.

Some companies have organized themselves to achieve truly outstanding savings—reductions on the order of 30 percent to 45 percent. But many potential savings have not been made. Many corporate energy managers believe that with relatively modest efforts, their companies could achieve 20 percent to 40 percent reductions in absolute terms—but are not.

MANY BARRIERS

This is not because of lack of desire or interest. Many barriers stand in the way of adequate levels of investment in energy conservation—unclear organizational responsibilities, institutional obstacles to cogeneration and imperfect information. But the most important obstacle is the financial barrier, which has two parts. First, industrial concerns, as well as other consumers, pay subsidized prices for their conventional energy sources. Second, lack of adequate capital retards investment. Thus, the major remedy lies primarily with financial incentives.

First, subsidized prices. Even after oil-price controls end, the cost of oil products will be below the true cost to the nation, for imported oil embodies a number of side-effects that are costly to the nation, but not to the user, at least not at the time when it makes its decision to use oil or invest in efficiency. These costs include the impact of the marginal U.S. oil imports on the world market. If the United States had kept to its 1975 import level of 6 million barrels a day instead of 8.5 million at the beginning of 1979, we might well have not seen prices reach $35 a barrel—with all the inflationary and GNP losses that accompany it. Our belief is that the marginal cost of the extra several million barrels daily of U.S. oil imports was on the order of $60 to $100 a barrel.

How to correct for this gap between $35 a barrel that the user sees and the $60 to $100 the nation pays? One way is a tariff—of 100% or more. A response of this sort is a standard solution of economists when the price of imports works against achieving some national goals. But it is unrealistic to expect a tariff of this magnitude to be enacted—and if it were, it would draw dollars away from conservation investments to paying for current energy costs. To say the least, it would have a harsh impact.

Our other energy prices are also subsidized. Natural-gas price controls, of course, will be in existence for "new" gas until 1985, and for "old" gas indefinitely. Consumers of electricity, for instance, pay average costs rather than the marginal costs engendered by new generating capacity. Moreover, there are obvious side-effects in the use of coal and nuclear power that are not included in the market price—hazy skies in the case of coal and fear of a catastrophic accident in the case of nuclear power. The true cost of these to society is hotly debated, but everyone would agree that the result is that energy prices do not give correct information to consumers, and are unlikely to do so.

The financial barrier is also operative within the corporation. Many who say that "industry will take care of itself" are assuming that a corporation is a single rational actor, with a single mind.

On the contrary, a constant competition takes place within a company over the allocation of capital. Companies establish various hurdle rates in order to make those decisions on a rational basis. Conservation investments must often leap over high hurdle rates—two- or three-year paybacks. They are not viewed as having the same strategic impact as new product or additional capacity and so they are postponed. Other claimants are also ahead in line, such as mandated environmental expenditures.

Conservation investments do not attain the same level of interest, commitment, and glamour for top management as do investments that lead to increased sales. Also, energy may not be a significant cost to a firm, and so, even if the payback is good,

management will choose to put its dollars elsewhere. After all, the company is purchasing average barrels at $35—not marginal barrels at $60 to $100. Finally, high interest rates and economic uncertainty cause management to pare down its list of investments—and conservation investments often fall off the bottom.

The result of the financial barrier is that there is a very large backlog of highly desirable energy-conservation investments that would benefit both industry and the nation—that could perhaps lead to a 20% to 30% absolute reduction in energy use in the industrial sector. Assuming some modicum of economic stability, many of these investments will eventually be made. But they are much more valuable to the nation if done in 1981 rather than in 1986.

TAX CREDITS REQUIRED

Tax or other policies that promote investment in new facilities will speed energy conservation. Rapid depreciation policies for new facilities could substantially accelerate efficiency. The 1978 National Energy Act provided a limited 10 percent credit for conservation investments. But, given the financial hurdle, this credit seems much too low. Significantly greater tax credits, up to 40 percent, plus accelerated depreciation or direct financial payments, are required. In addition, energy-conservation loans and grants for small businesses, which are often cash-strapped, are needed.

Industry executives freely acknowledge that there are many energy-saving innovations in which they could be investing, but are not because of other more urgent claims on capital. One company, for example, was considering a $500,000 investment that could lead to a 40 percent reduction in energy use—for a 1.5-year payback. It made this investment in its Belgian factory because of the incentives provided by the Belgian government. It did not in its similar American factory because other claims on capital were ahead in line.

Unless adequate incentives are provided to overcome the barriers to investments in more efficient use of energy, the U.S. will be faced with a vicious circle. The recessions resulting from higher world oil prices will retard investment in more efficient plants, thereby slowing energy conservation over the longer term, so that at any given level of economic output there is greater pressure on energy supplies.

There is an alternative: more efficient energy use and the benefits that go with it—greater economic output, more stability, reduction in the alarmingly large and potentially larger dependence on OPEC oil, a cleaner environment, less tension with our allies and a stronger dollar. By refusing to take sensible policy steps, we foolishly deny ourselves these benefits.

(NOTE.—Robert Stobaugh and Daniel Yergin are co-editors of "Energy Future: Report of the Energy Project at the Harvard Business School." Mr. Stobaugh is professor of business administration at the Harvard Business School and director of the project. Mr. Yergin is a lecturer at the Kennedy School of Government at Harvard and is editor of "The Dependence Dilemma: Gasoline Consumption and America's Security.")

By Mr. HOLLINGS (for himself and Mrs. KASSEBAUM):

S. 3007. A bill entitled the "Methane Transportation Research, Development, and Demonstration Act of 1980"; to the Committee on Commerce, Science, and Transportation.

● Mr. HOLLINGS. Mr. President, as we all know a major cause of our Nation's current economic difficulties is the continued importation of expensive foreign oil. One of the primary uses of this oil is in the transportation sector. In fact, meeting the daily fuel requirements of the vehicles of the American people takes up a large portion of not only the imported oil but an increasingly large amount of our domestically produced oil. The threat posed to our Nation by continued reliance on foreign energy supplies is potentially devastating. On a day-to-day basis, the dependence weakens us economically and our national security is put at risk by the threat of an oil cutoff. Clearly, it is important that we take steps now to reduce the amount of oil used in the transportation sector of the economy.

There is no simple, single solution to this problem. The legislation I am today introducing on behalf of myself and Senator KASSEBAUM is designed to make possible the use of methane in the transportation sector which could help bolster our economy. Our bill, the Methane Transportation Research, Development, and Demonstration Act of 1980, offers our Nation the opportunity to utilize a fuel which has a variety of benefits when compared to other transportation fuels now in use or under consideration by private companies and the Federal Government.

Natural gas, which is composed of 95 percent methane, is our country's most abundant source of this domestically produced fuel. As indicated in the bill, methane is also derived from such domestic sources as coal gas, Devonian shale, tight sands, geopressured zones, coal seams, and such renewable resources as marine and land biomass, peat, and organic and municipal wastes.

Of importance, methane has the potential for reducing the cost of transportation fuel to the consumer. The rate of return on this small investment would be great. Presently, methane costs the equivalent of 65 cents per gallon of gasoline.

Another major advantage of methane-powered vehicles is based on environmental considerations. Generally, all types of emissions associated with methane-powered vehicles are of lower levels than those associated with vehicles powered with other fossil fuesl. On a total energy-cycle basis (from energy source to end use) all types of emissions associated with methane-power vehicles are lower than those from vehicle powered by gasoline from oil, coal or shale.

Currently there are only about 10,000 methane-powered vehicles operating in the United States. This is another example of where our country lags behind other nations. By contrast, as estimated 400,000 motor vehicles burning gaseous fuels are in use world-wide. There are over 250,000 natural-gas-powered vehicles in Italy alone and New Zealand has recently announced a program to convert 150,000 vehicles to natural gas by 1983. Even the Soviet Union intends to convert most of the buses in the city of Moscow to methane. Clearly, methane has been proven to be a viable and economic transportation fuel for vehicles. The rapid development of this alternative fuel technology in the United States, however, is being hindered by economic and institutional barriers founded on a data base of outdated economic and gas-supply studies and restrictive laws which do not apply to the modern methane transportation situation.

Our bill, Mr. President, calls for funds to support advanced and accelerated research, development and demonstration of methane use in Government, commercial, and commuter vehicle fleets as well as for various agricultural vehicular uses. If our Nation's 6.5 million fleet vehicles were converted to methane, the United States could realize a savings of about 700,000 barrels of oil per day. This savings would require approximately 1.4 trillion cubic feet of gas—about 7 percent of our present natural gas consumption. In short, this legislation will help reduce the need for continued importation of foreign oil, will promote energy independence for the United States, and will help cut air pollution in major metropolitan areas. It can also accelerate development of unconventional sources of natural gas. All this can be done while providing vehicle operators with a cheaper and cleaner domestically obtained fuel than that which is currently in use.

Mr. President, I urge my colleagues to expeditiously consider and pass this legislation which is one more positive step to reduce our country's overreliance on imported oil.●

By Mr. DURENBERGER (for himself and Mr. MCGOVERN):

S. 3008. A bill to amend the Internal Revenue Code of 1954 to make the investment credit for railroad property refundable; to the Committee on Finance.

RAIL INVESTMENT INCENTIVES ACT OF 1980

Mr. DURENBERGER. Mr. President, today I am introducing legislation that will play an essential role in halting the deterioration of this Nation's rail system. The bill is entitled the "Rail Investment Incentives Act of 1980," and it would provide a system of refundable investment tax credits for the rail industry.

Several months ago, Senator MCGOVERN and I introduced a similar proposal as amendment to the rail deregulation bill. Since that time, the state of the Nation's rail system has continued to deteriorate. With the deregulation bill bogged down in the House, the need for this type of legislation is even greater today than it was when we proposed that amendment 4 months ago.

America enters the 1980's with a rail system weakened by nearly $4 billion in deferred maintenance. Power shortages and railbed deterioration touch every region of the country, and even on their main lines, few railroads can maintain the operating speed they were accustomed to just three decades ago. Because the bulk of maintenance deferrals occur on the Nation's branch lines, rural communities—which depend so heavily on rail transportation—are paying the greatest price.

The difficulties experienced by midwestern farmers in their efforts to ship last year's record harvest provided a dramatic illustration of the interdependence between our regional economies and their transportation systems. We

need to recognize that the Nation's railbeds are an indispensable national asset. Yet under present regulatory and tax structures, it is difficult to see how the industry can raise the billions of dollars necessary to preserve that asset over the last two decades of the 20th century.

The refundable investment tax credit is a mechanism to extend the benefits of the investment tax credit to marginal railroads, whose investment needs uniformly exceed those of their more profitable competitors. In doing so, it will fill an important gap in our present rail assistance program.

Although the Federal Government invests hundreds of millions of dollars each year in emergency rail assistance, most of this money is targeted toward subsidizing or rebuilding railroads that are already insolvent.

Unfortunately, most of the damage done to the physical plant of a weak railroad occurs during the "wind-down" stage prior to bankruptcy. When a railroad's cash flow declines, the easiest obligation to defer is track maintenance. But as maintenance is deferred, service declines, which forfeits business and further weakens the railroad itself. This is more than a theoretical argument; the cycle has been evident in dozens of railroad bankruptcies across the Nation throughout the past few decades.

The need for investment capital is not a problem unique to the railroad industry. It was the precise problem Congress sought to address by enacting the investment tax credit, and that bill has achieved some dramatic results.

But because it is a tax credit, its impact is confined to the most profitable industries, and the most profitable members within each industry.

By common admission, rail is among the most labor- and capital-intensive of American industries. But its net return on investment has hovered around 1 percent in recent years, so the ITC has had little effect on the industry as a whole.

Within the industry, ITC has had a particularly skewed impact because of the unique economics of the rail industry. Invariably, when weak railroads cut back on expenditures, they begin by deferring railbed maintenance. As a consequence, the great bulk of the Nation's $4.1 billion in deferred maintenance is concentrated in the Nation's weakest railroads—the ones that draw little or no benefit from the ITC. And deferred maintenance, by weakening service, weakens the rail companies themselves. The Rock Island is the best example of this secondary impact. ITC has strengthened the stronger railroads, but had little impact on the weaker, investment starved lines. In effect, it has widened disparities within the industry, intensifying the trend toward merger and acquisition.

Rail companies come and go, but the railbeds are an essential national asset. And the RITC is a mechanism to induce failing railroads to maintain their railroad property investment during times of economic difficulty. Under present law, a railroad with, say, $8 million in income and $10 million in obligations will place railbed maintenance at the bottom of its priority expenditure list. But with RITC in place, a dollar invested in railbed rehabilitation yields a 10-percent return—making this a more desirable source of resource allocation than of the railroads' other debts. The RITC is a crucial incentive for losing railroads to maintain their investment in the railbeds even during times of economic difficulty.

This effort to spread the effects of the ITC to weaker railroads is no corporate bailout. It has a direct impact on the future of the Nation's rural transportation system. Railbeds are a national asset. When railroads begin deferring maintenance, they starve the branch lines first because those lines produce a weaker cash flow. This process focuses the impact of a failing railroad on rural—agricultural areas, creating the type of difficulties experienced throughout the Nation's agricultural areas over the past 24 months.

Railroads are the lifelines that link these agricultural regions with national and international markets. Farmers, consumers, and exporters alike have a stake in preserving those lifelines. By lowering the cost of branch line rehabilitation, the bill would improve the cash flow of every branch line in the Nation. This would do more to preserve branch line service than any program now in existence.

Even from a purely social standpoint, insuring the viability of the Nation's rail system is an essential step in preserving the vitality of rural America. Railroads determined the settlement patterns in much of the country, as elevators were built along branch lines, and settlements sprung up at key junctions. A century later, the economies of these rural towns still depend on their access to rail transportation. Preserving the rural rail system is an indispensable part of the effort to maintain rural vitality.

And at a time when the American public is spending hundreds of billions of dollars in the search for alternative energy sources, railroads remain the most energy efficient form of freight transportation.

By any public criteria this special investment in the rail industry is a sound investment.

The rail industry needs help, and this amendment is an efficient means to provide an infusion of desperately needed investment capital. During the last decade, we have repeatedly witnessed the immense human and financial costs that follow a major rail bankruptcy. It makes far more sense to provide the industry with some preventive medicine than to face these costs again in the decade ahead.

This is a bill that every farmer, every shipper, and every resident of rural America has a stake in. I hope that every Senator will join in supporting it.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3008

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) subparagraph (A) of section 46(a)(9) of the Internal Revenue Code of 1954 (relating to special rules in the case of energy property) is amended—

(A) by inserting "or the application of the regular percentage to railroad property" after "energy percentage" in clause (i),

(B) by striking out the period at the end of clause (ii) and inserting a comma and "and", and

(C) by adding at the end thereof the following new clause:

"(iii) then with respect to so much of the credit allowed by section 38 as is attributable to the application of the regular percentage to railroad property.".

(2)(A) Section 46(a)(9) of such Code is amended by adding at the end thereof the following new subparagraphs:

"(C) REFUNDABLE CREDIT FOR RAILROAD PROPERTY.—In the case of so much of the credit allowed by section 38 as is described in subparagraph (A)(iii)—

"(i) paragraph (3) shall not apply, and

"(ii) for purposes of this title (other than section 38, this subpart, and chapter 63), such credit shall be treated as if it were allowed by section 39 and not by section 38.

"(D) RAILROAD PROPERTY DEFINED.—For purposes of this paragraph, the term "Railroad Property" means Section 38 property, which is (i) used directly in connection with the trade or business of operating a railroad company (including a railroad switching or terminal company), and (ii) is owned by a domestic common carrier by railroad or by a corporation at least 80 percent of the voting stock of which is owned directly or indirectly by one or more such common carriers or by persons who were such carriers before entering proceedings under the Bankruptcy Act."

(B) Paragraph (8) of section 46(a) of such Code (relating to alternative limitation in case of certain railroads and airlines) is amended—

(i) by striking out "to railroad property or" in subparagraph (A)(i),

(ii) by striking out "railroad property or" in subparagraph (B)(ii),

(iii) by striking out subparagraph (D) and redesignating subparagraph (E) as subparagraph (D), and

(iv) by striking out "railroad and" in the heading thereof.

(3) The headings for section 46(a)(9) of such Code is amended by inserting "OR RAILROAD" before "PROPERTY".

(b)(1) Each person who, by reason of section 46(a)(9)(C) of the Internal Revenue Code of 1954 or subsection (c)(2), receives a refund of the credit allowed by section 38 of such Code which is attributable to the application of the regular investment percentage to railroad property (within the meaning of section 46(a)(9)(D) of such Code) shall establish and maintain a separate account for amounts so received.

(2)(A) All refunds described in paragraph (1) and subsection (c)(2) shall be credited to the account established under paragraph (1).

(B) No amount may be withdrawn from an account established under paragraph (1) unless the funds are to be used for—

(i) normal maintenance, rehabilitation, or capital improvements made in connection with railroad property,

(ii) acquisition of railroad property, or

(iii) payment of the tax imposed by section 3221 of such Code.

(C) If funds are withdrawn from such an account and are not used for a purpose described in subparagraph (B), then there is hereby imposed on such person for the taxable year in which such amount is withdrawn a tax in an amount equal to such amount.

(c)(1) Except as provided in paragraph (2), the amendments made by subsection (a) shall apply with respect to—

(A) property to which section 46(d) of the Internal Revenue Code of 1954 does not apply, the construction, reconstruction, or erection of which is begun or completed by the taxpayer after December 31, 1979, but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date.

(B) property to which section 46(d) of such Code does not apply, acquired by the taxpayer after such date, and

(C) property to which section 46(d) of such Code applies, but only to the extent of the qualified investment (as determined under subsections (c) and (d) of section 46 of such Code) attributable to qualified progress expenditures made after such date.

(2)(A) In the case of an unused credit for an unused credit year ending before January 1, 1980, which—

(i) is attributable to the application of the regular percentage to railroad property which is property not described in paragraph (1), and

(ii) in an investment credit carryover to a taxable year beginning after December 31, 1979,

that portion of the unused credit which would expire after the 7th taxable year following the unused credit year by reason of section 46(b) of such Code shall be treated as if it were a credit allowed by section 39 (and not section 38) of such Code for the 8th taxable year following the unused credit year.

(B) For purposes of this paragraph, the terms "unused credit", "unused credit year", "regular percentage", and "railroad property" have the same meaning as when used in section 46 of such Code.

(d) The Secretary of the Treasury shall reserve such receipt of the tax imposed by section 4986 of the Internal Revenue Code of 1954 as he determines are equal to the decrease in revenues attributable to the amendments made by this section.

By Mr. GLENN:

S. 3009. A bill to establish a uranium enrichment fund; to the Committee on Energy and Natural Resources.

URANIUM ENRICHMENT FUND ACT OF 1980

Mr. GLENN. Mr. President, I introduce and send to the desk the Uranium Enrichment Fund Act of 1980.

The uranium enrichment program has been the backbone of our nuclear effort in the United States since the inception of the atoms-for-peace program. It has played an important role both here and abroad, not only in aiding the expansion of our nuclear industry, but in helping our nuclear nonproliferation effort as well.

The uranium enrichment program, unlike most Government programs, provides a service which receives revenues for value added to goods used in the private sector which may be used to fund enrichment operations. In terms of revenues, the uranium enrichment program is equivalent to the top 275 U.S. corporations. The program's suppliers and customers are both private sector entities. The rapidly changing domestic and foreign prospects for nuclear reactors and the business-type nature of this enterprise calls for a financial system which provides for more management flexibility than is offered in the usual appropriations cycle.

This increased flexibility can be provided through establishment of a uranium enrichment revolving fund—that is what I am proposing—and should result in greater overall economy and efficiency. DOE's image as a world supplier of enrichment services would be improved and foreign competitors' criticisms about the "unbusinesslike" nature of U.S. enrichment operations would be blunted. The establishment of a revolving fund would thus aid in marketing initiatives, primarily international, and would further U.S. nonproliferation objectives and improve U.S. balance of payments.

In recognition of the continuing congressional interest in the program, expenditures would be subject to limitations and directives that might be inserted into authorization and appropriation acts. Moreover, the Secretary could not acquire plant and capital equipment, the cost of which exceeds 5 percent of the total net book value of uranium enrichment fixed assets or construct new enrichment capacity without express congressional authorization. In addition obligations for plant and capital activity purposes which would increase expenditures for the capital activity to a level greater than 15 percent above that approved by Congress could not be made until Congress has been notified and a period of 30 days while Congress is in session has elapsed.

Mr. President, it is vitally important that some degree of stability be provided to the uranium enrichment program at this time. The recent cutbacks proposed for the gas centrifuge enrichment plant at Portsmouth, Ohio, are a subject of great concern at a time when the United States wishes to reestablish its position as a reliable supplier in the area of nuclear enrichment services and at a time when our nonproliferation effort is seen in some quarters to be flagging. The revolving fund will bring a degree of stability to the enrichment program that will make it less subject to budgetary whim.

Mr. President, in creating this revolving fund, I would not want to reduce or to make more difficult congressional oversight over the nuclear enrichment program. Accordingly, the bill requires that comprehensive reports be sent to the Congress concerning the operation of the fund, DOE plans on enrichment activities for the future, the financial position of the fund, and projections and statements of policy regarding tails assay and projected enriched uranium needs.

It is my view that the Uranium Enrichment Fund Act will aid our domestic industry as well as our competitive posture with respect to foreign uranium enrichment sales. I urge the support of my colleagues for this measure.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be printed at this point in the RECORD.

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

S. 3009

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 "Uranium Enrichment Fund Act of 1980".

SEC. 2. The Atomic Energy Act of 1954 is amended by inserting the following sections:

"SEC. 262. URANIUM ENRICHMENT FUND.

"a. There is established in the Treasury of the United States a Uranium Enrichment Fund (hereinafter referred to as the 'Fund'). The Fund shall consist of—

"(1) all receipts, collections and recoveries of the Secretary of Energy (hereinafter referred to as the 'Secretary') in cash from the provision of services for the production or enrichment of uranium in the isotope 235, and the sale, lease, distribution or transfer of uranium and from activities incidental to the foregoing;

"(2) all proceeds derived from the sale of bonds by the Secretary pursuant to section 263;

"(3) proceeds from the investment of fund moneys;

"(4) the unexpended balance of any funds available prior to the effective date of this Act for functions or activities necessary or incident to the production or enrichment of uranium enriched in the isotope 235, and the sale, lease, distribution, or transfer of uranium; and

"(5) any appropriations made by Congress to the Fund.

"b. The Secretary may make expenditures from the Fund which shall have been included in the annual budget submitted to Congress by the President, without further appropriation and without fiscal year limitation, but within such specific directives or limitations as may be included in appropriation or authorization Acts, for—

"(1) any purpose necessary or appropriate to the conduct of the Secretary's functions and activities for the provision of services for the production or enrichment of uranium enriched in the isotope 235 and the sale, lease, distribution or transfer of uranium; the conduct of research and development activities related to the isotopic separation of uranium; and the acquisition, design, construction, modification, replacement and operation of facilities necessary or incident to the foregoing; and

"(2) paying the principal, interest, premiums, discounts, and expenses, if any, in connection with the bonds issued under section 263 of this Act.

"c. The Provisions of the Government Corporation Control Act (31 U.S.C. 841) shall be applicable to the Secretary in his utilization of the Fund in the same manner as they are applied to the wholly owned Government corporations named in section 101 of such Act (31 U.S.C. 846).

"d. If the Secretary determines that the moneys of the Fund are in excess of current needs he may request the investment of such amounts as he determines advisable by the Secretary of the Treasury in obligations of the United States with maturities suitable for the needs of the Fund and bearing interest at rates determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining period to maturities comparable to the maturities of such investments except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

"e. Proceeds realized by the Secretary from issuance of bonds and revenues from the conduct of activities described in this section and the expenditure of such proceeds and revenues shall be subject only to annual apportionment under the provisions of section 665 of title 31 of the United States Code.

"f. Commencing October 1, 1980, the Secretary shall pay to the Treasury revenues and proceeds derived from sources set forth in subsection a. (1) and a. (3) of this section save and except such part of said revenues and proceeds as in the opinion of the Secretary shall be reasonably necessary in the

foreseeable future for the conduct of the functions and activities set forth in subsection b. of this section.

"g. Notwithstanding any other provision of this section the Secretary shall not—

"(1) enter into an obligation for plant and capital activity purpose if that obligation, together with prior obligations and outlays results in an increase in the total capital outlays in that fiscal year of more than 15 percent above the level of outlays in the plant and capital activity budget as submitted for that fiscal year as such budget may have been reduced or increased by congressional direction or limitation until the Secretary has reported such obligation to Congress and a period of 30 days shall have elapsed while Congress is in session (in computing such 30 days there shall be excluded the days on which either House is not in session because of adjournment for more than 3 days);

"(2) without express prior congressional authorization, enter into obligations for the construction of a new uranium enrichment plant or the acquisition of any new plant and capital equipment the cost of which exceeds an amount equivalent to 5 percent of total net book value of Department of Energy fixed assets which are devoted primarily to uranium enrichment activities; or

"(3) without express prior congressional authorization, modify any obligations authorized under paragraph (2) which would result in a decrease in authorized uranium enrichment capacity.

"SEC. 263. REVENUE BONDS.—

"a. The Secretary of Energy (hereinafter referred to as the 'Secretary') is authorized to issue and sell to the Secretary of the Treasury from time to time, to such extent or in such amounts as are contained in appropriation Acts, bonds, notes, and other evidences of indebtedness (collectively referred to herein as 'bonds') to assist in financing the acquisition, construction, modification, replacement and operation of facilities necessary or incident to the conduct of the Secretary's functions and activities for the provision of services for the production or enrichment of uranium enriched in the isotope 235; the sale, lease, distribution or transfer of uranium; and for activities incidental to the foregoing. Such bonds shall be in such forms and denomination, bear such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary of the Treasury taking into account terms and conditions prevailing in the market for similar bonds and the useful life of the facilities for which the bonds are issued.

"b. The principal of, premiums, if any, and interest on such bonds shall be payable solely from the Secretary's net proceeds as hereinafter defined. 'Net proceeds' shall mean for the purposes of this section the remainder of the gross receipts of the Secretary from the sources described in subsections 262 a. (1) and (3) after first deducting noncapital expenditures made pursuant to subsection 262 b. (1) and shall include reserve or other funds created from such receipts.

"c. The Secretary of the Treasury shall purchase any bonds issued by the Secretary under this section and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purpose for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchases of the bonds issued by the Administrator under this section. The Secretary of the Treasury may, at any time, sell any of the bonds acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such bonds shall be treated as public debt transactions of the United States.

"SEC. 264. ANNUAL REPORTS TO THE CONGRESS.—

"a. The Secretary shall report to the Congress on or before the 1st day of January each year on the principal activities for the preceding fiscal year of the Uranium Enrichment Fund established by section 262 of this Act and the revenue bonds issued under section 263 of this Act.

"b. Such reports shall contain a comprehensive description of the operation of the Fund, including information on—

"(1) projected enriched uranium needs for the next succeeding 5 years;

"(2) tails assay projections and policy for the next succeeding 5 years;

"(3) plans to meet the projected needs for the next succeeding 5 years;

"(4) estimated revenue of the Fund for the next succeeding 5 years;

"(5) any other future plans or administrative actions under consideration which would affect the operation of the revolving fund, including projections of expected revenues and costs resulting from those plans or actions;

"(6) management problems resulting from operation of the revolving fund; and

"(7) legislative proposals which may be necessary to assure that the purposes of the revolving fund are carried out most effectively.

"c. In addition, the annual report should include a comprehensive statement of the financial activities of the revolving fund, including, as a minimum, the following information:

"(1) the current financial position of the Fund, including a statement of assets and liabilities and surplus or deficit;

"(2) a statement of surplus or deficit analysis;

"(3) a statement of the sources and application of funds;

"(4) a statement of changes in Government investment in the revolving fund;

"(5) a statement of any changes in the financial position of the Fund;

"(6) schedules showing changes in inventory balances, plant and capital equipment, costs of production and sales, and power costs; and

"(7) such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the revolving fund.

These statements and supporting schedules should be prepared in accordance with generally accepted accounting principles.".

URANIUM ENRICHMENT FUND ACT OF 1980—SECTION-BY-SECTION ANALYSIS

1. Section 1 of the bill would add Sections 262 and 263 to the Atomic Energy Act of 1954, as amended.

2. Subsection a of the proposed Section 262 would establish a Department of Energy Uranium Enrichment Fund (hereafter called the "fund"). The Fund would consist of (1) all of DOE's revenues derived from activities associated with uranium enrichment activities (the term "uranium enrichment activities" as used in this analysis involves operations of the DOE uranium enrichment plants; the sale of enriching services; the sale, lease, disposition or transfer of uranium; the conduct of research and development activities related to the isotopic separation of uranium; the acquisition, design, construction, modification, replacement, and operation of facilities necessary or incidental to the foregoing; and such other functions or activities as may be necessary or appropriate for the conduct of the above enumerated items); (2) proceeds derived from the sale of bonds authorized by the new Section 263 of the Atomic Energy Act; (3) proceeds from the investment of fund monies; (4) the unexpended balance, as of the date of enactment of the legislation, of funds appropriated for uranium enrichment activities; and (5) Congressional appropriations for the Fund.

3. Subsection b of the proposed Section 262 would provide that expenditures from the Fund could be made only for purposes necessary or incidental to DOE's uranium enrichment activities. Expenditures from the Fund could be made without additional Congressional appropriation or fiscal year limitation but would be subject to specific directives or limitations which Congress might include in annual appropriation and authorization acts.

4. Subsection c of the proposed Section 262 would apply the Government Corporation Control Act to the utilization of fund monies. This would allow the uranium enrichment activities of DOE to be operated pursuant to a business type budget, which provides more flexibility than an appropriations-type budget.

5. Subsection d of the proposed Section 262 would allow the Secretary to request of the Secretary of the Treasury to invest Fund monies in obligations of or guaranteed as to both principal and interest by the United States during periods when they are not immediately required for fund purposes.

6. Subsection e of the proposed Section 262 exempts the expenditure of bond proceeds and uranium enrichment revenues from other than annual apportionment under the provisions of Section 665 of Title 31 of the U.S. Code.

7. Subsection f of the proposed section 262 would require the Secretary to pay to the Treasury revenues and proceeds derived from sources other than appropriations and bond sales to the Treasury save and except those revenues which in his opinion shall be reasonably necessary in the foreseeable future for uranium enrichment activities. This subsection assures that the uranium enrichment fund will not be the repository for idle monies. Each year, commencing in fiscal year 1981, the Secretary will make payment to the Treasury, for application to the total Federal budget of any monies which he determines are excess.

8. Subsection g (1) of Section 262 would require the Secretary to report to Congress changes in the enrichment enterprise during a fiscal year which would increase outlays in the plant and capital budget by more than 15 percent above the outlay level governing that fiscal year as represented in the President's budget as changed by Congressional action.

9. Subsection g(2) would require specific Congressional authorization before Fund monies could be obligated for new uranium enrichment capacity or for acquisition of any capital asset which would exceed an amount equivalent to five percent of the total net book value of DOE assets devoted primarily to uranium enrichment.

10. Subsection g (3) would require specific Congressional approval of any modification of obligations authorized pursuant to subsection g(2) when such modification would result in reduction of authorized enrichment capacity.

11. Subsection a of the proposed Section 263 would authorize the Secretary to issue revenue bonds, the proceeds of which would be used for Fund purposes. The Secretary of the Treasury would prescribe the form, denomination, maturities, interest rates and other terms and conditions of the bonds. Bonds could be issued only to such extent or in such amounts as are contained in appropriations acts.

12. Subsection b of the proposed section 263 would provide that the principal and

interest on such bonds would be payable solely from the net proceeds of DOE uranium enrichment activities and defines the method by which net proceeds would be determined.

13. Subsection c of the proposed section 263 would require the Secretary of the Treasury to purchase bonds issued by the Secretary pursuant to Section 263. This subsection would also authorize the Secretary of the Treasury to sell any bonds acquired from the Secretary.

14. The proposed section 264 requires the Secretary to report to the Congress by January 1st of each year on the principal activities for the preceding fiscal year of the uranium enrichment fund established by section 262 of this Act and the revenue bonds issued under section 263 of this Act.

15. Subsection b of the proposed section 264 delineates specific items to be contained in the comprehensive annual report outlining the present scope and operation of the Fund along with future projections of the Fund's activities.

16. Subsection c of the proposed section 264 provides that the annual report also include precise information on the current financial status, position, and operation of the revolving fund, plus a statement of the Fund's assets and liabilities and surpluses or deficits.

ADDITIONAL COSPONSORS

S. 2570

At the request of Mr. JOHNSTON, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 2570, a bill to authorize the President to establish a program to reduce and order the demand for motor fuel during a severe energy supply interruption.

S. 2881

At the request of Mr. BENTSEN, the Senator from Arkansas (Mr. BUMPERS) was added as a cosponsor of S. 2881, a bill to amend the Internal Revenue Code of 1954 to extend the historic preservation tax incentives.

S. 2890

At the request of Mr. LEVIN, the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from New Hampshire (Mr. DURKIN), the Senator from Idaho (Mr. CHURCH), and the Senator from California (Mr. HAYAKAWA) were added as cosponsors of S. 2890, a bill for the relief of Maria and Timofei Chmykhalov, and for Lilia, Peter, Liubov, Lidia and Augustina Vashchenko.

S. 2979

At the request of Mr. METZENBAUM, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 2979, a bill to amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases.

SENATE CONCURRENT RESOLUTION 73

At the request of Mr. DOLE, the Senator from Texas (Mr. BENTSEN), the Senator from New York (Mr. JAVITS), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Florida (Mr. STONE), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from North Dakota (Mr. BURDICK) were added as cosponsors of Senate Concurrent Resolution 73, a concurrent resolution expressing the sense of the Congress with respect to implementing the objectives of the International Year of Disabled Persons.

SENATE CONCURRENT RESOLUTION 111

At the request of Mr. PELL, the Senator from New Hampshire (Mr. DURKIN), the Senator from Maine (Mr. COHEN), the Senator from California (Mr. CRANSTON), the Senator from Oklahoma (Mr. BOREN), and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of Senate Concurrent Resolution 111, a concurrent resolution concerning the fifth anniversary of the Helsinki accords and calling for prominent attention to human rights concerns at the Madrid conference.

SENATE RESOLUTION 461

At the request of Mr. NELSON, the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of Senate Resolution 461, a resolution disapproving the proposed deferral of budget authority for EPA grants for waste.

SENATE RESOLUTION 470

At the request of Mr. NELSON, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of Senate Resolution 470, a resolution disapproving the proposed deferral of budget authority for EPA grants for waste treatment works.

SENATE RESOLUTION 491

At the request of Mr. THURMOND, the Senator from South Dakota (Mr. PRESSLER), the Senator from Texas (Mr. BENTSEN), and the Senator from Rhode Island (Mr. PELL) were added as cosponsors of Senate Resolution 491, a resolution to designate October 11, 1980 as "National Jogging Day."

SENATE RESOLUTION 497—ORIGINAL RESOLUTION REPORTED TO AUTHORIZE PAYMENTS TO A FORMER EMPLOYEE

Mr. PELL, from the Committee on Rules and Administration, reported the following original resolution, which was placed on the calendar:

S. RES. 497

Whereas, Candace M. Hanson, a former employee of the United States Senate, has filed a complaint against the Sergeant at Arms, the Hon. F. Nordy Hoffmann, in the United States District Court for the District of Columbia, Civil Action No. 77-0857;

Whereas, Candace M. Hanson and the Sergeant at Arms have determined that it would be in the interests of justice to terminate the litigation without further proceedings and in an amicable manner;

Whereas, the Sergeant at Arms wishes to reinstate the former Senate employee to her position as an operator in the Capitol Telephone Exchange with full seniority and recommends that she be deemed by the Senate to have rendered creditable service during the period from June 20, 1976, to July 31, 1980: Now, therefore, be it

Resolved, That the Committee on Rules and Administration is authorized to make payment from the contingent fund of the Senate in the total amount of $37,902.23. Of this total amount (1) $29,612.01 shall be paid to Candace M. Hanson as back pay, and (2) $8,290.22 shall be remitted to the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund, pursuant to 5 U.S.C. 8334, representing the retirement deductions of Candace M. Hanson and the retirement contribution of the United States Senate for the period June 20, 1976, to July 31, 1980.

AMENDMENTS SUBMITTED FOR PRINTING

DOMESTIC VIOLENCE PREVENTION ACT—S. 1843

AMENDMENTS NOS. 1954 THROUGH 1957

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted four amendments intended to be proposed by him to S. 1843, a bill to provide for Federal support and stimulation of State, local, and community activities to prevent domestic violence and provide immediate shelter and other assistance for victims of domestic violence, for coordination of Federal programs and activities pertaining to domestic violence, and for other purposes.

Mr. HATCH. Mr. President, I wish to file for printing, four amendments to S. 1843, the Domestic Violence Prevention Act of 1980, and I also request that the text of these amendments be printed in the RECORD at the conclusion of these brief remarks.

Mr. President, the amendments I am today submitting are to legislation presently on the Senate Calendar, a bill we are expected to consider shortly. It is a Federal proposal intended to prevent domestic violence and to bring aid and comfort to its victims.

We are dealing here, of course, with a classic motherhood and apple-pie issue. As diverse and heterogenous as we are, I have never heard any of my colleagues speak in favor of domestic violence. Every one of us and all other responsible citizens are revolted by the nightly news stories of wife battering, child abuse, and other kinds of family neglect which are manifested in some form of violence. The FBI reported that in 1975, one-fourth of the 20,510 people murdered in our country were killed by a family member, and that half of these involving the killing of one spouse by another. In Kansas City, Mo., a police department study revealed that in 85 percent of that city's domestic assault cases, the police had been called to the same house at least once before. And in over half the cases, the police were called five times or more.

So, it is no exaggeration to say that domestic violence affects all families—urban and rural, rich and poor, civilian and military. Those victimized are usually confused, desperate, and in danger without any resources. They are more often than not, abused women who need protection for themselves and for the other members of their family, usually involving their children or elderly relatives. Perhaps some of my colleagues were able to see a recent segment on the "NBC Today" show; an interview with grandmothers and grandfathers who had been severely beaten by their own children, and in some cases by their grandchildren.

If the passage of the Domestic Violence Prevention Act now on the Senate Calendar depended solely upon the level of our

moral outrage, I know that it would pass; and that it would pass unanimously. Where many of us are presently divided is on the actual remedy, and this is where I think S. 1843 is seriously deficient. These deficiencies were outlined in a letter I sent to each of my colleagues, along with Senator HAYAKAWA, this past April. Because the various criticisms are unfortunately still valid, and the information in it still current, I ask unanimous consent that the text of my colleague's letter be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. HATCH. Mr. President, I also ask unanimous consent that an editorial which appeared in the Washington Star on June 30, entitled "Domestic Violence and the Feds," be printed in the RECORD following my remarks.

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

(See exhibit 2.)

Mr. HATCH. Mr. President, the four amendments I am today submitting are intended to correct the major weaknesses I find in the legislation. While important, these changes I am today proposing even if passed, are not in and of themselves enough to warrant this bill's passage. There remain a number of other corrections which must be made to S. 1843, and I understand that Senator HUMPHREY, Senator DOLE, and several other colleagues will shortly introduce their own amendments to shore up the legislative leaks in this bill.

The first of my amendments allows State legislatures to veto grants authorized by the Secretary of Health and Human Services for any of the bill's programs within the respective State. This amendment gives to State legislatures authority they ought to have anyway, but which S. 1843 as presently written gives to the respective States' Governors' offices instead. My proposed change is certainly not intended to slight our Governors, and in fact I could be enlisted to support this provision of the bill if I could be convinced that the Nation's Governors would become personally involved.

But all of us know this would not be the case. We know that a de jure ad hoc, but de facto permanent State minibureaucracy would be appointed instead. Rather than such a relatively unaccountable, unrepresentative bureaucratic entity, the State legislature in my opinion would be more responsible and effective as the authority to assure a smooth transition from Federal to State participation once the Federal aid ends and the offer of Federal matching funds begins. Through my amended change, State legislatures would be invited to become more familiar with domestic violence programs, indirectly involving these State legislatures in the grant-in-aid process for the benefit of both the State and Federal governments. I say that it is mutually beneficial on both the State and Federal levels, because having the veto authority on federally guided domestic violence programs gives these State legislatures a comparable responsibility to track down and to assure the quality and compliance of State grant applications.

Practical experience teaches us that State legislative veto requirements tend to save us money. They tend to prevent programs initiated as "demonstration" or "seed money" grant programs from becoming permanent federally subsidized fixtures, but instead lead to State matching or fully State supported programs. Anyone wanting to read about a classic illustration of this can take a look at the discontinuation of State LEAA programs after the initial Federal authorizations ran out, and I ask unanimous consent that a two-page summary of this case be printed in the RECORD following my remarks.

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

(See exhibit 3.)

Mr. HATCH. Mr. President, too often, "seed money" grant programs established to aid special local problems become entrenched as part of the Federal bureaucracy because there was no mechanism available to involve State legislatures early enough to make it possible for them to pick up the Federal share. As a result, established constituencies grow like Topsy and begin lobbying Congress for the incredible increased authorizations we have had in program maintenance at the Federal level.

Just consider a few examples: Food stamps started out as a pilot project funded at $13 million in 1969, and grew to $6.8 billion in fiscal year 1979. Community mental health centers originally part of the Office of Economic Opportunity began at $10.4 million, and is now $360 million, taking the last fiscal year's authorization. Women, infants, and children's programing for cash assistance through HEW began at $15 million and is now $550 million.

What I am saying in all of this, is simply that had the Federal Government not followed a policy path discouraging State involvement, we might today have these same programs but operated at more efficient cost levels and conducted in a more decentralized fashion. With my amendment, we can begin making up for lost time by involving the State very early on in the domestic violence center authorization process.

The record reveals that no State has ever turned down Federal money, and the Nation's State legislatures do not have reputations for refusing such money. Nevertheless, each of our States' elected legislative chambers should have the legal authority to say, "No." They should have the authority to welcome Federal assistance or to reject it. We can only give them such authority by holding them accountable and giving them full participation as elected representatives in the process of providing aid to domestic violence victims as my amendment would provide.

My second amendment requires States to assure that the emergency shelters provided in this bill meet State licensing requirements. None are now federally required. When a battered woman makes the decision to leave her husband, she may be in fear for her life. She commonly has nothing but the clothes on her back, and she may be afraid to leave her children with a violence-prone husband. For too many of these women, there is no place to go, except to any emergency shelter. The amendment I am offering would help make sure that the shelter to which a victim of battering goes for help is licensed by the State in order to guarantee that housing is safe, clean, and competently staffed.

This amendment requiring State licensing is a requirement for accountability: Accountability for the quality of care provided, for the services and for the domestic violence prevention facility itself. Overcrowded, poorly or inadequately staffed shelters perpetuate abuse through neglect, and thereby take away any options for battered women and their children rather than creating them. Passage of such an amendment will place the responsibility as well as the discretionary authority on the shoulders of the individual States where they belong anyway.

The third of my four amendments strikes from the legislation, direct grants by the Federal Government to local projects. Instead, all money for shelters, counseling and other services would go through the States, as should be the case.

After all, most of the project money is slated to go through the States anyway. Why hold a percentage back, as is currently the case in S. 1843 as drafted? Unless my amendment is accepted, we would be forced to develop a separate Federal apparatus to do what the States would already be doing.

The State governments are closer to the people and are more responsible for coordinating social services within their jurisdictions than Federal agencies. Better, then, that the State rather than Federal Government handle the grant process. To do otherwise and in effect endorse the kind of Federal set-aside established in the present bill, only exemplifies the standard image of mistrust the Washington establishment has for local governments. State governments are of course democratically elected, and when we have the opportunity to maximize their authority and at the same time letting them share the burdens of government, we ought to do so. This amendment would further guarantee an important province of a State's fiduciary responsibility. Without it, we in effect deny the States their proper responsibility.

My final amendment to S. 1843 strikes from the legislation the so-called National Center on Domestic Violence. There is simply no proper function for such a center, an artificially created office lacking a real purpose or genuine need to exist other than develop its potential to be an OSHA on the family. The description of such an office in the legislation is wanting, and its presumed function of "promoting" shelters and "related services" are responsibilities of the various State and local domestic violence prevention offices to be set up within the States and communities.

Domestic violence, as I have said earlier, is alien to everything all of us consider to be decent and right. It is only proper that everyone in government and

at every level use every available means to cure this epidemic problem. But in doing so, we run the risk of making a bad situation worse if we see a solution in trying to federalize the problem out of existence. My amendments are an attempt to return the discretionary power and legal authority for domestic violence prevention programs to the States and communities where they belong. They are a part of a much larger set of proposals which I know will be discussed and deserve to be seriously considered in this Chamber when the Senate finally begins to consider the Domestic Violence Prevention Act of 1980.

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

AMENDMENT NO. 1954

Page 9, after line 2 insert the following new section (and redesignate the following sections, and any references to such questions, accordingly):

VETO OF GRANTS BY STATE LEGISLATURES

SEC. 5. (a) In any case in which the Secretary—

(1) approves an application submitted to the Secretary by a State for a grant under section 4.

the Secretary shall submit written notice of such approval as soon as practicable after the date of such approval to the State legislature for the State involved for review by such legislature in accordance with this section. Such notice shall include such information as the Secretary considers appropriate describing the nature of activities which are proposed in such application and the reasons of the Secretary for approving such application.

AMENDMENT NO. 1955

Page 24, after line 10, insert the following new paragraph (and redesignate the following paragraph accordingly):

(5) (A) The term "shelter" means any shelter, facility, or other institution which is licensed under any applicable State law to provide, on a regular basis, shelter, meals, and related assistance to victims and dependents of victims of domestic violence.

(B) The term "shelter" also includes any shelter, facility, or other institution which is located on an Indian reservation and is certified by the Secretary as providing the assistance specified in subparagraph (A).

AMENDMENT NO. 1956

On page 31, strike out lines 3 through 19.

On page 31, line 20, strike out "(c)" and insert in lieu thereof "(b)".

On page 31, line 21, strike out "(other than to a State)" and insert in lieu thereof "by a State".

On page 32, line 1, strike out "(d)" and insert in lieu thereof "(c)".

On page 32, line 4, strike out "(e)" and insert in lieu thereof "(d)".

On page 32, line 8, strike out "(f)" and insert in lieu thereof "(e)".

On page 32, line 10, beginning with the comma, strike out through the comma on line 11.

On page 34, line 9, beginning with the comma strike out through line 2, on page 35, and insert in lieu thereof the following: "to States so qualifying for distribution as provided under section 102 (a) each State to be awarded, for grants to local public agencies and nonprofit private organizations, an amount which bears the same ratio to the total amount to be reallotted as the population of such qualifying State bears to the population of all qualifying States.".

On page 40, line 11, beginning with the word "and" strike out through "section 102 (b)" on line 12.

On page 40, line 19, insert "and" after the semicolon.

On page 40, beginning with line 20, strike out through line 17 on page 41.

On page 41, line 18, strike out "(6)" and insert in lieu thereof "(5)".

On page 52, line 10, strike out "60 per centum" and insert in lieu hereof "85 per centum".

On page 52, line 12, beginning with "25 per centum" strike out through "organizations;" on line 15.

AMENDMENT NO. 1957

On page 26, line 24, beginning with the word "and" strike out through the comma on line 1 on page 27.

On page 31, line 3, strike out ", through the Director,".

On page 33, line, 3, strike out "113" and insert in lieu thereof "112".

On page 37, beginning with line 12, strike out through line 21 on page 39.

On page 39, line 22, strike out "NATIONAL CENTER".

On page 39, line 23, strike out "SEC. 107," and insert in lieu thereof "SEC. 106.".

On page 39, lines 24 and 25, strike out ", through the Director,".

On page 41, line 22, strike out "SEC. 108." and insert in lieu thereof "SEC. 107.".

On page 45, line 5, strike out "SEC. 109." and insert in lieu thereof "SEC. 108.".

On page 45, line 17, strike out "SEC. 110." and insert in lieu thereof "SEC. 109.".

On page 48, line 5, strike out "SEC. 111." and insert in lieu thereof "SEC. 110.".

On page 48, line 5, strike out "Director" and insert in lieu thereof "Secretary".

On page 51, line 7, strike out "SEC. 112." and insert in lieu thereof "SEC. 111.".

On page 51, strike out lines 8 through 10.

On page 51, line 11, strike out "(3)" and insert in lieu thereof "(1)".

On page 51, line 22, strike out "(4)" and insert in lieu thereof "(2)".

On page 51, line 24, strike out "(5)" and insert in lieu thereof "(3)".

On page 52, line 6, strike out "SEC. 113." and insert in lieu thereof "SEC. 112.".

On page 52, line 18, beginning with "the operation" strike out through "Center" on line 20 and insert in lieu thereof the following: "administrative expenses".

EXHIBIT 1

COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C., April 4, 1980.

DO WE REALLY WANT AN OSHA ON THE FAMILY?

DEAR COLLEAGUE: This is an early warning. Recently, The Domestic Violence Prevention and Service Act, S. 1843, was reported from the Child and Human Development Subcommittee to the Labor and Human Resources Committee. Before long, we will find it waiting for us on the Senate floor. It has already passed the House.

Domestic violence goes by many names. Child abuse, wife battering, familial neglect and other forms of domestic crimes to the family violate everything we hold to be decent and right. Eleven states already have statutory programs giving aid and comfort to the victims and providing for preventive education. Twenty one states have legislative or administrative proposals for this kind of anti-domestic violence program pending. The remainder are trying to solve the problem in other ways.

These include reliance on program assistance from numerous federal programs. For example, 600 ACTION volunteers working in 30 states on some 100 domestic violence prevention projects; 33 Community Action agencies with programs or shelters for battered women; L.E.A.A. money to support domestic violence prevention projects through block grants; and various ways in which states are using Title XX Social Security money, all provide counseling and legal services to fight a very real problem. There has even been set up within HEW an Office of Domestic Violence providing states with additional aid for domestic violence victims.

So, effective ways have been found and are being used in every state and within every community to end the vicious cycle which we so tritely call, domestic violence. Ironically, S. 1843 would itself do violence to all these promising and in most cases effective efforts. With this bill, we once again have well meaning people trying to federalize state and local jurisdictions. The Domestic Violence bill proposes the following: (1) establish a coordinator and an office within HEW to review and administer Federal, state and local programs; (2) institutionalize periodic recommendations and legislative proposals by a Federal Interagency Council on Domestic Violence to Congress; (3) through this central body, approve and monitor grants for domestic violence programs nationally.

This legislation represents one giant step by the Federal Social Service bureaucracy into family matters which are properly, more effectively and democratically represented by the states and local communities. With this bill there is created a new narrow interest, a categorical grant program with federally employed beneficiaries and professional domestic violence advocates who under this bill would be relieved of their struggle to compete for a share of the federal pie. They would not have to struggle as established constituencies much like homemakers, vocational educators and the many other equally important causes. Rather, a de facto OSHA on the family within HEW starting with $65 million would annually reauthorize itself upward until it begins spending and directing like one of the already grownup agencies. In time, we can envision a National Association of Domestic Violence Center Directors with a national network of federal offices, all clamoring for more dollars in the name of victims. And certainly, states and private agencies are sensitive to what they see as federal encroachment in civil matters historically granted to the states and localities.

We oppose S. 1843 in its present form. We share a desire to increase the participation of states, local communities, nonprofit private organizations and individual citizens in efforts to prevent domestic violence and to increase shelter and assistance for the victims. To preserve the integrity of these state and local efforts and to encourage an increase in these domestic violence prevention programs, state legislatures ought to have a veto power over any grant decisions by the HEW Secretary for disbursal under a state's plan. Certainly, state legislatures ought to have the power to say no to Washington when dealing with state programs at the local level.

S. 1843 does not permit this. Nor does it require that any federal grant assistance ought to pass the respective state licensure requirements with respect to qualified health care professional and habitable living and nutrition standards. And the bill does not protect state and local programs from federal preemption.

In short, this legislation is in itself an example of abuse at a time when most Americans want to see the removal of Federal intervention, not the increase of it. We don't believe that Congress really wants to create

an OSHA on the family. We believe that we can effectively help the growing American community effort to prevent domestic violence and give comfort to its victims without having to shoot ourselves in the foot, as this bill proverbially does. And we also believe that when you sit down and think about it, you'll agree with us.

Sincerely,

ORRIN G. HATCH,
S. I. HAYAKAWA,
U.S. Senators.

EXHIBIT 2

[From the Washington Star, June 30, 1980]

DOMESTIC VIOLENCE AND THE FEDS

When Capitol Hill strategists are able to combine an applepie bill with a "twofer," congressmen and senators who routinely leap tall buildings at a single bound can find the prospect of opposition unnerving.

The legislative maneuver is evident in a Senate bill that would authorize $65 million over three years to aid victims of domestic violence, targeted particularly to providing emergency shelters for women abused in the home. S1843 represents the purest sort of motherhood/applepie.

But the bill is also a "two fer the price of one." The second part of the package would authorize a 25-member "Presidential Commission on National Service." The commission would address itself to the delicate question of universal service, possibly compulsory, for all young Americans.

National service has no logical connection with domestic violence. But a senator who fondly regards, say, the presidential commission might decide to vote for the bill despite disliking the notion of federally funded emergency shelters. A characteristic of this sort of combined measure is that it often is propelled by voice votes, as in the Senate Labor and Human Resources Committee approval of S1843. Voice votes leave no tracks, so to speak.

This bill deserves to be sunk by its primary ballast. "Federal missionaries are not the answer to domestic violence," argues Sen. Gordon J. Humphrey, R-N.H. "Domestic violence programs should be homegrown." That was our feeling when similar bills surfaced in Congress in 1978 and last year (though without the national-service component).

Senator Humphrey's sentiment does not represent indifference to domestic violence, though the special-interest groups supporting the bill will attempt thus to portray it. If domestic violence is a pervasive problem, then it properly should be a priority for the state or locale where the abuse has become apparent. If the lobbying groups seeking federal legislation and funds were to besiege a legislature or city council with the energy they bring to Capitol Hill, there can be little doubt that the issue would be promptly addressed.

But the statists have little patience with incremental approaches to social or political problems. They prefer a federal blanket big enough to cover every bed and cot in the land.

The usual methods to mobilize the feds for intervention are evident in this campaign. A "national" base is created—in this case, the National Coalition Against Domestic Violence. It is then announced that the problem has assumed "epidemic proportions," with appropriately stunning statistics to support the assertion (one estimate puts the number of women "severely battered" each year at 3.5 million). Finally, the push for legislation—and another bureaucracy is created and perpetuated with public money.

The supporters of S. 1843 claim that this would not happen with their program. The bulk of the federal money would go to states and communities, with an emphasis on private non-profit groups, to provide temporary assistance to battered women; longer-term responsibility would be assigned to the states and to local jurisdiction.

But federal guidelines and regulations and inspections would be, of course, controlling. We have seen too many of these back-door approaches to a permanent federal presence to accept this script without deep skepticism. Domestic violence can take a terrible toll. The national coalition ought to devote itself to protecting the victims—state by state, city by city.

The insistence that there is a federal solution and governmental role for every social malfunction is childlike and corrosive.

STATE PROJECT DISCONTINUATIONS

In accordance with Section 519(8) of the Crime Control Act, States submitted to LEAA data on the total number of projects ending in Fiscal Year 1978, the number of projects continued and not continued with non-LEAA funds both at the State and local levels when funds were discontinued, and the number of projects which by their very nature were not eligible or intended to be continued. Data is reported by criminal justice system components. Even though programs in juvenile justice and delinquency prevention and drug abuse are reported within the five primary program categories, they are reported again separately in response to congressional interest in these subject areas.

Of a total of 7,867 projects ending in fiscal year 1978, 2604 (33 percent) were continued at the State or local level subsequent to the termination of LEAA funding; 482 (6 percent) were discontinued either because of the unavailability of funds or the lack of appreciable impact; and 4781 (61 percent) were projects which by their nature were not eligible or intended for continuation. Of the projects in this latter category, the majority were in the enforcement area.

In reporting the projects that were continued with non-LEAA funds, the States indicated those which were funded at the State level and those funded at the local level. Some 74 percent of projects continued with non-LEAA monies were funded at the local level, with 26 percent funded at the State level. Of a total of 685 funded at the State level, 37 percent were in the correction category, 19 percent in enforcement, 18 percent in system support, 15 percent in adjudication, and 11 percent in prevention. There were 1,919 projects funded at the local level with the following percentages in each program component: enforcement, 33 percent; corrections, 22 percent; prevention, 18 percent; adjudication, 18 percent; and system support, 9 percent.

In addition to providing the number of projects continued at the State and local levels, the States reported the level of project scope and activity compared to that in the last year of LEAA funding. The focus of these indicators (reduced, comparable, or expanded) is upon the level of services provided and not solely upon the level of non-LEAA State or local continuation funding. Approximately 75 percent of the projects which were continued by States and localities were continued at levels comparable in scope and activity to that of the last year of LEAA funding. The remaining 25 percent were divided almost equally between reduced and expanded levels.

The number of projects not continued with non-LEAA funds when LEAA funding terminated were reported in two categories—those not continued because of no appreciable impact and those not continued because funds were not available. Of the total of 482 projects not continued, 26 percent fell into the former category and 74 percent into the latter. The breakout by criminal justice system component of projects not continued is as follows: corrections, 29 percent; prevention, 23 percent; enforcement, 21 percent; adjudication, 15 percent; and system support, 12 percent.

There are many LEAA-funded projects that by their very nature are not eligible for nor intended to be continued. Some 61 percent of the total projects ending in FY 1978 fall within this category. These include telecommunications and data processing equipment purchases, training, facilities construction and renovation, most research undertakings, and experimental projects or studies of a relatively short duration. The major objectives of these projects are accomplished with Federal funds, and with the exception of routine maintenance costs, the bulk of the project cost occurs during the initial Federal funding period.

A comparison of this report with data from the FY 1977 Annual Report shows that there is considerable consistency in the total number of projects ending (there were 79 more ending in FY 1977). Fiscal 1978 had 9 percent more projects continuing than were reported for FY 1977; 14 percent fewer projects not continued because of lack of funds or no appreciable impact; and 5 percent less projects not eligible for continuation than were reported for FY 1977.

CONTINUATIONS OF PROJECTS SUPPORTED WITH LEAA FUNDS

Program component	Projects continued with non-LEAA funds when LEAA funds were discontinued	Projects not continued when LEAA funds were discontinued	Projects which by their nature are not eligible or intended to be continued	Total number of projects not continued	Total number of projects ending in fiscal year 1978
Prevention	432	108	189	297	729
Enforcement	761	97	2,836	2,933	3,694
Adjudication	441	77	689	766	1,207
Corrections	665	140	572	712	1,377
System support	305	60	495	555	860
Total	2,604	482	4,781	5,263	7,867
Juvenile justice and delinquency prevention	630	150	305	455	1,085
Drug abuse	81	21	36	57	138

Note: Juvenile justice and delinquency prevention and drug abuse program information, although included in the 5 criminal justice system components, is reported again separately.

PROJECTS CONTINUED AT THE STATE AND LOCAL LEVELS BY CRIMINAL JUSTICE SYSTEM COMPONE IT

	State		Local	
	Number	Percent	Number	Percent
Prevention	79	11	353	18
Enforcement	128	19	633	33
Adjudication	101	15	340	18
Corrections	252	37	413	22
System support	125	18	180	9
Total	685	100	1,919	100

Note: Total number projects continued: 2,604.

PROJECTS NOT CONTINUED (NO IMPACT OR NO FUNDS) BY CRIMINAL JUSTICE SYSTEM COMPONENT

	Not continued	Percent of total	No appreciable impact	No available funds
Prevention	108	23	26	82
Enforcement	97	21	21	76
Adjudication	77	15	24	53
Corrections	140	29	35	105
System support	60	12	18	42
Total	482	100	124	358
Percent			26	74

ENVIRONMENTAL EMERGENCY RESPONSE ACT—S. 1480

AMENDMENT NO. 1958

(Ordered to be printed and to lie on the table.)

Mr. MAGNUSON submitted an amendment intended to be proposed by him to S. 1480, a bill to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

OIL SPILL LIABILITY ACT

Mr. MAGNUSON. Mr. President, S. 1480 addresses the subject of liability, compensation and cleanup for hazardous substance releases and spills. However, an issue of long concern to me is the inequitable and still unaddressed problems facing persons who are damaged by oil spills. The Congress has been working on this problem since the 94th Congress but still no resolution exists.

The amendment I am submitting today is very similar to the bill which the Committee on Commerce, Science, and Transportation reported last Congress, and legislation which I introduced earlier this Congress on this issue.

This legislation would establish a comprehensive and uniform system for fixing liability and settling claims for oil pollution damages in U.S. waters. This legislation is of great national importance as we seek to meet our energy needs in an environmentally sound manner. Those energy needs will probably result in accelerated development of our offshore oil and gas resources, the use of tankers, underwater pipelines, and the development of deepwater ports. This proposal would provide a broad range of protection against adverse economic impacts of the oil spills potentially associated with these activities.

In recent years, we have taken significant steps to limit and control oil pollution in the waters of the United States. The Port and Tanker Safety Act of 1978, which I authored during the last Congress, establishes the most stringent tanker construction and safety requirements in the world, and it encourages the Coast Guard to proceed unilaterally with even tougher national standards.

We have demonstrated our ability to reduce oil pollution despite an increase in the transportation of oil. Yet, as the incidents involving the *Argo Merchant*, the *Olympic Games* and the *Amoco Cadiz* demonstrate, oil spills continue to occur; and one-third of the oil spilled is from unidentifiable sources, where compensation cannot be obtained under existing law. Inconsistency among laws creates severe confusion and imposes unnecessary burdens on oil producers, taxpayers, and consumers through duplication of administrative costs and fee payments.

There is no reason why those persons damaged by oil spills should be forced to resort to costly and uncertain litigation in order to be made whole. Although there is Federal legislation in place that deals with the cleanup of oil spills, existing law still does not deal adequately with third party damages. Thus, damaged persons may still have no means to be compensated for their losses that may result from an oil spill.

For example, one of the roots of the problem is the 1851 Limitation of Liability Act, which limits the liability of a tanker owner for an oilspill to the value of the vessel after the accident. As the *Torrey Canyon, Argo Merchant,* and *Amoco Cadiz* disasters vividly demonstrate, this could well result in no liability for the tanker owner.

Up until the present time, it has been determined that innocent parties—the property owner and the fisherman—should bear the risks and costs of oil pollution damage from tanker operations. This state of the law cannot be allowed to continue. It is inadequate, illogical, and inequitable. This legislation would change this situation and shift the economic responsibility for such spills to those who present the risk and directly benefit from the transportation of oil—the shipowner and the oil industry.

This legislation would cover liability for all oil spills into our waters whether from tankers, oil terminals, pipelines, and would insure that property owners, fishermen, and other people who use and depend on our marine environment have a quick and equitable means for full compensation should an oil spill adversely impact them.

IMMIGRATION AND NATIONALITY EFFICIENCY ACT OF 1980—S. 1763

AMENDMENT NO. 1960

(Ordered to be printed and to lie on the table.)

Mr. HUDDLESTON submitted an amendment intended to be proposed by him to S. 1763, a bill to amend the Immigration and Nationality Act to improve the efficiency of the Immigration and Naturalization Service, and to establish a different numerical limitation for immigrants born in foreign contiguous territories, and for other purposes.

EMPLOYMENT OF ALIEN, PROHIBITION

Mr. HUDDLESTON. Mr. President, the unemployment rate in the United States is 7.7 percent, and many economists predict that it will reach 9 percent by the end of the year. Debate in Congress is now heated on how large Federal job assistance programs should be. If we expand these programs because of a rising unemployment rate, American taxpayers will be faced with a larger Federal budget at a time when they are demanding a reduction in spending levels.

In many ways it appears that we have lost sight of the important need to reduce the continuing high unemployment. This is due primarily to our massive unemployment and welfare programs which take much of the pressure off the unemployment issue. Even though the cost of unemployment to individuals is tempered, there still remains a growing cost to the taxpayers of supporting assistance programs and social costs tied to the many problems created by unemployment. These costs are generally hidden from the public eye, but they are massive. The causes of these immense societal costs must be addressed.

This need to consider the true societal costs of unemployment was recognized by Congress when it included in the Humphrey-Hawkins bill a national goal of 4-percent unemployment. I strongly believe that it is time we return to this basic concern and take positive steps to begin reducing our high unemployment rate.

The fair hiring amendment which I am submitting today could make a substantial dent in unemployment without much of the cost and paperwork of the methods we are now using. The general concept of fair hiring procedures was advocated last December by Secretary of Labor Ray Marshall as a way to cut unemployment to below 4 percent. Attorney General Civiletti, speaking for the administration, endorsed the idea as part of a comprehensive solution on February 5, 1980.

The concept to which I am referring calls for an enforceable method of restoring jobs now held by illegal aliens to citizens and legal residents. The amendment I am submitting today would institute a simple system for insuring that new employees are able to find work and would provide penalties for employers who violate those provisions. In a rela-

tively short period of time, without massive amounts of Federal funds and Federal paperwork, fair hiring practices would open up millions of jobs to individuals now on our unemployment rolls.

Estimates of the number of illegal immigrants holding jobs in this country range between 6 and 12 million. Secretary of Labor Marshall, who has worked as a labor economist in this field for 25 years, said last year when unemployment was around 6 percent that if aliens were removed from the job market, unemployment could be brought down to 3.7 percent. And these new jobs, Secretary Marshall said, would go to the most vulnerable people in our society: minority youth, women, and older workers.

The challenge of insuring that illegal immigrants do not take jobs which should be made available to American unemployed workers has traditionally been the task of the Immigration and Naturalization Service. But over the last few years, even though Congress has repeatedly appropriated more money for substantial increases in INS ability to conduct its job, the administration has blocked many of the increases. The reason for this resistance is that additional enforcement is thought to be only a part of controlling this problem, and the administration was interested in a comprehensive approach. The administration introduced a bill containing a similar provision in 1977, but has not reintroduced a fair hiring practices bill in this Congress.

The impact on the job market of millions of illegal workers in the United States is substantial. The ready supply of illegal labor depresses wages and working conditions. Because of illegal immigrants' fear of detection and deportation, they are inclined to work for lower wages and under conditions that legal workers would not and should not tolerate. The Department of Labor has recently documented millions of dollars in unpaid wages, for example, owed by unscrupulous employers to illegal immigrants. The end result of this is a huge pool of illegal labor that is used by employers and a corresponding large pool of domestic labor which is priced out of the job market. Unemployed Americans increasingly must depend on taxpayer-supported assistance programs in order to maintain a decent standard of living.

There is a prevailing myth that illegal immigrants only take the jobs which Americans shun. This thesis is untrue. Millions of Americans, primarily minority youth and older workers, hold jobs where the hours are long, pay is low, and work is hard. And many of our unemployed would take any job that pays a decent wage and is safe. Yet some employers will turn Americans away from jobs they have held for many years to hire easily-exploited illegal immigrants willing to work for lower wages and without complaint.

It is true that some of the jobs taken by illegal immigrants are unattractive to many of us. However, this does not mean that they are not sought by many of our unemployed. These jobs are important to our total job market and serve as a stepping stone to better positions. The Border Research Institute of Trinity University recently released its interim report on "The Importance of the Urban Mexican Worker in Re-evaluating U.S. Immigration Policies." This report states that:

> We would argue that although the urban secondary labor market is characterized by low-paying, dead-end jobs, it is utilized by most non-college youth to encounter their first jobs, and that a highly significant number of married females are employed in this labor market in order to supplement the salaries of working-class husbands, and although averaging only half of their husbands' salary, the augmentation of family income provides the margin by which middle-class living standards are maintained; (4) urban blacks and Mexican-Americans are becoming increasingly restive in cities like Los Angeles, Chicago, and Houston, as they find themselves forced to compete with illegal migrants for employment. Considering the present downward overall trend of the economy, the expected rise in unemployment due to the application of inflation controls, and the anticipated lower levels of federal and state assistance to most social services, the secondary labor market will become an important factor of subsistence for urban minorities.

The argument that the jobs at the lower end of the employment scale are very much in demand by domestic labor is substantiated by a major new study done by the U.S. Department of Labor. The New York Times, which obtained a copy of the report, states that it indicates unemployment among American youth is much higher than official figures now indicate. However, the most significant finding is that these young people are more than willing to take the type of jobs which many would have us believe only illegal aliens want. The Department of Labor survey found that:

> A majority of the young people would be willing to take low-paying jobs in such areas as fast-food restaurants, cleaning establishments, supermarkets as well as dishwashing. A substantial number of the young people surveyed said they would work at below the minimum wage.

I believe that this survey strongly indicates that our unemployed youth are willing to start at the bottom and work their way up. However, this is impossible if the available jobs are taken by millions of illegal aliens.

Where once illegal immigrants were primarily in agricultural jobs, now they are well-entrenched in service, construction and manufacturing positions. Illegal immigrants have been increasingly taking better jobs with higher pay. The Border Research Institute's report found that:

> It is becoming increasingly clear in our study of urban Mexican chain migration that: (1) the urban Mexican illegal migrant is increasingly finding employment in the industrial, construction, and service areas of the labor market in large northern cities at salaries well above the minimum wage level; (2) the presence of larger numbers of illegal migrants with specific skills, staying in the United States for longer periods of time, is undercutting the manpower goals and strategies of the Department of Labor as we perceive a high proportion of skilled and semi-skilled positions held by illegal migrants are precisely those for which the CETA program is training unemployed and disadvantaged youth.

Since about 60 percent of illegal immigrants come from Mexico the significance of these findings cannot be discounted. This trend toward higher salaries for illegal immigrant workers is further supported by statistics prepared by the INS on salaries of apprehended illegal immigrants. For fiscal 1978, over half the illegal immigrants apprehended had salaries in the $2.50 to $4.49 per hour range and a significant number were in the hourly category of $6.50 and over.

The North American Congress on Latin America, in a report on illegal immigrants in New York City issued last year, discounted another persistent myth about illegals; that they are poor, uneducated, rural young men. NACLA found in a limited survey:

> These people came to the United States almost entirely from urban areas. They had substantial wage labor experience under their belts and most held jobs immediately before leaving. They were neither the chronic unemployed nor the poorest in their societies.
>
> The largest group came from the urban working class. Among them were mechanics, sewing machine operators and other factory workers, as well as a printer, a welder, a truck driver and a construction worker. Others were self-employed artisans . . . Only one out of the 50 had been primarily engaged in agricultural work.
>
> Twenty-six out of fifty immigrants interviewed were women.
>
> Compared to the general population in Latin American countries, these wokers had a relatively high level of education . . .
>
> All in all, these immigrants constituted a young, healthy, literate, semi-skilled group of experienced laborers, representing a loss of resources to their own countries.

This report is substantiated by a recent INS raid on a construction site in the Washington area. Nineteen illegal aliens were found working at wages between $11,000 and $20,000 a year.

Faced with massive numbers of well-paid illegal immigrant workers, some unions have turned to recruiting illegal immigrants. The AFL–CIO, in a policy statement on fair hiring procedures, said that it should be made a crime to hire illegal immigrants. Yet the Wall Street Journal reported last November that:

> A new attitude toward illegal aliens is emerging in the American labor movement. Instead of summoning immigration agents to get the illegal workers deported, a small but growing number of unions are trying to sign up the workers as members.

Although most unions continue to urge strong action against illegal immigrants, the effort by a few to recruit illegal immigrants complicates the issue of fair hiring procedures and will make it much more difficult to deal with if legislation action is delayed too long.

The adverse impact of illegal immigration on unemployment during an economic downturn has been confirmed by an interagency task force appointed by President Carter. This group stated in its March 1979 staff report:

> If immigration occurs near the bottom of the business cycle, when many U.S. workers are unemployed it is unlikely to produce any significant benefits and it clearly will exacerbate unemployment or lower the relative wages of low-skilled workers or both.

In other words, large scale illegal im-

migration occurring during 1980 when the President is predicting a recession and unemployment of 8.5 percent will cause additional unemployment and lower wages.

This conclusion is supported by David North, director for the Center for Labor and Migration Studies at the New Trans-Century Foundation, and a recognized expert on immigration. In a recent report, North states:

> The central point is that the presence of a substantial number of additional, usually hardworking, often docile, often exploited workers can only serve to flood already overstocked labor markets, thereby causing working conditions and the reward for work to remain stable, or perhaps decline relatively.

Protecting the U.S. labor market with its present high unemployment levels would be justification in itself for this bill. However, there are other reasons which are just as compelling. A rapidly expanding population will place substantial strains on the economy and society of the United States. A substantial number of demographers believe that the United States has one of the fastest growing populations of any industrial country if illegal immigration is included.

The House Select Committee on Population reported that legal and illegal immigration account for 25 percent to 50 percent of our annual population growth. This uncontrolled rapid population growth may have dire consequences for the United States because of the demand it places upon scarce natural resources, energy, governmental services, housing and food. Further, it will substantially contribute to our urban congestion and pollution. In essence, it can mean a declining standard of living for all of us in the years to come.

There is little hope that immigration pressure on the United States will decline in the near future. Presently, there are 4.5 billion people in the world and this number is growing at the rate of at least 192,000 per day or 70 million a year. These numbers will produce about 900 million new people for the world labor force over the next 20 years. Mexico, which is responsible for about 30 percent of our illegal immigration, will see its population double by the year 2000. Already droughts and crop failures in Mexico are driving many Mexicans to cross the border. With an unemployment and underemployment rate which already extends well into the double-digit range, the United States is certain to experience increased immigration pressures.

There are several questions we must face in this regard. Is the United States going to continue to allow foreign countries to export their excess populations and unemployed to this country? How high must our own unemployment rate go before we take decisive steps to enforce our immigration laws effectively as other countries do? As elected officials, who are we more concerned about—an unemployed worker from Mexico, or one from New York?

There is increasing evidence that there are thorns hidden among the roses for the countries exporting surplus labor. A study released by the Worldwatch Institute indicates that many exporting countries are experiencing shortages of skilled laborers which interferes with some of the most dynamic sectors in their economies. The loss of manual workers and low-level white-collar workers is resulting in a "brawn" drain in addition to the traditional brain drain of well-educated immigrants from developing countries to the United States. In the long run I believe that we are probably encouraging the continued high flow of illegal immigrants by draining off some of the brightest and most ambitious workers in underdeveloped countries. A shortage of skilled workers will hamper the economic development of less developed countries which would provide more jobs for their growing populations.

There is another myth about illegal immigration which does not stand up to the facts. Some would have us believe that illegal immigrants are not a drain on our economy because illegal immigrants do not use governmental services for fear of being detected and deported. The facts do not support this idea.

David North found in a recent study that:

> "In the first quarter of calendar year 1979, the Department of Public Social Services (of Los Angeles County) . . . reported that it identified and denied benefits to 3,453 illegal alien applicants, an average of more than 1,000 a month. Since such cases cost about $175,000 a month, and generally last about 19 months, the savings generated by this Los Angeles County process, in a year, total about $46,000,000.
>
> If the programs are as tightly run in the other counties of California as the one in Los Angeles County . . . something on the order of $100,000,000 a year is now being saved.

The 3,453 illegal immigrants represented 21 percent of the aliens applying for welfare services during that period of time.

A study by Maurice D. Van Arsdol, Jr. found that 37.3 percent of the sampled illegal immigrants had not only used public hospitals, but still owed hospital bills at the time of the survey.

This figure is supported by a March 1979 HEW report which was unable to refute allegations by nine hospitals located in five States that losses totaling about $62 million in 1976 were attributed to illegal immigrants.

Another myth is that illegal immigrants pay more than their share of U.S. taxes through withholding by the employer. Tax records do not sustain this belief. In 1974, the Internal Revenue Service conducted a test program which indicated a high frequency of tax noncompliance among apprehended illegal immigrants. A report by an IRS study team in 1978 found that illegal immigrants are not only nonfilers, but that many work completely "off-the-books." Off-the-books means that earnings are concealed by exclusion from tax records, contributing to the persistently increasing "underground economy" of untaxed, unrecorded funds. The IRS report projects that the income of illegal immigrants who are non-tax filers amounts to between $5 and $6.5 billion annually.

Evidence of this loss of revenue is further found in instructions in the IRS manual on how employers and illegal aliens avoid Federal tax obligations. The manual points out:

> Many aliens also claim excessive exemptions, since they are aware that by doing so they will receive larger take-home amounts.
>
> Determining taxable income is sometimes difficult since many employers pay in cash and do *not* withhold. The employers do not enter the alien on payroll records and, as a result, wage information is sketchy or nonexistent.

It is obvious from this that there are many ways to avoid paying taxes and that illegal immigrants who flout our immigration laws are just as willing to flout our tax laws.

Presently there is no reason why the Congress cannot move ahead with this bill to curb the employment of illegal immigrants. Although the Select Commission on Immigration and Refuge Policy will not complete its final report until next year, this is not viewed as a reason for Congress to delay acting on important immigration legislation. Secretary of Labor Ray Marshall, a Commission member, stated on December 2, 1979 that—

> We do not need to wait for the Commission . . . to penalize employers who hire illegal immigrants, to improve enforcement.

Th's approval of legislative action on immigration issues was strongly voiced by the chairman of the Senate Judiciary Committee, Senator Kennedy, when he stated on the floor of the Senate on September 6, 1979:

> The existence of the Select Commission must not mean that Congress should stand idle on pressing immigration issues. It must not be an excuse for delaying consideration of urgent, remedial immigration reforms. The Judiciary Committees should not ignore legislative proposals in the immigration field, for which there is already a broad consensus on the need to act, pending the report of the Select Comission in 1981.

With unemployment expected to rise to 9 percent in 1980, no one can seriously claim that the influx of millions of illegal immigrant workers is not a "pressing immigration issue." Nor can anyone allege that there is not "a broad consensus on the need to act." A Gallup poll in 1977 favored legislation providing fair hiring procedures by 6 to 1. During that same year, a Roper poll found that 91 percent of the people agreed that the United States should make an "all-out effort to stop illegal entry."

The Library of Congress has found that there are now 11 States which have statutes that, in effect, are fair hiring procedures. These States are: California, Connecticut, Delaware, Florida, Kansas, Maine, Massachusetts, Montana, New Hampshire, Vermont, and Virginia. Although Puerto Rico is not a State, it too, has a fair hiring statute.

These statutes indicate there is a growing awareness of the economic burden imposed by illegal immigrants and that legislation requiring fair hiring practices is desired and feasible. However, this proliferation of State statutes will not solve the problem. Multiple legislative schemes create many prac-

tical problems which can only be solved by uniform Federal legislation.

The legislators of the States mentioned before are not the only elected officials who are taking action to curb the impact of massive illegal immigration. Another Library of Congress study found that the Congress has acted in 11 different instances to keep illegal immigrants from receiving the benefit of Federal programs. In another Federal statute the actual hiring of illegal immigrants by farm labor contractors is prohibited. These legislative intiatives indicate to me that many Members of Congress are seriously concerned about the illegal immigration problem and would like to control it.

Unfortunately, these piecemeal actions are not enough. There must be comprehensive legislation that goes to the heart of the problem. The vast majority of illegal immigrants come to the United States for one reason—jobs. Unless they are prevented from taking these jobs on a nationwide basis, we will never be able to deal effectively with the problem of unemployment in the United States. With a huge pool of easily exploited, uncomplaining illegal workers, unscrupulous employers can put more Americans out of work without any penalties. Fair hiring procedures will insure that Americans can get jobs that would otherwise go to illegal immigrants.

What I am proposing today is not a new idea from the standpoint of what would be accomplished. President Carter introduced legislation in the 95th Congress which would have imposed penalties for the hiring of illegal immigrants. This amendment simply puts this idea in the right context: providing millions of jobs for Americans without massive infusions of Federal funds.

The amendment that I am proposing would not make a substantive change in our immigration laws. It would not change our admission or exclusion procedures or change our legislated quota system. It would merely provide an effective means of providing jobs to legal residents and enforcing our existing immigration laws.

I believe that one of the primary reasons why we have not enacted effective legislation to deal with the illegal immigration problem is our proper concern about the rights and needs of the illegal immigrant. We should be concerned about the welfare of any human being. But, as elected officials, our primary concern should be for the citizens and legal residents of the United States. Their right to a job with decent wages and working conditions should be paramount, and their rights should be protected first. Every citizen and legal resident has a right to fair hiring procedures.

By continuing to permit the existence of a large pool of relatively cheap and docile labor that takes jobs from the neediest Americans, we are also permitting a few greedy individuals to exploit them. If we truly believe in the rights of all workers, we will enact a system which protects the rights of domestic and foreign workers in this country. By continuing to permit the use of illegal immigrant labor, we are encouraging illegal immigration, and creating a larger problem for the future. By delay, we assure that the problems created by illegal immigrant labor will be even more unmanageable in years to come, and solutions ever more difficult to find for a problem that could become completely intractable. If we doubt the impact of the estimated millions of illegal workers today displacing American workers, can we doubt the impact of twice that many in 5 or 10 years? The problem grows because illegal immigrants and their employers see that there is no penalty for the harm they do to American workers.

The method I have chosen to assure fair hiring practices is one that is already being utilized successfully by the U.S. Department of Labor. The Farm Labor Contractor Registration Act prohibits farm labor contractors from knowingly "recruiting, employing or utilizing" illegal aliens. My amendment would simply make this prohibition applicable to all employers.

However, in order to prevent possible disruption in some industries, it would only apply to individuals who are hired after the effective date of this act. This will permit us adequate time to make decisions on very controversial issues, such as amnesty, while discouraging the flow of new illegal aliens. Further, this amendment would not include any of the registration requirements now in FLCRA.

The attractiveness of this proposal is that we know that it works. It has been in Federal law since 1974. During that time, a handful of Labor Department officials have found thousands of illegal aliens and have discouraged the hiring of countless others by assessing civil money penalties amounting to hundreds of thousands of dollars. This same success can be carried out on a broader scale with the commitment of the appropriate resources.

I urge my colleagues to give speedy and careful consideration to this fair hiring amendment.

NOTICES OF HEARINGS

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. PROXMIRE. Mr. President, the Committee on Banking, Housing, and Urban Affairs will hold a hearing on Tuesday, August 5, 1980, beginning at 10 a.m. in room 5302 Dirksen. The purpose of the hearing is to review the decisions of the Depository Institutions Deregulation Committee (DIDC) and to hear comment on S. 2927, a bill concerning the interest rate differential.

All six members of the DIDC will be present as well as representatives of various depository institution associations. Anyone wishing to submit statements for the record should contact Steven Roberts at (202) 224-7391.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON ENERGY RESOURCES AND MATERIALS PRODUCTION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Energy Resources and Materials Production Subcommittee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to hold a hearing on S. 2734, legislation to authorize the Secretary of the Interior to transfer certain lands and facilities used by the Bureau of Mines.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet during the session of the Senate today to hold a markup session on the nomination of Thomas W. Fredericks and S. 2126, legislation on the Northern Cheyenne coal leases cancellation.

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

ADDITIONAL STATEMENTS

THE U.S. COAST GUARD—190 YEARS OF SERVICE

● Mr. DANFORTH. Mr. President, on Monday, August 4, 1980, the U.S. Coast Guard will be celebrating its 190th year of service to the citizens of the United States.

The U.S. Coast Guard is to be commended for its untiring efforts toward educating our citizens in water safety, protecting our environment from pollution, assisting our citizens during flood relief activities, and fulfilling its numerous other humanitarian missions both in peacetime and in time of national emergency.

I would like to add my congratulations to the many others I am sure it will be receiving that day.●

DEPARTMENT OF ENERGY AUTHORIZATIONS—CIVILIAN APPLICATIONS

● Mr. LEVIN. Mr. President, yesterday I voted against the energy impact assistance legislation. I was not opposed to energy impact aid in principle; the hearings which the Governmental Affairs Committee held on this bill demonstrated that there is some legitimate need for such aid by some local communities, particularly where the revenues from new energy developments do not begin to accrue until years after funds are needed to cope with the impacts of those developments.

However, in the Governmental Affairs Committee, we pared down the bill from what I considered an excessively generous and even wasteful version which was reported by the Energy Committee. We removed all grants for implementation of impact programs from the bill, because the Congressional Budget Office told us that they were unnecessary.

We removed a loophole that would discount revenues accruing to State and local governments from energy development for purposes of determining whether adequate revenues exist to fund impact programs. That loophole would effectively have required the Federal Government to provide impact assistance

even where a State or locality's own resources were already adequate to handle its problems, if the State or local government simply passes legislation funneling its energy development revenues into some area other than impact aid.

Finally, we reduced the annual authorization level for the program from $400 million to $150 million, which was more in line with what CBO estimated the program would cost.

The version of the bill upon which we voted yesterday reversed all of these changes made by our committee. It exceeded what I considered the maximum acceptable size of the program, based on the data we have accumulated as to the real need which exists and I therefore opposed the legislation in the form offered.●

AUTUMN BINGE

● Mr. COHEN. Mr. President, I am pleased to bring to the attention of my colleagues an editorial that appeared recently in the Louisville Courier-Journal commending Senator CARL LEVIN for his leadership in investigating year-end spending in the Federal Government.

As chairman of the Governmental Affairs Subcommittee on Oversight of Government Management, Senator LEVIN has been in the forefront with the efforts to examine the causes and consequences of the annual "Autumn Binge," when Federal agencies rush to spend the funds remaining in their budgets, regardless of need or time constraints, before the fiscal year ends.

I look forward to continuing to work with Senator LEVIN in developing solutions to the problem of "hurry-up spending" that will help end the "use it or lose it" philosophy that now motivates many in the Federal bureaucracy.

I ask that the editorial be printed in the RECORD.

The editorial follows:

LAST-MINUTE FEDERAL SHOPPERS

Government bureaucracies aren't alone when it comes to spending everything in their budget before year's end lest someone get the idea they can survive on less. Corporations have the problem, too. But there's one big difference. Government is spending our money.

That's why it was such a pleasure to hear U.S. Senator Carl Levin's subcommittee sound an ominous warning the other day on the "Use It or Lose It" practice. His panel has looked closely at the behavior of 10 major federal agencies as the September 30 witching hour for the end of the fiscal year approaches, and found some $2 billion in waste.

The senator from Michigan found that the Interior Department bought $378,000 in furniture last September—27 percent of all furniture purchases in fiscal year 1979—though it was paying $200,000 annually to store another $300,000 worth of office equipment in warehouses.

He found that the Army awarded $187,631 in contracts at one base on the last working day of fiscal year 1978. His panel rightly regarded this work as unnecessary: the base was due to be closed.

And he found 80 TV sets bought for Fort Riley, Kansas, in the final week of the 1978 contract year. Most were still in crates a year later.

Senator Levin's Governmental Affairs subcommittee also charged that the haste to spend usually overrides competitive bidding or other purchasing controls. It called on the Office of Management and Budget to crack down.

Amen. "Use It or Lose It" cheats taxpayers. If enough get irked, we might get a real trial of "zero-based" budgeting, in which a department in its appropriations request has to justify every nickel from scratch. Who knows, some of the worst offenders might even hear a new slogan: "Zero for this agency."●

UNITED STATES-CANADA TRADE AND TOURISM CONFERENCE

● Mr. BAUCUS. Mr. President, on June 30, 1980, I sponsored a United States-Canada Trade and Tourism Conference in Great Falls, Mont. Some 200 people attended including prominent State government officials from Montana, Idaho, and Washington, Provincial Government officials from Alberta, Saskatchewan, and British Columbia, and many representatives from the private sector. The purpose of the conference was to explore ways to increase cooperation in trade and tourism along the Western United States-Canadian border. I sponsored the conference because I strongly believe that local opportunities for trade cooperation are very great, are often untapped and can contribute very much to a better and more profitable relationship with our northern neighbors. The conference was entirely consistent with my efforts to promote North American trade.

Conference participants were privileged to hear from three very distinguished individuals: the Honorable Kenneth Curtis, U.S. Ambassador to Canada, the Honorable Robert Herzstein, Under Secretary of Commerce for International Trade, and the Honorable J. Allen Adair, Minister of Tourism and Small Business, Province of Alberta. I commend all three of these presentations to my colleagues and will have copies available in my office shortly for anyone interested.

The formal presentations at the conference were followed by two working groups, one on trade and one on tourism. The trade working group established a steering committee to explore the possibility of creating a local Canadian-American Joint Commission on Trade. Montana's Governor, Tom Judge, was designated as chairman of the steering committee. Governor Judge will be contacting Premiers, Governors, and business and agricultural leaders to obtain their views on the form any Commission should take.

The tourism working group nominated six-member delegations from each of the States and Provinces to attend a meeting in Calgary, Alberta, on August 18. The purpose of the Calgary meeting will be to explore international marketing ventures, identify impediments to such ventures, and ultimately to establish an International Tourism Council similar to one now operating successfully on behalf of Atlantic Canada, Quebec, and the New England States.

Mr. President, the need to cooperate more closely with our northern neighbors is now being recognized in all sectors of our economy. I am delighted that the people of Montana are taking the lead in working with our Canadian friends. The conference in Great Falls is just the beginning of what I hope will be a long and fruitful relationship.

Finally, I want to thank particularly Senators CHURCH and MAGNUSON for having helped us by nominating key important citizens from their States to attend the conference. Their nominations were uniformly excellent and I appreciate the effort and thought that went into the nominations. Similar thanks are owed to the Governors of Washington, Idaho, and Montana; the Premiers of Alberta, Saskatchewan, and British Columbia; as well as the U.S. consulates general in those areas, the United States and Canadian Embassies, and many chambers of commerce in both countries.

To provide a summary of these presentations, I ask that two articles from the Great Falls Tribune of July 1, 1980, be printed in the RECORD.

The articles follow:

U.S.-CANADIAN TOURISM, TRADE FACE STRAINS OF ECONOMICS

(By Ronald J. Rice)

Twin challenges—inflation and unemployment—face tourism in the United States and Canada during the next decade and both countries face an increasingly competitive global economy, a Canadian official and a U.S. official stated during the U.S.-Canada Trade and Tourism Conference Monday at the Heritage Inn.

The conference, sponsored and hosted by Sen. Max Baucus with Gov. Tom Judge and Lt. Gov. Ted Schwinden as co-hosts, drew more than 170 persons from the western U.S. and the western provinces of Canada.

The two officials sounding similar notes in the morning addresses were Robert E. Herzstein, Under Secretary for International Trade, U.S. Department of Commerce, and J. Allen Adair, Minister of Tourism and Small Business, Government of the Province of Alberta.

Adair told the conference there are important similarities between the western provinces of Canada and the northwestern States in the United States. Both regions are long distances from their national capitals, he said, adding both are sparsely populated and, therefore, have fewer political representatives than more populated regions and both are resource-based with enormous potential for future development.

Herzstein noted industrial restructuring in the U.S. has the potential of straining this Nation's border relationship with Canada. As the Federal governments of the two nations are approached increasingly by industries and by State and Provincial governments for assistance, the temptation will be strong to take actions that offer short-run solutions which tamper with the open market.

Given the massive scale of our two-way trade, Herzstein said, we will need to balance our impulse to intervene with a longer-term concept of what kind of economy we want in 1990 and what kind of basic Canadian-American economic line we should be fashioning.

Both speakers stated trade between the two countries now is over $70 billion a year and climbing steadily. About 20 percent of all U.S. exports go to Canada and 70 percent of Canada's exports come into the U.S.

The speakers agreed that the two countries share in the dedication to a free-enterprise economy, both enjoy a high level of prosperity and share a similar legalistic approach to international trade, believing such

trade should take place in free and open markets under rules that limit the intervention of governments in the decisions of competing enterprises. Both countries have worked together to nurture it further in the recent Multilateral Trade Agreements.

Adair told the group that, in trade terms, the two countries are moving closer to free trade and greater interdependence, but added Canadians are sensitive to some of the implications of greater integration because they see themselves as a very distinct and unique nation. Adair said there is an advantage in focusing on specific areas that complement the two regions where concrete results can be achieved instead of looking toward continent-wide integration.

The Alberta official said international energy developments are almost producing a "forced growth" situation in Alberta. The province's population is over 2 million and is growing at 3½ percent per year—twice the average for the rest of Canada and three times that of the United States.

Alberta possesses 85 percent of Canada's oil reserves with much of the remainder in Saskatchewan. Approximately 80 percent of the economically recoverable natural gas in Canada is in Alberta and much of the other 20 percent is in British Columbia. Alberta has enormous oil sands deposits with estimates of these reserves as high as 1 trillion barrels—which is larger than the total known oil reserves of the Middle East.

Western Canada is by far the most dynamic region in Canada, Adair said, and it has been forecast that 85 percent of all Canadian economic growth this year will be generated in British Columbia, Alberta and Saskatchewan.

Herzstein said the governments and private groups in both countries are engaged in a healthy examination of the relationship between the two countries and the possibility for increased cooperation. Congress' Trade Agreements Act has a requirement of an executive branch study of the desirability of entering into trade agreements with countries in the northern portion of the western hemisphere.

The under secretary said the economies of both nations would enjoy benefits of improved efficiencies on either side of the border and together the two nations would be better equipped to meet competition challenges from third countries, such as Japan. There are important principles to recognize, Herzstein said, such as Canada's interest in preserving its cultural identity, which should be considered in the cooperative efforts to solve the problems of the two nations.

One of the delights of our two countries, and their fortunate position on the continent, is that the opportunities for expanded trade and tourism are many and exploring them is worthwhile and enjoyable, Herzstein said.

Adair pointed out shifts in travel trends are occurring and American traffic to Alberta has declined consistently since 1976. He said the downtrend should be arrested and Canadians are optimistic it will be reversed now that Americans have adjusted to the energy crisis which kept them home last summer.

Area States, Provinces Seen as One Large Region

The United States and Canada could both benefit if the western states and western provinces were thought of as one large region, Kenneth Curtis, U.S. Ambassador to Canada, told the more than 170 persons attending the United States-Canada Trade and Tourism Conference Monday.

Curtis, a former member of the International Joint Commission, said cooperation between Alaska and the Yukon had proved beneficial to both countries. There is a continuing trend, he said, for the western provinces and states to be considered by travelers as a single unit instead of individual subdivisions.

Curtis, also a former governor of Maine, stressed the importance of tourism between the countries and said it is "often the forerunner to increased trade and improved travel methods."

The joint entity, or common purpose, also is more economical, the ambassador said adding that integrated tourist development can be done in the name of tourism and can still contribute to the expansion of industry, which, in turn, can contribute to a better community.

"In 1979, the U.S. took the step of multinational trade negotiations," Curtis said. "Our joint future doesn't line in protectionism. In the next several years we both will be consolidating our gains and looking to tariff reductions.

"I would like to see the United States and Canada go to further liberalization of trade. Any trade liberalization must bring mutual benefits and must be reasonably proportioned so both nations will receive fair benefits."

Curtis said there has been close trade associations between the two nations for many years and cited the "petroleum swaps" as an example. Under this arrangement, United States firms would deliver petroleum to Canada's eastern provinces, which have none, in return for petroleum brought down into the United States from Western Canada.

He noted electricity exchanges also are being carried out and said the Alaska Pipeline, built to bring natural gas to the United States, also would be beneficial to western Canada with Canadian gas going into the southern portion of the system.

The ambassador said he would like to see improvement in transportation between the two countries, both in the air and on the ground. He said proposals have been made to the Canadian government.

Curtis said the greatest competition between the two countries is in the field of agriculture and added Canada and the United States are the "breadbasket of the world" because the two countries produce 70 percent of the world trade in food grains.

"We should have an open, no-holds-barred exchange of information between our two countries," Curtis said, "with this exchange being based on mutual respect to each other. The opportunities far outweigh the problems between our two countries." ●

TAXFLATION AND TAX ABATEMENT

● Mr. DOLE. Mr. President, yesterday the Senate Finance Committee completed 7 days of hearings on possible tax reduction for 1981. The hearings have been useful and informative. I believe the testimony reflects a strong consensus that tax reduction is needed, as soon as possible. The disagreement is over how soon tax reduction will be feasible, and the precise structure the reduction should take.

This Senator believes we must act now, to make a commitment to tax reduction beginning January 1, 1981. The urgent need for action—to limit the record tax burden scheduled for next year, to restore personal incentive, and to stimulate business investment—is discussed in detail, and with considerable insight, in the record of the hearings held both in the Finance Committee and the Ways and Means Committee. I urge my colleagues who have not attended any of the hearings to examine the testimony that has been given—I believe the testimony helps frame the issues we now face. The question of the timing and structure of tax reduction is the most important issue of domestic policy—and of economic policy—that we are confronted with.

Tax Cut Is Tax Abatement

Mr. President, I would just like to note that some of the testimony received by the Finance Committee focused on an issue of great concern to me—the bracket creep, or taxflation, that occurs when inflation pushes people into higher tax brackets. Virtually every witness acknowledged the problem of taxflation as a major reason why tax relief is needed. It was suggested that really we are talking about tax abatement—a moderation of scheduled increases in the tax burden—and not tax reduction. I believe the public is very much aware of this distinction. That is why, when people are asked if they favor a tax cut this year, they are skeptical. They know that "tax cut" is not the right term, and they are reluctant to give Congress credit for cutting taxes—particularly in an election year—when they know that we are discussing nothing more than tax abatement.

Public Deserves a Stronger Commitment

Mr. President, it is because of this public skepticism that I feel compelled to stress the need for tax indexing. The American people deserve a commitment to ending automatic tax increases, so that we can once again talk about real tax reduction, and mean what we say. That commitment was offered by Governor Reagan in his June 25 statement calling for immediate tax reduction. The first objective of the Reagan proposal—which I have introduced on behalf of Senate Republicans as S. 2878—is a 10-percent rate reduction for individuals, combined with accelerated depreciation for businesses. But Governor Reagan also called for preserving the real value of rate reductions, once they are made, by indexing the personal income tax to inflation. The Republican platform adopted at the Detroit convention also made a commitment to tax indexing.

And we will fulfill that commitment, if the voters give us the opportunity. Three times over the past 2 years the Senate has had an opportunity to vote on tax indexing. Each time the measure has been defeated, although by narrower margins on the last two occasions. I do not suggest that this is a partisan issue—it is not, and should not be. A growing number of Senators on the other side of the aisle have supported tax indexing, and that fact is very gratifying to this Senator. But those supporters clearly remain in a minority, while a clear majority on our side has consistently voted to end tax increases from inflation.

Why We Are Here

Mr. President, in a very real sense our failure to act on the problem of inflation and taxes is the reason why we are now discussing tax reduction. Some have accused Governor Reagan of advocating hasty, imperfectly throught-through action to cut taxes. Some have even criticized Members of this body for over-

reacting to the Republican initiative. Neither view is correct. The fact is that we must expedite action now because we failed to act earlier, when we should have. Some of us have sought to give the Senate opportunities to deal with the problem of the level of taxation. The Senate has not seized those opportunities; but that is no excuse for further delay, which would be inexcusable.

It has been said that tax legislation cannot, or should not, be made on the Senate floor. Perhaps that is so, but if our normal procedures—committee hearings and markups in each House of Congress—fail to expedite action on a vital issue, then those of us in the minority have no option but to raise that issue on the floor. Several weeks ago commentator George F. Will mentioned this situation on the public affairs program, Agronsky and Company. Mr. Will favorably mentioned efforts by the Senator from Kansas—and by the Congressman from Ohio, BILL GRADISON—to index personal income taxes. He then indicated that the failure of Congress to respond to those efforts has led to the situation we now find—efforts on the Senate floor to reduce taxes without delay.

TIME TO FOLLOW THROUGH

Mr. President, now we have had hearings, we are proceeding to address the problem. I believe it is not unfair to say that we are proceeding now partly because of the efforts some of us have made to bring the tax issue to the attention of this Chamber. We have discussed the issues, and now we should expedite action on tax reduction to take effect January 1. As we do so, we should consider following up rate reductions by indexing taxes to inflation—as has been urged on the Finance Committee by Martin Feldstein and Alan Greenspan, and by James Davidson of the National Taxpayers Union. I would also note that Herbert Stein, although he prefers shifting the tax burden to consumption rather than the net tax reduction at this time, recommended indexing as the most equitable and sensible reform of the personal income tax.

We have made progress in recent weeks. Now we must maintain the momentum. Our ultimate goal will be to restore stability to tax rates in periods of inflation. We should make a commitment now to do so.●

GEORGE PEABODY MEDALS FOR CONTRIBUTIONS TO MUSIC IN AMERICA AWARDED TO LEONARD BERNSTEIN, EUBIE BLAKE, AND CONGRESSMAN JOHN BRADEMAS

● Mr. SARBANES. Mr. President, several weeks ago, on the occasion of the 1980 commencement of the Peabody Conservatory of Music in Baltimore, Md., three distinguished Americans were awarded the first George Peabody Medals for outstanding contributions to music in America.

The recipients of these awards were Leonard Bernstein, Eubie Blake, and our colleague in the House, the Honorable JOHN BRADEMAS of Indiana, the distinguished majority whip.

Mr. President, I congratulate all three of these individuals and at this point in the RECORD I insert the text of the statement made on the occasion of the presentation of the George Peabody Medals by Dr. Elliott Galkin, president of the Peabody Conservatory.

The statement follows:

PRESENTATION OF THE GEORGE PEABODY MEDALS

INTRODUCTION

As you know, the Peabody Conservatory is an institution with a particular sense of identification with the music of this country, past and present.

And in recognizing the richnesses of our musical heritage we are proud to honor three individuals whose accomplishments enhanced the world of music in this country. Tonight we present for the first time the George Peabody Medal for Outstanding Contribution to Music in America to three individuals whose achievements have enriched the pages of the history of music in America: Leonard Bernstein, Eubie Blake, and Congressman JOHN BRADEMAS.

LEONARD BERNSTEIN

This morning, at the Commencement Exercises of The Johns Hopkins University, Leonard Bernstein was described as a brilliant pianist, prodigious conductor, and inimitable composer.

In his inspirational address to the graduating classes of the University, he dramatized once again the ultimate role of the artist—that of educator.

Whether before an orchestra, in his Young People's Concerts, the Charles Eliot Horton Lectures at Harvard University, or his Commencement address at The Johns Hopkins University, Leonard Bernstein is a virtuoso teacher. He has demonstrated to the world how the medium of television may become an educational tool—enriching our life.

Always spontaneous, always charismatic, he more than any musician in history, has democratized the understanding of artistic performance.

Leonard Bernstein . . . It is an honor for the Peabody Conservatory to award you the George Peabody Medal for Outstanding Contributions to Music in America.

EUBIE BLAKE

Eubie Blake has been called the grand old man of American Jazz.

He was born in 1883 in Baltimore, the son of slaves. His mother was a washerwoman. He began the study of music at the age of six. However, he was unable to pursue the classical instruction in music which he desired. He remembers that he frequently passed the Peabody Conservatory, but so rigid was the color bar in the year 1890 that there was an objection even to his carrying his mother's laundry bundles past this building. Some 89 years later, Eubie Blake recalled that when he appeared at the Peabody Conservatory in 1978, it was one of the two places in the world in which he received a standing ovation, the other in Berlin after the Second World War.

Mr. Blake's professional career began at the age of seventeen. In 1915 he began to achieve a national reputation as a songwriter, composing such works as "It's All Your Fault", "Shuffle Along", and the "Chocolate Dandies". These were pioneer compositions in the so-called negro shows which introduced the Great White Way, Broadway, to some of the most vibrant music in this country's history.

He soon became a major figure in creating what was called "the black presence" on Broadway in the 1920's and the 1930's.

From the 1930's until the present, he became known as "the man who put black music on Broadway". He is recognized as one of the founding fathers of American popular music. Jazz experts quote excerpts from his compositions to explain elements in the development of the jazz style. He has been honored by the American Society of Composers, Authors, and Publishers, and the American Guild of Vaudeville Artists, and has received numerous honorary doctorates. He has been heard throughout the world as a performer and as a composer. One of the most amazing tributes to Eubie Blake, to his compositional vitality and his performance abilities, took place in 1969 when Columbia Records issued a two-record set entitled "86 Years of Eubie Blake", for which he himself did most of the recording.

Throughout the world, wherever American popular music is known, Eubie Blake is recognized as one of its masters.

For his achievement, the Peabody Conservatory is proud to award him the George Peabody Medal for Outstanding Contributions to Music in America.

JOHN BRADEMAS

Since the earliest days in America's history, from Thomas Jefferson to John F. Kennedy, this nation has been fortunate in having national leaders with a breadth of vision profound in its understanding of the importance of art as a basic need in the life of man.

Representative John Brademas is such a national leader. He has been described in the New York Times as "Congress's most articulate and effective spokesman for aid to culture."

He was born in Mishawaka, Indiana. After service in the Navy he became a Veterans National Scholar at Harvard University where he was graduated with a B.A. degree magna cum laude and was elected to Phi Beta Kappa. He then studied as a Rhodes Scholar at Oxford University receiving the degree of Doctor of Philosophy in Social Studies in 1954.

He was first elected to Congress in 1958 from Indiana's Third District. During more than twenty years of service as a member of the Education and Labor Committee, he has played a principal role in helping to write most major legislation concerning elementary and secondary education, higher education, vocational education, services for the elderly and the handicapped, and Federal support for libraries, museums and the arts and humanities.

He is chief architect of the National Institute of Education, the Federal agency supporting research in education, and he was a major sponsor of the Omnibus Education Act of 1972 and the Higher Education Amendments of 1976.

He was also chief House sponsor of the Education for All Handicapped Children Act; the Arts, Humanities and Cultural Affairs Act; Arts and Artifacts Indemnity Act; Museum Services Act; and the Older Americans Comprehensive Services Amendments of 1975, which included the Age Discrimination Act prohibiting age discrimination in those programs receiving Federal assistance. From the beginning days of his distinguished career in Washington, Mr. Brademas has understood the inspiration of education and art to be an inalienable right of our people.

This country is in his debt for his accomplishments—for his insistence on the role of art as, in the words of Jefferson, "an important expression of the American mind."

For these reasons, it is the privilege of the Peabody Conservatory to confer upon him the George Peabody Medal for Oustanding Contributions to Music in America.●

MONTANA CENTER FOR INNOVATION

● Mr. BAUCUS. Mr. President, I would like to insert into the RECORD at the con-

clusion of these remarks an article which appeared recently in the New York Times. It is about Montana's Center for Innovation, and it is an excellent description of a real success story. I am pleased that such attention is given to the center.

CFI serves a unique function in the United States: To examine and market the inventions of private entrepreneurs. These inventions are useful and create new jobs; yet, the nature of our overregulated system makes it difficult for the private entrepreneur to gain access to the market. CFI helps provide such access.

The center itself was the creation of Dr. Jerry Plunkett, an eminent and prolific inventor. The NSF and other agencies which are supposed to provide financial assistance to entrepreneurs, have often proven to be less than helpful to such small business efforts. Yet, for innovations not created within a corporate system, entrance and success on the market is extremely challenging, to say the least, and assistance is very much needed.

The center has received great attention during the past year as the proposed Small Business Innovation Act seeks to be responsive to the needs of the small business inventor. As a cosponsor of the act, I have actively pursued the feasibility and desirability of establishing more centers like CFI. I believe, Mr. President, that such action will contribute to the resolution of serious unemployment and sluggish productivity which our country faces. A small investment to help the small businessman market his inventions and innovative techniques has great long-term benefit.

Mr. President, witnesses before numerous Small Business Committee hearings have testified that the majority of innovations stem from small businesses and individuals; however, due to the complexity of regulations and the tremendous costs involved, few entrepreneurs see their dreams actualized.

America is a nation built upon the dreams of its individuals. Yet we are allowing the creativity of the individual and the productivity of the country to suffocate by callous inattention to the needs of our entrepreneurs. This is needless, Mr. President, needless to the entrepreneur as well as to our country.

The Center for Innovation has proven to be an effective means to truly help Americans revitalize our Nation without the burdensome involvement of the Government. I am pleased by the recognition given to the center by the New York Times. It is well deserved.

The article follows:

THE MARKETING OF INVENTIONS

In recent months, a modest project in Butte, Mont., called the Center for Innovation, has received visitors and inquiries from scores of scientists, inventors and government officials from both nearby towns and such far-flung outposts as Pagopago, American Samoa.

The three-year-old program is one of fewer than a dozen similar operations throughout the world, including ones in Denmark, West Germany and Japan, and is the only one of its kind in the United States.

The Butte unit sends its representatives to evaluate the technology and the commercial potential of new-product ideas, usually those of individual inventors or small businesses. If the idea seems promising, the center's technical experts can help the budding entrepreneur tailor his invention for the marketplace and arrange outside financing.

The center has brought 20 products to market so far, and about 50 more are being readied, according to Clyde W. LaGrone, manager of the center. Over the last three years, the products—some sold to existing companies under licensing arrangements, and others produced as new ventures—have generated an estimated $75 million in revenues and created 150 jobs. The center is financed by the Old West Regional Commission, a five-state economic development group backed by the Department of Commerce. To date, the Butte operation has received roughly $1.5 million in public money.

Its performance has attracted increasing attention from Washington. Three months ago, the Senate Select Committee on Small Business held hearings on the concept. At the session, testimony was taken from Jerry D. Plunkett, managing director of the Montana Energy Research and Development Institute, a nonprofit corporation affiliated with the innovation center.

The Senate committee is now prodding the Small Business Administration to use $750,000—which has already been appropriated for the current fiscal year to nurture innovative ventures by small businesses and individuals—for the creation of four additional centers patterned after the Butte operation.

"We've met with S.B.A., and we've made it clear that what we want is a replication of the Butte model elsewhere," said Allen Neece, legislative counsel of the committee.

Mr. Plunkett of the Montana Energy Institute had a meeting three weeks ago with A. Vernon Weaver, administrator of the S.B.A., and came away impressed by Mr. Weaver's apparent support for spreading the innovation center concept nationally.

"All things considered, I think the S.B.A. has been quite receptive, once they noticed us," said Mr. Plunkett, an engineer with a Ph.D. from the Massachusetts Institute of Technology.

Under the current plan, Mr. Plunkett and his staff would help start the new units, but leave them within two years. The sites for the additional centers have not yet been selected, but Mr. Plunkett said 28 states had expressed an interest in having one.

"Our hope is that these new units would be a solid first step toward eventually establishing a network of them across the country," said Mr. LaGrone, the Butte center's manager.

All this activity comes amid growing recognition that small businesses, particularly young high-technology ventures, play a central role in creating new jobs and fostering innovation. The White House Conference on Small Business, held in January, seemed to signal political recognition of this fact. And there has been a gathering academic consensus in recent years that small ventures are often the most productive in advancing technology.

The Butte center, in the words of one staff member, "is not a 'white coat' operation at all." The workdays of the eight-person staff are frequently long, and the work has its frustrating side: 90 percent of the ideas that come over the transom are quickly rejected as impractical or unmarketable. And, occasionally, the suggested breakthroughs come from people who are "not entirely balanced," said one worker at the center.

"What we do is like looking for gold nuggets in sand," noted Mr. Plunkett. "There's a lot of sand."

Then, too, the center officials sometimes travel long distances assisting inventors. Almost two years ago, for instance, Mr. LaGrone trundled off to a farm outside Larimore, N.D., next to the Canadian border. There, roughly 1,000 miles from Butte, a farmer had come up with a new implement for thinning weeds from soybean fields and harvesting the crop using a series of horizontal blades. With the center's aid, the device was patented and licensed to a company in North Dakota.

Other center-backed products include a new type of solar energy collector, a temperature-control device, a plastic coating for food packaging and a chain-saw sharpening device. Roughly 60 percent of the items submitted are energy-related.

"The majority of the items we receive are not what you'd really call high-technology inventions," Mr. LaGrone said. The reason, he suggested, is geography—namely, Butte is not thought of as a technological hotbed. "We feel that if we branch out into, say, the New York or Silicon Valley areas, you'd see plenty of high-technology ideas come through the door," he said.●

CENTENNIAL COLORADO CONFERENCE VI

● Mr. ARMSTRONG. Mr. President, each year since 1975 a group of Coloradans has convened in the Colorado Rockies to debate State and Federal public policy issue. The forum, called the Centennial Colorado Conference, was held several weeks ago in Keystone, Colo.

Traditionally the 8 or 10 consensus resolutions adopted by the conferees are bellwethers to decisions made later by the Colorado General Assembly and the U.S. Congress. That is not surprising, given the fact that the conferees represent a cross-section of a State which traditionally is a testing ground for new concepts.

What makes the Centennial Colorado Conference unique is the fact that its topics are not limited to any particular interest area, and that attendees are about equal measures of Democrats, Republicans, and Independents; liberals, conservatives and independents; and high- and low-profile citizens.

Among the resolutions passed by the group were ones calling for more flexibility in air quality standards to accommodate the public's need for energy; removing a number of high ranking Federal employees from the Civil Service system; opposing public financing for candidates in Colorado; and calling for the return to multiple-use management of Federal land studied for wilderness designation if it is not acted upon by Congress within 24 months after conclusion of the study.

The text of all resolutions adopted by Centennial Colorado Conference VI follows:

CENTENNIAL COLORADO CONFERENCE

That the binding caucus used by partisan blocs in the Colorado General Assembly should not be made unlawful.

That air quality standards be made more flexible to accommodate the needs of the public for adequate energy, and that such standards be incorporated in laws passes by legislative bodies rather that adopted by regulatory bodies. And,

That conversion to coal fuel should allow reasonable application of environmental controls and that the Congress should conduct a continuing review of energy restrictions to levels compatible with national energy goals.

That all Federal and State department

heads, agency directors, institutional managers, executive policy-making employees, and their confidential assistants be removed from Civil Service job tenure guarantees.

That all states not be required to conclude their prospective delegate selection processes for presidential conventions by March 1st of the presidential election years and that uniform selection procedures not be passed.

That Colorado not provide for public financing for candidates in all primary and general elections, including Colorado General Assembly elections. And that public financing of federal elections be abolished, along with limitations on spending and campaign contributions, while retaining present reporting requirements and limitations on corporate and labor union contributions.

That acknowledged homosexuals not be barred from teaching in the primary (K–6) grades of public schools.

That the United States adopt a policy for Canadian and Mexican nationals in the issuance of temporary work permits where the need for workers exists.

That all lands which have been studied for wilderness designation, but not acted upon by Congress within twenty-four months after the conclusion of the study, be returned to their original Federal land management status. Also, that all wilderness areas be subject to "Sunset" review twenty years after the dates of their designation.●

JAPAN AND THE AEROSPACE INDUSTRY

○ Mr. STEVENSON. Mr. President, the foreign competition is creeping into the most competitive American industries. That competition will not be countered by more of the conventional wisdom—more of the same. I cite Japanese plans for the aerospace industry. Mr. President, I ask that a Wall Street Journal article of June 24 by Masayoshi Kanabayashi be printed in the RECORD.

The article follows:

JAPAN AEROSPACE FIRMS EYE TAKEOFF

(By Masayoshi Kanabayashi)

TOKYO.—Even as Japan overtakes U.S. world leadership in vehicle output this year, its industrialists are eyeing other fields to conquer. Now it appears that the Japanese aerospace industry is preparing for takeoff.

The government has targeted aerospace for financial assistance because spinoffs from that industry could contribute to a general industrial restructuring. For the Japanese, that means a switch into higher technology and away from such fields as steel and shipbuilding, in which Asia's emerging industrial nations are catching up. Thus Japanese aerospace companies are taking aim at world markets through joint-venture and licensing pacts they are signing with foreign makers of engines and aircraft.

Late last year, three companies—Mitsubishi Heavy Industries Ltd., Kawasaki Heavy Industries Ltd. and Ishikawajima-Harima Heavy Industries Co.—signed a contract to develop a jet engine with Rolls-Royce Ltd. of Britain. The project calls for spending of $645 million over eight years. The Japanese government will provide $150 million to $155 million of that amount in the form of loans, to be repaid only after the venture becomes profitable.

Another group—including Mitsubishi Heavy, Kawasaki Heavy and Fuji Heavy Industries Ltd.—is involved in a three-country venture with Boeing Co. and Alitalia, Italy's state-owned airline, to develop and produce the Boeing 767 and 777. That project will benefit from $70 million to $75 million in Japan government loans on similar terms.

In addition, Boeing, McDonnell Douglas Corp., the European consortium Airbus Industrie, Fokker Aircraft Corp. of the Netherlands and others are sounding out Japanese companies on possible partnerships to develop airplanes.

Mitsubishi Heavy—with subcontractors Ishikawajima-Harima and Kawasaki Heavy—recently started producing the F15 jet fighter under license from McDonnell Douglas. Those three companies, plus Fuji Heavy, Shin Meiwa Industry Co. and Nihon Aeroplane Manufacturing Co., began similar production of Lockheed Corp.'s P3C submarine-spotting aircraft.

In fact, military-related orders currently account for 85% of the Japanese industry's sales, and such sales should remain strong as Japan boosts its defense spending. But the industry believes the greatest growth potential lies in the private sector.

Japan's airplanes have so far had a negligible impact on the world market. The industry is minuscule beside that of the U.S. Last year's output of aircraft alone (excluding rockets and missiles) amounted to the equivalent of $1.3 billion, converting the yen at its current rate, compared with 1979 U.S. sales of $24.5 billion. The total industry employs 35,000 people in Japan versus one million in the U.S.

But the picture should change rapidly. In the venture with Boeing, which is responsible for marketing the planes, 288 orders—152 firm ones and 136 options—have been secured, according to an official at the Ministry of International Trade and Industry. Japan's All Nippon Airways accounts for 25 of the firm orders and 15 of the options.

The Rolls-Royce project aims to develop a jet engine for use in a 130-seat, twin-engine passenger plane Japan expects to develop and produce jointly with foreign companies as its next civil transport, to succeed the Boeing 767 and 777.

The industry is also focusing on light aircraft. Mitsubishi Heavy has sold more than 600 units of its twin-engine turboprop business plane, the MU2, or Marquise, in the past 15 years, primarily in the U.S. and Australia. Now it is pushing sales of a new business jet, the MU300, or Diamond One, powered by two of United Technologies Corp.'s Pratt & Whitney JT15D turbofan jet engines. The company says it has won more than 80 firm orders since the plane was introduced in June 1979.

Kawasaki Heavy is developing the BK117—a twin-engine, multipurpose helicopter—with Messerschmitt-Bolkow-Blohm G.m.b.H. of West Germany. This plane is expected to be certified this year.

For the time being, Japanese aerospace concerns will continue to rely on foreign tie-ups, analysts say, because of the risks and the huge investments required. An industry official says, "For Japan, there isn't any other way but international cooperation, since we are a newcomer and we don't have any major achievements to our credit." He adds that even Japanese airlines won't buy a plane unless it is made by an internationally recognized maker.

During the 1960s, the Japanese government aided the industry in developing its first civil transport, a 64-seat turboprop called the YS11. More than 180 planes were produced, but the project wound up with a huge deficit, mainly due to poor marketing strategy.

Kozo Hirata, managing director of the Society of Japanese Aerospace Companies, concedes that point. "We didn't even know we had to have demonstration flights to sell it," he says, "and we didn't have a flight manual when the plane was ready."

Because the domestic market is relatively small, the Japanese must look overseas for sales as well as partners. Sooner or later, it could become a strong competitor in planes, as it has in cars and household appliances. "If someone is going to compete with Japan," warns a U.S. aerospace expert, "he had beter be prepared." ●

WILLIAM J. BARODDY

● Mr. DOLE. Mr. President, on Monday the United States lost one of its great men of ideas. That man was Bill Baroody.

The epitome of the self-made man, Bill inspired others to follow in his example. He made his mark steadily and with assuredness, and leaders throughout this country respected his judgment and his word.

The institution he built, the American Enterprise Institute, came to be known as a reflection of the man: A magnet for thoughtful men of all persuasions.

I know what Bill Baroody has meant to the men and women in the halls of Congress, for his persuasiveness has shaped the thoughts of each of us.

I speak for the Members of this Chamber as well as for myself personally when I offer my deepest condolences to Bill's wife, Nabeeha, and the rest of the Baroody family.

Mr. President, I ask that an editorial from the Thursday, July 31, edition of the Washington Star be included as part of my statement for the RECORD.

The editorial follows:

WILLIAM J. BARODDY

It is not often that a single career and personality can combine vital attachment to tradition with creative anticipation of the future. It was among the distinctions of William J. Baroody, the former head of the American Enterprise Institute, who died Monday, that his career and personality did just that.

The private man was pure American myth. A poor boy from an immigrant family—his father was a stonecutter from Lebanon—he worked his way through college and, by middle age, had risen to a position where presidents of the United States were listening to his advice.

He was a patriarch emotionally centered in a large, energetic family that kept growing; when he died, the count on grandchildren was up to 37. He was gratified to have his oldest son, former White House aide, William Jr., take over as head of AEI when he retired two years ago. He was a profoundly religious man, whose preoccupations in the world of politics and intelectual controversy never got in the way of active participation in the affairs of the Melchite Greek Catholic church.

At the same time, this man of values a good many people find old-fashioned if not downright anachronistic had an extraordinarily cool and discerning eye for trends. He decided back in the 1950s that New Deal dogma on politics and economics had run out of steam, leaving a clear track for a vigorous new kind of conservatism. As one of his long-time colleagues put it, "He was always the first to spot a vacuum and move in, sometimes he would create a vacuum to move into."

Starting with a bit of corporation money and a few lively minds, including that of Nobel laureate Milton Friedman, he began to build AEI into the major American think tank it is today. At first, it was considered too right-wing to be taken seriously by the intellectual mainstream. Recruiting more and more dynamic scholars, conducting long-range studies, publishing magazines and books, sponsoring debates over critical issues, bringing in distinguished foreign thinkers and political figures, Mr. Baroody maneuvered AEI front and center to a position where it is financed by leading foundations and respected by old opponents as well as by

a widening—and bipartisan—circle of new friends.

In the process, Mr. Baroody became a political force in his own right, recognized as an influence on the policies of both the Nixon and Ford administrations and on thinking in the neo-conservative wing of the Democratic party as well. It was thanks to him, among others, that the term "neo-conservative" became identified with fresh ideas and possibilities of power.

His presence will be missed in Washington and across the nation, the more so because of its continuing life in the institution he built.●

PRIVATE SECTOR COMMITTEE ON NORTH AMERICAN TRADE

● Mr. BAUCUS. Mr. President, on behalf of Senator DOMENICI and myself, I would like to report that on July 25, we, as cochairmen of the Senate North American Trade Caucus, hosted a meeting with some 20 leading representatives of the private sector. We are attaching a list of the participants as well as the agenda for the meeting, which we ask to be printed in the RECORD at the conclusion of these remarks. We specifically mention that the meeting was sponsored by the Senate caucus, since we were also very pleased to have present Congressman ARLAN STANGELAND who has let us know that he and Congressman BREAUX on the House side have undertaken a similar initiative forming a House caucus on North American trade. We very much welcome the initiative and look forward to working with our counterparts in the House on all matters relating to North American trade.

The July 25 meeting was the culmination of preliminary work to make the caucus an effective instrument for improving and strengthening the trade relationships we have with our neighboring countries. Let us summarize very briefly what those efforts have been.

First, of course, was the requirement to have the administration begin serious consideration of special trade relationships which might be warranted with our neighboring countries. The Trade Act of 1979 fulfills that requirement by calling upon the administration to do a study on that subject.

Second, it is a great pleasure to observe a similar interest developed on the part of the Governors of our 50 States. The National Governors' Association under the leadership of Governor Busbee has devoted considerable resources to developing trade with Canada and Mexico. The study the association commissioned with the Dean Rusk Center at the University of Georgia certainly reflects the seriousness of their interest. We fully support that initiative since we strongly believe at the heart of the developing relationship is the State/Canadian Province/Mexican State bridge. In many cases the relationship between a U.S. State and a Canadian province, for example, is much closer, more informed, and more cooperative than on other levels.

Third, was the formation of the caucus in the Senate, and now also in the House, to form a base of interested Senators and Congressmen who are willing to consider support for initiatives that might be taken by North America. We believe the formation of these caucuses should send a clear signal to our neighbors that indeed many leaders in America are very much interested in the trade relationship with them and want to see it prosper.

Finally, and most important, the missing link was participation by the private sector. For that reason, we organized the meeting which took place on July 25. The response was most encouraging.

The caucus asked these leaders of American industry and labor to take upon themselves the task of returning to the Senate within a fixed period of time with specific recommendations and ideas on what might be done to develop trade on the continent. We have asked the private sector to go to neighboring countries to investigate the possibilities of coordinating their activities with the private sector there. We asked them to consider possible institutional frameworks and areas of specific interest. But most of all, we simply made clear that we view this private sector group as a key one to provide assistance and specific recommendations to the Congress on the trade relationship with our neighbors. We want them to make recommendations on how we can maintain that link with the private sector for the long term.

We believe our colleagues who attended the conference would agree that participants expressed a common concern over the problems facing United States/Canadian/Mexican relations and a desire to overcome barriers which might exist.

Several speakers addressed the group and made interesting points. One speaker outlined the problems which presently exist in our border relations. He warned against pursuing a bilateral trade policy oriented to energy, and listed some of the trade problems we face with Canada and Mexico, such as disparity of income, Mexico's nonadherence to GATT, interventionist policies pursued by both our neighbors, and, of course, the energy disparity between us which breeds distrust. We encouraged governments to consult openly on anticipated action and suggested this might be done through mechanisms possibly similar to the OECD. He specifically mentioned areas for possible innovative trade development. The point was also made that while the U.S. interest may be trilateral, it would be easier to deal with each country bilaterally.

Another speaker strongly suggested that we focus not upon disparities, but rather on a movement toward the free trade concept that exists in the EEC. He postulated that political impediments to trade cooperation far exceed the economic impediments, and stressed that a greater emphasis should be given to economic analysis. He supported the idea that initiatives should be taken by the private sector possibly on a sectoral approach, as a primary step to better trade integration. What was of paramount interest was reaching agreements beneficial to the parties concerned, even if GATT waivers might be required.

We also want to thank our colleague, Senator JAVITS, for his presentation describing his efforts over a long period of outstanding public service to improve the trade relationship with our neighbors. He stressed the importance of interrelationships with the private sector. His presentation was extremely well received by the group and we appreciated his taking the time to make it.

We also had a very interesting discussion among ourselves. There seemed to be general agreement that the overriding reason for working more closely with Canada and Mexico and other neighbors is simply because they are our neighbors and therefore must be treated differently than other trading partners. This was the case even though there is the common perception, wrongly or rightly, that both Canada and Mexico are greatly interested in free access to U.S. markets without much willingness to consider fair reciprocal arrangements.

Institutional frameworks for the longer term were a topic of discussion, with the recognition that any proposals must meet the requirements of all concerned. Participants were informed by the Congressional Research Service regarding the multitude of studies and other activity taking place in this area.

We are very pleased with the results of this initial meeting with the private sector. In the next several weeks the group is to report back to us regarding how it plans to constitute itself to carry out the mandate we have given it. We believe that this will be a significant group, if it succeeds in organizing itself properly, which will provide very important information to the Senate, with long term recommendations worthy of receiving special consideration. We want to thank each and every one of the participants publicly and in the RECORD for having given so much of themselves and their time. We look forward to a continuing relationship.

The list of participants and the agenda follow:

LIST OF PARTICIPANTS

Mr. Richard E. Heckert, Senior Vice President, E. I. Du Pont De Nemours. Accompanied by: Mr. T. F. Killheffer.

Elizabeth Jager, Legislative Representative, AFL–CIO.

Mr. Peter F. Warker, Director of International Affairs, TRW, Inc.

Dr. David S. Potter, Vice President and Group Executive of the Public Affairs Group, General Motors Corporation. Accompanied by: Mr. H. C. Witthaus.

Mr. William G. Phillips, Chairman of the Board, International Multifoods. Accompanied by: Dr. Roger Swanson.

Mr. A. Flamm, Senior Vice President, Union Carbide Corporation. Accompanied by: Dr. George Phillips, Mr. Richard M. Brennan.

Mr. J. R. Babson, Vice President, Ingersoll-Rand. Accompanied by: Mr. Glenn H. Brown.

Mr. Robert A. Belanger, Senior Vice President of North American Division, Bank of America. Accompanied by: Karen Shaw.

Mr. Wallace H. Lloyd, Executive Assistant, Deere & Company.

Louis Couttolenc, President, RCA, S.A. de C.V. Accompanied by: Raymond L. Scherer.

Mr. James Reinke, Vice President of Governmental Affairs, Eastern Air Lines.

Mr. L. E. Hoyt, Vice President, Southern Pacific Company.

Mr. John Plunkett, President, American Chamber of Commerce of Mexico. Accompanied by: Mr. John Bruton.

Mr. C. T. Marck, Vice-President, Government Relations, Dow Chemical. Accompanied by: Rafael Miquel.

Mr. Jay Van Hueven, Executive Director, U.S.-Mexico Chamber of Commerce.

Mr. Ralph Mecham, Vice President, Anaconda.

Dr. Stan Wisniewski, Research Economist, International Association of Machinists & Aerospace Workers.

Myron D. Oakes, Executive Vice President, Commercial Division, Byron Jackson.

Mr. David A. Weeks, Vice President, Research, The Conference Board.

(Not present, but member of task force: R. L. Mitchell, Vice Chairman, Celanese Corp.)

AGENDA

10 a.m., Welcome and Coffee.

10:15, Opening Remarks.

U.S. Senator Max Baucus (D-Montana), U.S. Senator Pete V. Domenici (R-New Mexico), Co-Chairmen, Senate Caucus on North American Trade.

10:30, Status Report on Studies of North American Cooperation Completed or in Progress.

Review of Existing Bilateral and Multilateral Private and Public/Private Committees to Promote Economic Cooperation.

Allan Nanes, Congressional Research Service, Library of Congress.

10:40, Questions and Answers.

10:45, Status Report on Trade and Investment With Canada and Mexico. Progress Report on Administration. Study on North American Economic Cooperation.

Ambassador Reubin O'D Askew, U.S. Trade Representative.

11:00, Questions and Answers.

11:10, Discussion Paper: Options for North American Cooperation.

Sidney Weintraub, University of Texas.

11:30, Questions and Answers.

11:40, Discussion Topic: Establishment of a Private Sector Task Force on North American Economic Cooperation.

U.S. Senator Jacob Javits (R-New York).

11:50, Questions and Answers.

12 Noon, Lunch.

12:30–2:00 p.m., Discussion of Morning Topics and the Form Private Sector Initiative Should Take.

2:00, Press Conference to Announce Formation of Private Sector Task Force.●

ELLSWORTH AIR FORCE BASE NEEDS ADDITIONAL FUNDING

● Mr. McGOVERN. Mr. President, I had the opportunity to appear yesterday before the Defense Appropriations Subcommittee to recommend that the subcommittee appropriate additional operations and maintenance funds in the fiscal year 1981 military budget to stem the deterioration of facilities at Ellsworth Air Force Base, in Rapid City, S. Dak.

I would like to submit my prepared remarks for the RECORD and to summarize my presentation very briefly.

Mr. President, the status of Ellsworth Air Force Base seems to reflect the status of much of our military structure: It possesses modern weapons and employs the most skilled and dedicated personnel, but it is not being maintained in an adequate manner.

As a result, the weapons are underutilized and the skilled personnel are leaving military service.

Unless the maintenance problems of our military bases are corrected, our current efforts to upgrade military readiness and improve personnel retention will be undercut, because it makes no sense to raise the pay of a soldier to a 1980's level and then ask him or her to live in a temporary Korean war-era dormitory, to eat in a World War II-era mess hall and to work under difficult physical handicaps.

Let me briefly describe some of the problems I saw at Ellsworth during my inspection trips in recent months.

First, the housing accommodations are plainly inadequate. The Korean-era dormitories are uncomfortable, poorly lit, badly insulated, and, in many cases, unsafe.

Second, the road network is in bad repair. The adverse weather of the South Dakota winters causes huge potholes and ruts in the roads which link the 150 Minuteman missile sites and the absence of a concerted repair effort is now affecting the roadbeds themselves.

Third, the aircraft and vehicle repair facilities have 25-year-old heating systems which are wearing out, unsafe furnace stacks, and insufficient weatherstripping. Mechanics at the base told me that they have to repair our strategic bombers with numbed hands because of the low temperatures inside the repair docks.

Fourth, almost one-half of the vehicle fleet exceeds age or mileage criteria or both; a number of vehicles have been driven 200,000 miles or more.

Fifth, the runway aprons periodically crack from the impact of the freezing and thawing cycle on the asphalt, and this poses a great danger to jet engines.

And there are many other problems, including the Korean-era dining hall, inefficient energy uses, widely separated management facilities, a less-than-adequate base exchange facility, and many more.

All of these problems, Mr. President, affect personnel retention, energy consumption, weapons alert rates, and employee productivity.

Unless these repair and maintenance projects are funded, the structures will continue to deteriorate. Soon it will be too late to just repair them. If paint is not applied to the dorm buildings, they will rot and become unsafe. If the roads are not repaired, the roadbeds will die.

Then it will be necessary to replace them completely—at enormous costs in military construction funds.

Over the years, the Strategic Air Command has provided Ellsworth with approximately 80 percent of its validated repair requirements. This means that 20 percent of base facilities have been eroding. This is unacceptable for our national defense posture and for the people who live and work at Ellsworth.

Mr. President, I ask the subcommittee to add $7.5 million to the operations and maintenance budget for fiscal year 1981 to enable the Ellsworth managers to overcome the total backlog of maintenance and repair projects now pending.

If this proves to be unfeasible because of competing budget demands, then I urge—as a minimum—that an additional $1.5 million be made available simply to prevent the backlog of repair projects from growing any longer and to help Ellsworth turn the corner on the maintenance problem.

I am prepared to offer an amendment on the Senate floor in case the committee fails to add these funds.

These additional funds should be used to the greatest extent possible, in my view, for so-called "people programs" at Ellsworth—to improve the dormitories, dining halls and other facilities which are so essential to a decent and dignified life for the military and civilian personnel at Ellsworth.

Mr. President, no one quarrels with the fact that weapons operation must receive first priority, but I believe it is time to stop the neglect of our military personnel at our military bases.

Mr. President, I ask to insert my prepared testimony on Ellsworth Air Force Base at this point in the RECORD.

The text of the testimony follows:

TESTIMONY OF SENATOR GEORGE MCGOVERN

I appreciate the opportunity to appear today before the Defense Appropriations Subcommittee to recommend that at least $1.5 million in Operations and Maintenance funds be added to the FY 1981 military budget to stem the deterioration of facilities at Ellsworth Air Force Base and to help the Base Commander turn the corner on the day-to-day repair needs of this critical defense installation.

In many ways, the status of Ellsworth Air Force Base in Rapid City, South Dakota, reflects the status of our military structure as a whole. Ellsworth possesses modern weapons; its military and civilian personnel are skilled and dedicated beyond question. But Ellsworth is not being maintained in an adequate manner with the unacceptable results that the advanced weapons are not fully utilized and the skilled personnel are leaving military service.

A consensus has developed in Congress that we need to shift more military resources to improve readiness. I support that consensus. But it appears that the whole question of defense installations is being left out of the readiness equation. Unless it is changed, efforts to improve readiness will be undercut.

For example, higher military pay and benefits are essential for retaining experienced personnel in the military. But it does not make sense to raise the military pay of an enlisted soldier to a 1980 level and then ask that soldier to sleep in a dormitory built for the Korean War, to eat in a dining room built before most of us entered the Senate, and to work in a converted World War II-era office building.

Or consider the weapon readiness problem. The failure of the helicopter rescue mission in Iran has focused attention on the problem of spare parts for our advanced weapons. Funding increases are properly being made in this area. But we will be unable to improve alert rates if the weapons to be repaired must be trucked in over roads cratered by potholes—on delapidated service vehicles—into repair hangars where mechanics are forced to overhaul the systems with numbed hands because the corroded heating system and leaky doors are no match for the winter winds of the Black Hills of South Dakota.

Unfortunately, these situations are common occurrences at Ellsworth Air Force Base.

Based on my inspection trips to Ellsworth during the past few months, I recommend that property maintenance and military construction be given a higher priority in the current effort to improve the readiness of our existing force structure. Additional funds must be added to upgrade the facilities at Ellsworth and other key defense bases.

Mr. Chairman, Ellsworth Air Force Base plays a critical role in the maintenance of America's nuclear deterrent. It is the host to the 4th Strategic Missile Wing, which operates 150 ICBMs, and for the 28th Bombardment Wing (Heavy), which operates two B–52H squadrons, one KC–135 tanker squad-

ron and an EC-135 command and control squadron. If South Dakota were to secede from the Union, Ellsworth would make our state the world's third largest nuclear superpower.

The military importance of Ellsworth will grow in the coming decade due to the conversion of the B-52 into a cruise missile carrier aircraft. In addition, the new strategic bomber to be selected by the Defense Department under the authority of the Glenn-Culver amendment to the FY 1981 Defense Authorization bill will almost certainly be based at Ellsworth, because its physical location halfway between the East and West Coasts offers maximum security to bombers against submarine-launched depressed trajectory missile attacks.

Therefore, Ellsworth is essential to our security posture now and in the future. A sound national defense strategy cannot allow Ellsworth to operate at a lowered readiness level, for if Ellsworth's readiness is below par, the readiness of our deterrent is jeopardized. In 1979, for example, 775 missile off-alert hours at Ellsworth were directly attributed to non-availability of service-related vehicles.

But the fact is that the real property at Ellsworth is deteriorating. Let me cite a few examples of what I saw during my visits to the base:

Housing Accommodations: Dormitories for enlisted men were built during the Korean War and lack many amenities of decent housing. Now unaccompanied enlisted housing is needed. In the meantime, extensive alterations are required to keep domitories liveable.

Dining Facilities: The main dining hall for enlisted men is also of the Koeran War era and needs refurbishing.

Aircraft Repair Facilities: A number of repair docks and hangars have 25 year old boilers which are worn out and corroded; furnace stacks are unsafe; sliding doors on the repair docks need to be weather stripped to keep out the wind.

Vehicle Fleet: The vehicle fleet is a key part of Ellsworth's operation because 8.2 million miles are driven annually to maintain the 150 missile sites. Almost 6 million miles are driven over unimproved roadways under adverse weather conditions. Of the 866 registered vehicles at Ellsworth, 41% (352 vehicles) exceed age or mileage criteria or both, and by the end of Fiscal Year 1980, the level will rise to 45%. Many specialized vehicles are in worse shape: 50% of the snow plow flight line fleet has reached or exceeds ten years of age; 60% of the 45 Pax Buses used to rotate security forces to and from the missile fields exceed ten years.

Vehicle Maintenance: The vehicle fleet is the largest in the entire SAC Command, but repair facilities are spread over 4 different buildings separated by 2 miles. This set-up is inefficient.

Weapons Maintenance: The helicopter landing pads at each of the 15 missile launch control facilities are crumbling; the foundation rock is being blown away by helicopter air pressure. In addition, a number of missile access roads are too narrow for safe turning by the missile transfer erectors.

Road Repair: Road upkeep is being defeated by the South Dakota winters, leaving roads with large potholes and crumbling asphalt.

Energy Efficiency: New siding and insulation are needed in the Korean-era dorms and dining halls, in administrative and finance offices, in the vehicle maintenance areas and in many other locations at the base.

Base Engineering: Engineering facilities are spread out over 8 buildings, including converted old dining halls dating back to the 1950's. The Combat Support Group operates out of 6 buildings. Centralized management, cost-savings and office efficiencies become more difficult.

Living Conditions: Approximately 5,000 military dependents live at Ellsworth; they deserve a modern base exchange facility, adequate recreation opportunities, and decent commissary parking.

This backlog of repair projects and military construction projects at Ellsworth exists because the legitimate funding needs of the base have not been met. The Operations and Maintenance funds for these projects have been squeezed by budget pressures, inflation and energy costs at both the national and local level.

At the national level, readiness funds for base repair and for weapons overhauls have been shortchanged in favor of new procurement and gold-plated weapon systems. Operations and Maintenance funds are now being increased, but one of the legacies of years of neglect is a backlog of maintenance and repair projects in the Air Force of $500 million by the end of the current fiscal year. At Ellsworth, the backlog is $7.5 million.

Mr. Chairman, I recently wrote an article for the New York Times on the military budget which attempts to put the readiness problem in a larger foreign policy context. I am attaching a copy of the article for insertion at the end of my prepared remarks.

At the base or local level, repair funds get the short end of the stick. As you know, the Air Force divides up the O&M funds appropriated by Congress among the different commands. The Strategic Air Command allots its funds to the 26 bases under its authority, including Ellsworth.

The funds allocated to Ellsworth are used to pay for utilities, civilian pay, basic supplies and the contracts to perform the repair projects under the real property account.

This is where the squeeze on funds occurs. The Wing Commander at Ellsworth may start off the year by budgeting a share of the funds for a new roof on Hangar No. 10. But then utility costs go up and he must transfer money from the repair budget to pay for utilities and so he ends up postponing the roof repair—or the paint job or road repair or any of a dozen worthy projects—for another year.

Or take another example. At Ellsworth I was shown deep cracks in the asphalt aprons which were caused by wheel ruts made in summer and the freezing and thawing cycle in winter. Since hunks of asphalt can be sucked up into the jet engines and destroy them, the commander will use his limited repair funds to fix the runway instead of repairing that hangar roof.

This pattern repeats itself year after year. Soon that hangar roof can no longer just be repaired—it must be replaced at a high cost to the taxpayers. And in the meantime, that hangar has been wasting energy and the mechanics have been working in substandard conditions.

I have been using the hangar roof as an example, but the lesson applies to road repair, paint jobs for the dorms and to projects across the board. Deteriorating facilities which are not repaired in time must be replaced—at greater costs and with greater waste in the interim.

Over the years, Mr. Chairman, the Strategic Air Command has provided Ellsworth with approximately 80% of its validated repair requirements, although in certain years the figure has been even lower. This means that 20% of the facilities at the base have been eroding. This is unacceptable to me, to the managers and officers of Ellsworth, to the enlisted men and women and to their dependents.

Additional funds are needed to maintain the base property at Ellsworth. Budget increases in operations and maintenance will not only improve performance at the base and increase retention—but higher funding now will save tax dollars in the long run because pressure on the military construction budget will be reduced and energy efficiency will be advanced.

I recommend that this Committee add an additional $7.5 million to fund the backlog of maintenance and repair projects at Ellsworth. If this is not feasible, then at a minimum, I urge that this Committee budget an additional $1.5 million for O&M repairs at Ellsworth to bring the total FY 81 funding up to $3 million. This is the level the Ellsworth managers told me is required to enable them to halt the erosion in base facilities and to permit the base authorities to hold the line on everyday maintenance projects.

In other words, an additional $1.5 million is required just to keep the backlog of maintenance and repair from growing even longer and to help Ellsworth start to reduce the backlog year by year.

This small extra investment will more than pay for itself over the long term in terms of improved retention, reduced energy costs, better productivity and extended use of existing structures.

These additional funds, in my view, should be used on a priority basis for "people programs" at the base—to improve the dormitories, dining halls and other facilities which are essential to a decent and dignified life for the military and civilian personnel at Ellsworth.

No one quarrels with the fact that weapons operation must get first priority. The Air Force is providing for sufficient funds for weapons operations, including the on-going Air-Launched Cruise Missile conversion program at Ellsworth. But it is time to stop the neglect of our military people at our military bases.●

USDA'S REGULATIONS ON MECHANICALLY DEBONED MEAT

● Mr. HAYAKAWA. Mr. President, we are at a point in time where a major consideration in our country is the survival of private industry. Most Members of the U.S. Senate want to see the businesses in their States and across this Nation survive. This goal is not simple to achieve. We face high inflation, high taxes, and a welfare system that discourages people from going back to work.

In the face of all these negative factors, bureaucrats in our Federal agencies continue to promulgate unnecessary regulations that restrict industry, and raise the cost of products for the consumer in the long run. The U.S. Department of Agriculture is guilty of such insensitive behavior by issuing very controversial regulations governing mechanically deboned meat.

I was shocked while reviewing a report conducted by the Massachusetts Institute of Technology Center for Policy Alternatives Study for the Senate Governmental Affairs Committee entitled "Benefits of Environmental, Health, and Safety Regulation" (March 25, 1980). It contains a glaring misstatement and inaccuracy on page 30 with respect to mechanically deboned meat (MDM). MDM is obtained by separating particles of meat that cling to bone after being hand trimmed. Special machines grind parts of the carcass and separate out a finely strained meat product containing a small amount of fine bone powder. This product has had a controversial history and the Department of Agriculture published a final regulation regarding its use in 1978. On page 30, the report states that the regulation—

Will promote efficient utilization of the total carcass. Industrial efficiency and productivity will be enhanced; and the supply of high protein beef and pork products will increase in both domestic and world markets . . .

Far from promoting efficient utilization of this safe, nutritious, high protein source, the Food Safety and Quality Service (FSQS) regulation stopped its production, thus making it unavailable to consumers.

The Government regulation requires a prominent label on each package, in letters at least half as large as the product name, to state: "with mechanically processed meat product"; and, in smaller letters underneath: "contains — percent powdered bone." The regulation also limits the use of MDM to 20 percent or less of the meat in a processed product. Meanwhile, there are no special labeling requirements for mechanically deboned poultry or fish.

Due to this inequitable, burdensome, and unappetizing labeling requirement, this product is not being produced domestically today, rather than benefiting consumers, the regulation is having the opposite effect. Consider the following:

First. The total carcass is not being utilized. We lose 12 to 16 lbs. of each beef carcass, 3 to 4 lbs. of each pork carcass—a wasteful production practice in these inflationary times.

Second. The domestic supply of high protein beef and pork has not been increased. Yet, worldwide production is increasing. The product is now marketed in 29 countries under a nondiscriminatory label, and consumer acceptance is growing.

Third. The safety, wholesomeness, and nutritional integrity of these red meat products has been assured and reaffirmed by two Government scientific panels. However, the improper labeling requirements have stopped the production, marketing, and purchase of these products in the United States.

Fourth. Poultry and fish products consisting of 100 percent mechanically deboned ingredients as the meat component continue to be marketed with no special labeling. Consumers are buying and eating these safe, nutritious, and less costly products.

Fifth. While processors are now permitted to resume production of MDM, none have. Market and consumer research clearly shows that products bearing the stringent label are not as acceptable to the consumer. It makes no economic sense to produce a product that is difficult to market simply because the required label makes the product appear to be unappetizing. In many cases, the idle machines previously used to mechanically debone meat have been sold at a loss to processors in other countries.

Several requests have been made to FSQS for labeling relief, but so far the inequitable labeling system remains in place. In summary, the FSQS regulation has not resulted in benefits to consumers. On the contrary, at least 600 million pounds of meat is being lost to consumers each year.

Why must a specific ingredient be singled out for boldfaced labeling? The facts speak for themselves. The USDA continues to play an adversary role toward industry, in this case the meat packing industry.●

COAL SEVERANCE TAX—JUDICIAL OPINION

● Mr. BAUCUS. Mr. President, on July 17, the Montana Supreme Court issued its opinion on the challenge to Montana's coal severance tax brought by a consortium of coal-burning utilities and coal producers. In a unanimous decision, the court upheld the constitutional validity of Montana's tax.

I have read the court's opinion and find it extremely compelling. The court's opinion is well-reasoned and well-documented.

The plaintiffs centered their challenge on the commerce clause of the U.S. Constitution. The plaintiffs contended that Montana's tax violates the interstate commerce clause because it taxes coal which may eventually enter interstate commerce and add to the price of consumer services elsewhere. Although the plaintiffs conceded that the State can levy some tax, they objected to the rate of Montana's tax.

The Montana Court's opinion in responding to this contention of the plaintiffs should be of vital interest to all of my colleagues concerned about Federal-State relationships. Historically, as the Montana opinion noted, the U.S. Supreme Court has upheld the judicial sanction of State taxation on production, extraction, and manufacturing. The importance, moreover, of these reserved rights of taxation to the States cannot be overstated. For, as the Montana Court stated, "if the rate of tax on a local activity . . . can be found to violate the commerce clause, then certainly the amount of tax raised by a State on a local activity" can also be found to be a violation. "Were we or the U.S. Supreme Court to reach that result, then we should see, in the words of the old spiritual that 'the walls came a-tumblin' down.'"

In short, a decision by any court or an enactment by Congress in support of the plaintiffs contentions would raise unprecedented havoc with Federal-State relations. Whatever the intentions of those who attack Montana's right to levy coal severance taxes—whether in the courts or in the Congress—the successful outcome of their efforts would be absolutely devastating and far-reaching.

Mr. President, I urge my colleagues to study the opinion of the Montana Supreme Court in this very important matter, and I request that the opinion be printed in the RECORD.

The opinion of the Montana Supreme Court in the case of Commonwealth Edison Company, et. al., vs. State of Montana et. al., follows:

[In the Supreme Court of the State of Montana]

COMMONWEALTH EDISON COMPANY ET AL., PLAINTIFFS AND APPELLANTS, VS. STATE OF MONTANA ET AL., DEFENDANTS AND RESPONDENTS, AND LAKE SUPERIOR DISTRICT POWER COMPANY ET AL., PLAINTIFFS AND APPELLANTS, VS. STATE OF MONTANA ET AL., DEFENDANTS AND RESPONDENTS

Appeal from: District Court of the First Judicial District Hon. Peter G. Meloy, District Court Judge.

Counsel of Record:

For Appellants: Hooks and Budewitz, Townsend, Montana; John Carl argued, Butte, Montana; Rogers and Wells, New York, N.Y.; William P. Rogers argued and William R. Glendon argued, New York, N.Y.

For Amicus Curiae: Garrity, Keegan and Brown, Helena, Montana. Hon. Mark White argued, Attorney General, Austin, Texas.

For Respondents: Hon. Mike Greely, Attorney General, argued, Helena, Montana, Mike McGrath argued, Assistant Attorney General and Mike McCarter argued, Assistant Attorney General, Helena, Montana, Cannon and Gillespie, Helena, Montana, Ross Cannon argued, Helena, Montana.

For Amicus Curiae: Leo F. J. Wilking argued, Special Assistant Attorney General for State Tax Commissioner, Bismark, North Dakota.

Mr. Justice John C. Sheehy delivered the Opinion of the Court.

This is an appeal from a judgment of the District Court, First Judicial District, Lewis and Clark County Montana, the Hon. Peter G. Meloy presiding, upholding the validity of Montana's coal severance tax.

Plaintiffs sought a declaratory judgment from the District Court that the tax unconstitutionally burdens interstate commerce, and unconstitutionally frustrates federal policy. Commonwealth Edison Company and its coplaintiffs brought one action for this purpose, and Lake Superior District Power Company and its coplaintiffs brought a second action. Because the issues are the same, the actions were consolidated.

The District Court granted defendants' motions to dismiss the complaints before trial, finding as a matter of law that they did not state claims upon which relief could be granted. Judgment was entered in each case in favor of the defendants and the plaintiffs appealed.

Since each case comes to us on appeal from a judgment of dismissal, we accept the facts which are well-pleaded in the complaints as true. This was the rule before we adopted the Montana Rules of Civil Procedure, Heisler v. Severy (1945), 117 Mont. 105 111, 158 P. 2d 501, 503, and is the rule now. However, conclusions of law in the pleadings need not be accepted by this Court as binding under a judgment on a motion to dismiss. Allegations of conclusions of law present no issuable facts. Waite v. Standard Accident Insurance Co. (1957), 132 Mont. 220, 315 P.2d 984. If therefore factual issues exist which should have been considered by the District Court prior to granting judgment the judgment must be reversed. Conversely, if as a matter of law, under any view of the alleged facts, plaintiffs cannot prevail, affirmance of the District Court is commanded.

We have fully considered the contentions of plaintiffs on their appeal; we have examined the pleadings, and the grounds of the motion to dismiss; we have looked at the admitted factual matters which plaintiffs allege would invalidate the tax; and we have concluded from the whole record that the Montana Coal Severance Tax in its present form is a lawful exercise of Montana's taxing authority under our State and Federal Constitutions. Accordingly, we affirm the District Court.

Three issues were raised by plaintiffs for our review:

1. Is the coal severance tax impermissible under the Commerce Clause of the United States Constitution?

2. Is the coal severance tax impermissible under the Supremacy Clause of the United States Constitution as frustrating national policies and statutes?

3. Is the coal severance tax impermissible under the Supremacy Clause of the United States Constitution as frustrating national policies contained in the Mineral Lands Leasing Act of 1920?

THE TAX AND ITS HISTORY

In 1975 and 1977, the Montana Legislature amended its coal severance tax schedules, section 84-1314, R.C.M. 1947, now section 15-35-103, MCA. It now contains these provisions:

"15-35-103. *Severance tax—rates imposed—exemptions.* (1) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

"Heating quality (Btu per pound of coal):	Surface mining	Underground mining
"Under 7,000	12 cents or 20% of value	5 cents or 3% of value.
"7,000-8,000	22 cents or 30% of value	3 cents or 4% of value.
"3,000-9,000	34 cents or 30% of value	10 cents or 4% of value.
"Over 9,000	40 cents or 30% of value	12 cents or 4% of value.

"'Value' means the contract sales price.

"(2) The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule.

"(3) A person is not liable for any severance tax upon 20,000 tons of the coal he produces in a calendar year."

No issue is raised here that there is an unconstitutional difference between the rate of taxes charged for strip-mining of coal and for underground mining of coal.

Prior to 1975, the Montana tax on strip-mined coal ranged from twelve to fourteen cents a ton, depending on BTU content. The 1975 amendment was a response to the meteoric increase in strip-mined coal entrepreneurs in the state in the 1970's. From the 1940's until the mid-1960's activity in coal strip-mining as well as in underground coal mining remained fairly dormant in the state. The increase in gross tonnage produced since 1971 from strip-mining is demonstrated by the following figures taken from the records of the Montana Department of Revenue, of which we have taken judicial notice:

One year	*Gross tons*
1971	6,983,186
1972	8,224,118
1973	10,678,058
1974	14,116,625
1975	22,160,236
1976	26,347,923
1977	27,340,905
1978	26,516,481
1979	32,545,071

In the general election of 1976 the Montana voters amended their state constitution by adding a new Section 5 to Article IX, 1972 Montana Constitution. In essence the constitutional addition provides that from and after December 31, 1979, at least fifty percent of the severance tax collected shall be dedicated to a trust fund, the principal of which is to remain inviolate unless appropriated by a vote of three-fourths of the members of each house of the legislature.

This Court notes in passing our impression that the 1975 coal severance tax provisions, and the 1976 constitutional amendment, were in part responses to the historical experience of Montana with respect to the inadequacy of earlier forms of taxes on mineral production. In 1965, the Hon. James Felt rose in the State House of Representatives to complain that the richest hill on earth (Butte) had paid not a dime in net proceeds tax the previous year. Some modifications in computation agreed to by the mining company ameliorated that condition in subsequent years. Nevertheless, Montana's experience had shown that its mineral wealth could be exhausted and exported with little left in Montana to make up the loss of its irreplaceable resources. Montana has been painfully educated about the extreme economic jolts that follow when the mine runs out, the oil depletes, or the timber saws come still. We have a good many examples that teach us what happens to our hills when the riches of our Treasure State are spent. For these and other reasons, when strip coal mining was beginning to burgeon, in 1975, the legislature moved to fix a tax that would provide both for the present and the future when the coal deposits were gone.

Since the commencement of the instant actions, the plaintiffs have paid their coal severance taxes under protest. Were the coal severance tax found to be invalid, presently some $87,000,000 and accrued interest in protested taxes should have to be returned by the State to the taxpaying producers, we were informed in oral argument.

EFFECT OF THE COMMERCE CLAUSE

Before we discuss the commerce clause contentions, we look at the relationship of the various plaintiffs to the coal tax which is being attacked. The true taxpayers before us in this case are the *producers* of the coal. The Montana coal severance tax is levied at the time the coal is separated by the producer from the realty in Montana, and at its value when sold by the producer in Montana. Section 15-35-103, MCA. Thus in this case, only the coal producing plaintiffs are actually paying taxes, they being Decker Coal Company, Peabody Coal Company, Westmoreland Resources, Inc., and Western Energy Company. The remaining plaintiffs are utilities to whom the producers, by contract or indirectly, may have passed on the coal severance tax as a part of the price of Montana coal. To contend that the utility plaintiffs are the true plaintiffs because by contract or indirectly they have assumed the coal severance taxes would seem also to argue that the coal producers have no real issue at stake here. Nevertheless the coal producers have the only vital stake in this case because they and not the utility companies are in fact the taxpayers. It is the producers to whom the protested taxes would be returned should the tax be found unlawful. In deciding this case therefore, we look to the status in Montana of the producing taxpayers to determine whether the coal, at the time it is severed by the producers, is subject to the present Montana state taxation.

The United States Constitution provides in Article I, Section 8, that Congress shall have the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

The principal contention of the plaintiffs in this case is that the holdings of the United States Supreme Court in *Heisler, Oliver Iron Co.*, and *Hope Gas Co., infra*, no longer have any force. The plaintiffs do not allow that Montana can tax a purely local event such as the severance of coal from a seam or deposit. They insist that the commerce clause reaches even into the very severance of the coal, and that the only issue for the District Court to have decided here was whether the coal severance tax had impact enough to hamper or obstruct interstate commerce. The plaintiffs concede that the state can levy some tax, perhaps twelve and a half to fifteen percent of the value of the coal. Therefore, by inference, the plaintiffs contend that at some point not specified, between fifteen to thirty percent of the value of the coal, Montana's coal severance tax butts into the lintel of federal impermissibility.

In essence, the plaintiffs' argument under the commerce clause reduces to this: Montana has no inherent right to tax the intrastate severance of coal which may eventually enter interstate commerce except by federal sufferance; such sufferance ceases when the tax can be construed to hamper or obstruct commerce between the states.

The law on state taxation of production of goods, it seems to us, has been settled by the United States Supreme Court since the 1920's. Leading cases on manufacturing (American Mfg. Co. v. St. Louis (1919), 250 U.S. 459, 39 S. Ct. 522, 63 L.Ed. 1084); producing (Hope Gas Co. v. Hall (1927), 274 U.S. 284, 47 S.Ct. 639, 71 L.Ed. 1049); and extracting (Oliver Iron Co. v. Lord (1923), 262 U.S. 172, 43 S.Ct. 526, 67 L.Ed. 929); Heisler v. Thomas Colliery Co. (1922), 260 U.S. 245, 43 S.Ct. 83, 67 L.Ed. 237); established a common theme: production of personal property within a state is a local activity which precedes the entry of the property into interstate commerce, and is therefore subject to state regulation and taxation.

Yet we have found no United States Supreme Court case, and none has been cited to us, which implicitly or directly overthrows the rule that the several states have the reserved power to tax intrastate manufacturing, extraction, and production of goods. It is true that some cases have used language which *seems* to assail this reserved power. Notwithstanding, it must be concluded after an analysis of the cases bearing on the subject that the United States Supreme Court continues to recognize the taxing power of the states in these intrastate fields.

The plaintiffs' attack against the coal severance tax under the commerce clause is based upon the premise that the United States Supreme Court has moved away from its holdings in *Hope Gas Co., Oliver Iron Co.*, and *Heisler*, supra. The cases on which plaintiffs rely for this contention may be summarized as follows:

(1) Labor Board v. Jones & Laughlin (1937), 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893, upholding the NLRA against a constitutional attack; Wickard v. Filburn (1942), 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122, upholding a federal program of acreage allotments for wheat production; Parker v. Brown (1943), 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315, which upheld a California state statute that fixed prices and restricted sales of raisins grown in California but which contains language seeming to reject the mechanical test of *Heisler*; Freeman v. Hewitt (1946), 329 U.S. 249, 67 S.Ct. 274, 91 L.Ed. 265, holding unconstitutional the application of an Indiana gross income tax act to the sales of securities by brokers in New York; the securities being assets of an Indiana estate, and indcidentally, applying the commerce clause to intangibles as well as to tangibles; Nippert v. Richmond (1946), 327 U.S. 416, 66 S.Ct. 586, 90 L.Ed. 760, striking down a municipal tax on solicitors in Richmond, Virginia; Pike v. Bruce Church, Inc. (1970), 397 U.S. 137, 90 S.Ct. 844, 25 L.Ed.2d 174, striking down an Arizona state regulation concerning the packing of cantaloupes grown in Arizona; Hunt v. Washington Apple Advertising Comm'n. (1977), 432 U.S. 333, 97 S.Ct. 2434, 53 L.Ed.2d 383, striking down a North Carolina statute which prescribed the labeling of containers in which apples were to be sold in that state; A. & P. Tea Co. v. Cottrell (1976), 424 U.S. 366, 96 S.Ct. 923, 47 L.Ed.2d 55, holding unconstitutional the application of a Mississippi regulation that milk and milk products could be sold in Mississippi from another state only if the other state had reciprocal provisions for Mississippi milk, where a Louisiana producer was refused a permit from Mississippi; Complete Auto Transit, Inc. v. Brady (1977), 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, reh.den. 430 U.S. 976, which we will discuss more in detail hereafter; Washington Rev. Dept. v. Stevedoring Assn. (1978) 435 U.S. 734, 98 S.Ct. 1388, 55 L.Ed.2d 682, also discussed hereafter.

Plaintiffs have cited a number of other cases, but their full recitation here would only be cumulative.

The District Court, in ruling on the motions to dismiss, determined that the cases relied on by the plaintiffs from the United

States Supreme Court fell into four categories, which we here set forth together with some examples:

(1) When Congress has asserted its regulatory powers under congressional acts. Labor Board v. Jones & Laughlin, supra; Parker v. Brown, supra.

(2) When the State engages in regulatory activity of interstate commerce. Pike v. Bruce Church, Inc., supra; A. & P. Tea Co. v. Cottrell, supra.

(3) When the state imposes a tax on interstate commerce activity. Nippert v. Richmond, supra; Complete Auto Transit, Inc. v. Brady, supra.

(4) When the state imposes a tax on an activity which is not in commerce. Heisler v. Thomas Colliery Co., supra; Alaska v. Arctic Maid (1961), 366 U.S. 199, 81 S.Ct. 929, 6 L.Ed. 227.

The District Court determined that the coal severance tax in issue here fell into the fourth category. The District Court further found that the cases in the fourth category involved a local incident subject to the state's reserved power of taxation on goods which preceded their entry into interstate commerce. We agree.

It is fair judicial policy for us not to regard as controlling here dicta found in cases in which the United States Supreme Court has upheld the regulatory powers of Congress under the commerce acts. See, for example of dicta, Labor Board v. Jones & Laughlin, supra; Parker v. Brown, supra.

It is likewise fair judicial policy for us not to feel bound here by dicta found in cases involving states which have engaged in regulation of interstate commerce. Again, see Pike v. Bruce Church, Inc., supra; Philadelphia v. New Jersey (1978), 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475. Nor do we feel bound or controlled by dicta found in cases decided by the United States Supreme Court involving states or municipalities which have imposed a tax on an interstate commerce activity. For example, Nippert v. Richmond, supra; Complete Auto Transit, Inc. v. Brady, supra. We rely instead on those cases where the United States Supreme Court has directly upheld state taxation of production, extraction or manufacturing.

While the plaintiffs have contended that the trend of the United States Supreme Court decisions has been to move away from the holdings in *Heisler, Oliver Iron Co.*, and *Hope Gas Co.*, supra, we do not find that contention supported in cases involving state taxes. Indeed, if we can read the trend of the decisions, it has been the policy of the Supreme Court to open up and to allow, not to *prevent*, state taxation of *interstate commerce transactions*. What has occurred in those decisions is that the Supreme Court has moved away over the course of years from the "immunity per se" rule which prevented state taxation of interstate commerce. LeLoupe v. Port of Mobile (1887), 127 U.S. 640, 8 S.Ct. 1380, 32 L.Ed. 311, to a rule of accommodation which recognizes that interstate commerce, in utilizing the services and protections of a state is required to "pay its way". See Western Live Stock v. Bureau (1938), 303 U.S. 250, 58 S.Ct. 546, 82 L.Ed. 823. For this reason the Supreme Court has upheld state taxation which intrudes upon interstate commerce but where there exist local incidents which justify state taxation nevertheless. General Motors v. Washington (1964), 377 U.S. 436, 84 S.Ct. 1564, 12 L.Ed. 2d 430; Norton Co. v. Dept. of Revenue (1951), 340 U.S. 534, 71 S.Ct. 377, 95 L.Ed. 517. Local incidents which are severable from interstate commerce but occur within a state, such that multiple taxation by other states on the same activity is not a threat, provide a basis which has brought about the standards announced by the Supreme Court in Complete Auto Transit, Inc. v. Brady, supra, to find constitutional permissibility for state taxes *on interstate commerce*.

A most recent case demonstrating the tendency of the United States Supreme Court to encourage and allow state taxation of interstate commerce can be found in Exxon Corps. v. Wisconsin Dept. of Revenue (1980), ——— U.S. ———, 100 S.Ct. 2109, ——— L.Ed. 2d ———. Exxon had filed income tax returns in Wisconsin using a geographical system of accounting which reflected only its Wisconsin marketing operations and which showed a loss for each year, resulting in no taxes being due. Exxon kept its accounts in three major functional departments: exploration, refining, and marketing. Transfers of products and supplies among the three functional departments were theoretically based on competitive prices. Exxon had no exploration, production or refining operations in Wisconsin in the taxable years in question. Only marketing in Wisconsin was carried on by Exxon. Nonetheless, Wisconsin treated Exxon as a unit, and apportioned its income in such manner that a tax was produced, for which Wisconsin made demand upon Exxon. The United States Supreme Court held that Wisconsin was not prevented from applying its statutory apportionment formula to appellants total income under the due process clause of the Fourteenth Amendment. It held that the unitary business principle was a proper basis for apportioning state income tax upon an interstate enterprise when its income can be reasonably related to the activities of the corporation within the taxing state. The Wisconsin tax was held valid even though its statutory apportionment formula indirectly taxed income derived from extraction or refinement of oil and gas located outside the state. The Supreme Court found nexus, proper apportionment, and a rational relationship between the income attributed to the state and the interstate values of the enterprise. (Compare Mont. Dept. of Rev. v. Am. Smelting & Refining (1977), 173 Mont. 316, 567 P.2d 901.)

Mobile Oil Corp. v. Com'r. of Taxes of Vermont (1980), ——— U.S. ———, 100 S.Ct. 1223, 63 L.Ed. 510, likewise approved such apportionment, finding a nexus is established if the corporation avails itself of the substantial privilege of carrying on business within the state.

These recent cases buttress our statement that plaintiffs have misread the trend of the United States Supreme Court cases. That trend lies in the direction of allowing states to tax products in interstate commerce, once a nexus with the taxing state is established.

The intent and portent of the United States Supreme Court in these cases is not to overturn the holdings of *Heisler, Oliver Iron Co.*, and *Hope Gas Co.*, supra. Indeed the Court has consistently recognized the vitality of those holdings on production and extraction. In Freeman v. Hewit, supra, Justice Frankfurter expressed the distinction between permisible and prohibited taxes as follows:

". . . a seller State has various means of obtaining legitimate contribution to the cost of its government, without imposing a direct tax on interstate sales. While these permitted taxes may in an ultimate sense come out of interstate commerce, they are not, as would be a tax on gross receipts, a direct imposition on that very freedom of commercial flow which for more than 150 years has been the ward of the commerce clause." 329 U.S. at 256, 67 S.Ct. at 278, 91 L.Ed. 274.

In like manner, state taxation of manufacturing within a state has also been upheld, though manufacturing of goods destined for commerce may be thought to present a weaker case than the production or extraction of goods. Adams Mfg. Co. v. Storen (1938), 304 U.S. 307, 58 S.Ct. 913, 82 L.Ed. 1365.

The intent of the United States Supreme Court to preserve these fields for state taxation as preliminary to interstate commerce and within the reserved taxing powers of the states is manifest. In Alaska v. Arctic Maid, supra, for example, the court found that Alaska's taxing of the gathering and freezing of fish taken from Alaska's territorial waters by ships was a "preliminary local business", to be compared with *Oliver Iron Co.*, supra, as its "first cousin"; this, even though the ships eventually took their frozen cargo directly from the seas to the State of Washington for canning. From that evident intent of the Supreme Court, we find this portent: there is no indication by the United States Supreme Court that its historical judicial sanction of state taxation on production, extraction and manufacturing is in jeopardy.

Indeed, the very inference of such a threat in a Supreme Court opinion would have raised such a clamor that the case would be a benchmark. We find none, and can only conclude that the Supreme Court will be as consistent in this area in the future as it has been in the past.

See Federal Compress Co. v. McLean (1934), 291 U.S. 17, 54 S.Ct. 267, 78 L.Ed. 622; and Chassaniol v. Greenwood (1934), 291 U.S. 584, 54 S.Ct. 541, 78 L.Ed. 1004; referred to with approval in Pike v. Bruce Church, Inc., supra. Also Caskey Baking Co. v. Virginia (1941), 313 U.S. 117, 61 S.Ct. 881, 85 L.Ed. 1223.

The importance of these reserved fields of taxation to the states cannot be overstated. The State of Texas, whose attorney general appears before us as amicus opposing Montana's tax, will realize $980 million in oil and gas production taxes this year. The State of Alaska has sufficient revenues from the severance of oil and gas within its borders that its 1980 legislature, before its recent adjournment, provided $900 million in an inviolate trust, not unlike Montana's, from those revenues. Such examples of local taxes could be added to almost state by state. No more important case on the power of states to levy taxes can be imagined than is presented here. For if the *rate of tax* on a local activity, as here, can be found to violate the commerce clause, then certainly the *amount of tax* raised by a state on a local activity is in the same jeopardy. Were we or the United States Supreme Court to reach that result, then we should see, in the words of the old spiritual that "the walls came a-tumblin' down."

Plaintiffs' attack here is another in a series that seeks to assail and overturn the recognized power of states in these regards. In Bel Oil Corporation v. Roland (1962), 242 La. 498, 137 So. 2d 308, appeal dismissed 371 U.S. 2, the state court upheld the validity of a severance tax on the extraction of natural gas in Louisiana. In Industrial Uranium Co. v. State Tax Commission (1963), 95 Ariz. 130, 387 P.2d 1013, an Arizona privilege tax on mining was upheld. In Post Oak Oil Company v. Oklahoma Tax Com'n. (Okla. 1978), 575 P.2d 964, a state excise tax on the severance of natural gas in Oklahoma withstood a commerce clause attack. All of these courts relied, as we do, on the continued adherence by the United States Supreme Court to its steady course of sanction in these fields.

On the basis that the severance of coal here is a taxable event that precedes entry into interstate commerce, we rule without hesitation that plaintiffs cannot prevail on their claims under count I of their complaints, because Montana's coal severance tax does not violate the commerce clause. The severance of coal by mining is not an interstate activity.

In oral argument, the plaintiffs asked us to give them a straight up-and-down decision on whether the coal severance tax was governed by the commerce clause. We have done that in the foregoing paragraphs. However, we feel compelled to remark that even

if the commerce clause in this case obtained, plaintiffs could not have prevailed and the motion dismissing the complaints would have been properly granted in any event.

In making their commerce clause argument, the plaintiffs have contended that we were bound to apply the tests set forth in *Complete Auto Transit, Inc.*, supra. In that case, the United States Supreme Court considered the constitutionality of a Mississippi tax on the "privilege of doing business in that state". The earlier case of Spector Motor Service v. O'Connor (1951), 340 U.S. 602, 71 S.Ct. 508, 95 L.Ed. 573, had adopted a formalistic test to the effect that taxes on the "privilege" of doing interstate business violated the commerce clause. The United States Supreme Court in *Complete Auto Transit, Inc.* overruled *Spector* stating that state taxes affecting interstate commerce must be viewed as to their practical effect and must be examined in light of a four-pronged test of that practical effect:

(1) Whether the tax is applied to an activity with a substantial nexus with the taxing state,

(2) Whether it is fairly apportioned,

(3) Whether the tax does not discriminate against interstate commerce and,

(4) Whether the tax is fairly related to the services provided by the state. 430 U.S. at 277–8, 97 S.Ct. at 1078, 51 L.Ed.2d at 330.

Washington Rev. Dept. v. Stevedoring Assn., supra, upheld this four-pronged test and further recognized that a state had a significant interest in exacting *from interstate commerce* its fair share of the cost of state government. 435 U.S. at 748, 98 S.Ct. at 1398, 55 L.Ed.2d at 695.

Complete Auto Transit, Inc. is a good example of our earlier assertion that the United States Supreme Court, instead of intrudng upon the reserved fields of taxation allowed the state on local activities, has been moving toward a permissive or accommodating position allowing state taxation of interstate commerce under certain conditions.

Applying the *Complete Auto Transit, Inc.* four-pronged test, for the sake of argument, to the case at bar, plaintiffs could not prevail as a matter of law. Surely there can be no argument here that a substantial, in fact, the only nexus of the severance of coal is established in Montana. There can be no discussion of apportionment, because the severance can occur in no other state. There is no danger of multiple taxation, for no other state can tax the severance. See, *Chassaniol*, supra; compare, Mich.-Wis. Pipeline Co. v. Calvert (1954), 347 U.S. 157, 74 S.Ct. 396, 98 L.Ed 583.

There would remain, if *Complete Auto Transit, Inc.* applied, only the fourth test, whether the tax is fairly related to the services provided by the state.

The taxpayers here, the coal producers, have the right to and the availability of all the governmental comforts and protection which this state provides. Since the United States Supreme Court is tending toward the position that interstate commerce must pay its way in the respective states affected thereby it is with logic of great force that Montana can require strip-coal mining to assume its just share for the cost of the state government that it enjoys, and for the governmental cost that has occurred, is now occurring, and will in the future occur as the direct result of such strip-coal mining. Here Montana meets the test set out in *General Motors* v. *Washington*, supra, 377 U.S. at 441, 84 S.Ct. at 1568, 12 L.Ed.2d at 435:

"For our purposes the decisive issue turns on the operating incidents of the tax. In other words, the question is whether the State has exerted its power in proper proportion to appellant's activities within the state and to appellant's consequent enjoyment of the opportunities and protections which the State has afforded . . ."

It is impossible for any court to foot up the dollar cost of the governmental benefits received and to be received by the taxpayers here. Aptly the state points out the heart of plaintiffs' complaint is the *rate* of the tax. The state further contends that no United States Supreme Court opinion invalidating a state levy has turned on the rate of a tax. No summation of the cost of government benefits has ever been required by any court in determining the validity of a rate of levy in a general excise, property or income tax imposed by a state. It is said:

"A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. . . . Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the public good." Carmichael v. Southern Coal Co. (1937), 301 U.S. 495, 522–523, 57 S.Ct. 868, 878–879, 81 L. Ed. 1245, 1260–1261.

The rate of a tax is a determinaton for the legislature to make, not a court. Montana's legislature has determined that its coal severance tax is fairly related to the governmental services Montana provides, and to the benefits of a trained work force and the advantages of a civilized society. See, Japan Line, Ltd. v. County of Los Angeles (1979), 441 U.S. 434, 99 S. Ct. 1813, 60 L.Ed.2d 336; Washington Rev. Dept. 1. Stevedoring Assn., supra. We are not talking here about "user" charges or like fees imposed for the use of state facilities where the charge for the service must bear some fair relation to the service or property provided for use. Such "user" charges are capable of being determined. See Evansville Airport v. Delta Airlines (1972), 405 U.S. 707, 92 S.Ct. 1349, 31 L.Ed.2d 620. Taxes as here imposed for general support of the government are fairly related to that purpose by the mere fact that a government is thereby maintained. It is only when the taxpayer has an insufficient nexus to the taxing state, or the tax is disproportionate to the incidents of commerce being taxed, that the fair-relation test applies. See, e.g. National Bellas Hess, Inc. v. Dept. of Revenue (1967), 386 U.S. 753, 756, 758, 87 S.Ct. 1389, 18 L.Ed.2d 505.

Complete Auto Transit, Inc., is intended to apply to situations where a state or local taxing authority adopts a tax that intrudes upon, hampers or obstructs in some fashion interstate commerce. It has no application in this case to the intrastate severance of coal by mining. But even if *Complete Auto Transit, Inc.* applied, as we have shown, plaintiffs could not prevail here as a matter of law.

We note that a tax of thirty percent of the coal's value at the time of its severance is not any indication of the impact of the severance tax as to the cost of coal at its final destination, in-state or out-of-state. The attorney general of Texas, appearing here as amicus, informed us in oral argument that Montana coal destined for Texas is now purchased at $7 per ton at the mine, resulting in a severance tax in Montana of $2.10 per ton; however, the coal at destination in Texas costs $30 per ton. Most of the added price comes from the cost of transportation of the coal to Texas, which costs, the attorney general informed us, have incerased from $8 per ton to $20 per ton in a short time. Demonstrably therefore, as to Texas, the interstate impact of the Montana coal severance tax is no gerater than that of federal and state taxes on gasoline at the pump (before the recent price increases) or the state and city sales taxes on goods and services found in most localities. On the same tack, when we consider the customers of the utilities who are appearing in this case, it is obvious without argument or proof that coal costs are only a portion of total generating costs of electricity. Although plaintiffs have contended that Montana's coal tax is passed on to the utility consumers, it must be admitted that this is because of the particular terms of the coal contracts of purchase entered into by the utility-plaintiffs. It would be strange indeed if the legality of a tax could be made to depend on the vagaries of the terms of contracts. We do not assume that in the broad picture all of the Montana coal tax is passed on to consumers because Montana does not have a monopoly in the production of coal. Montana coal must compete in the market with coal produced in Wyoming, North Dakota, and other sources of supply. Under those circumstances, economic factors will determine whether the producers will shoulder all or part of the tax, or pass it on in the form of increased prices.

The argument therefore that Montana is "exporting its coal tax" to out-of-state users has no more force in reality when applied to Montana coal than to any other type of lawful tax on goods or products eventually moving in interstate commerce. Certainly, taxes paid on goods and products from origin to the eventual consumer are a factor in the final price to the consumer; that is an economic fact of our lives. In that sense, every state or locality that levies a tax on goods or products originating therein or manufactured therein is exporting its tax. No sane rule of law can or should be developed that would make a local tax illegal solely because it is a factor in the cost the eventaul consumer pays. Such a rule would make state government taxation of goods and products a judicial morass.

It is for these reasons that we have determined, as we have stated earlier, to look at the status of the true taxpayers in this case, the producers of the coal. The Montana severance tax is levied at the time the coal is separated by the producer from the realty in Montana at its value when sold in Montana. In that light we have no difficulty in finding that Montana has the power as a state to tax the severance of coal within its borders. Plaintiffs contended in oral argument that because the coal bought by the utilities from the producers was already under contract for sale when mined, that the instant the coal was severed, it was in interstate commerce. We do not have to address that argument because the taxable event, as far as Montana is concerned is the act of severance itself. The event of severance necessarily precedes the instant when the coal ceases to be part of the realty and becomes part of the mass of personalty in Montana. We are not required here to determine whether the mined coal should not be considered a part of interstate commerce until the moment when the producer hands the coal over to the buyer, or its transporter for the account of the buyer. There is no need to concern ourselves with such fine points here. The severance itself is a taxable event and the Montana statutes here tax that event in advance of any entry of the coal into commerce. In other words, the coal is produced and that production is taxed. Montana's coal severance tax is therefore ahead of and preliminary to the sweep of the power of Congress to regulate commerce. If this be not so, Montana and all other states would have to concede that any power of a state to tax the production of products which may eventually enter into interstate commerce

is at the whim or forebearance of the federal government. Neither the United States Supreme Court nor any other court has so held, and well enough, for such a decision would shatter the shield of judicially-approved states' rights in this field.

When it is realized that the coal producing plaintiffs are the real and only taxpayers of the Montana tax, the "exported tax" theory falls. With it falls the notion that there is no political check on the Montana legislature to limit the tax. Experience shows the producer plaintiffs are a vigorous presence at any session of the Montana legislature. Records of the Montana Secretary of State, of which we take judicial notice, Rule 202 (b), M. R. Evid., show the number of lobbyists registered for the coal industry in recent sessions, sections 5–7–103 and 5–7–201, MCA, and their participation before legislative committees on matters affecting the coal industry.

Finally, with respect to the commerce clause, plaintiffs have continued to assert an argument which does not raise a substantive issue or one material to our decision in this case, but nonetheless requires a comment lest our silence be considered an admission of its substance.

The nonissue raised by plaintiffs is that since a good deal of the coal being mined by plaintiffs or potentially to be mined (in oral argument it was said 75 percent of the coal) underlies federal leases, this coal therefore is not Montana's "birthright" but belongs to the nation as a whole. The argument is intended to have us believe that Montana is taxing here not the coal producers, but the people of the United States themselves.

Montana, in common with many of the states, has a substantial portion of its surface area under federal ownership. In addition, the federal government reserved to itself coal and other minerals in many of its patents or deeds of grant. We assume this situation gives rise to the nonissue raised by the plaintiffs.

Plaintiffs' argument is addressed to emotion and not to law. As long as the federal coal remains in deposit under federal ownership, it is "our" coal in the sense that it belongs to the people through the federal government. Once mined under a federal lease or permit, title to the coal is vested as personal property in the lessee or permittee as soon as it is mined and removed from its original place, subject only to the royalty rights of the lessor, Olson v. Pedersen (1975), 194 Neb. 159, 231 N.W. 2d 310, the same as with oil and gas. De Mik v. Cargill (Okla. 1971), 485 P. 2d 229. Montana may impose taxes on the private lessees of federal lands. 30 U.S.C. § 189; Oklahoma Tax Comm'n. v. Texas Co. (1949), 336 U.S. 342, 69 S. Ct. 561, 93 L. Ed. 721; reh. den. (1949), 336 U.S. 958, 69 S. Ct. 887, 93 L. Ed. 1111.

The coal being taxed here therefore is not "our" coal, but the personal property of the plaintiffs who produced it under lease or permit. When the coal is mined, the federal government is in no different position as a lessor than a private lessor who grants a mining lease or permit.

THE SUPREMACY CLAUSE

"This [federal] Constitution and the Laws of the United States which shall be made in Pursuance thereof", states U.S. CONST., Art. VI, Cl. 2, ". . . shall be the supreme Law of the Land. . . ."

Here plaintiffs contend that Montana's coal severance tax is preempted because it "frustrates and impairs" implementation of federal policy; that the District Court misconceived the national policies involved here; that the overall national energy policy is to encourage a greatly expanded production and use of western coal; and that the question of substantial frustration is one of fact which cannot be determined on the pleadings.

Montana responds that the plaintiffs have failed to allege or to identify any "Laws of the United States" which the coal severance tax could frustrate or impair; and that the general policy considerations and goals alleged by plaintiffs are not "laws of the United States" which are declared to be the "supreme Law of the Land".

The motion to dismiss made by the State in the District Court challenged the legal sufficiency of the supremacy clause claim of the plaintiffs.

It is conceded by the plaintiffs that Congress has not expressly preempted or limited the authority of the State to levy the coal severance tax, nor "clearly and unmistakably" required the conclusion that Congress intended to prohibit or limit the tax. Rather the plaintiffs contend, as their complaints allege:

"32. That the coal severance tax, on its face, and as applied, substantially frustrates and impairs fulfillment of national policies and purposes of certain acts of Congress." (App. 27)

Under this argument plaintiffs contend that proof of "substantial frustration" does not require plaintiffs to show a specific Congressional intent to preempt the field (Pl. Brief at 60).

In fine, plaintiffs have contended that it is not the tax, but the *rate of the tax* which constitutes an obstacle to federal policy and which requires a determination of fact as to whether such obstacle exists.

By their argument, plaintiffs seek to bring themselves within the coverage of statements made by the United States Supreme Court in Ray v. Atlantic Richfield Co. (1978), 435 U.S. 151, 158, 98 S.Ct. 988, 55 L.Ed.2d 179; Jones v. Rath Packing Company (1977), 430 U.S. 519, 525–526, 97 S.Ct. 1305, 51 L.Ed.2d 604; reh. den. (1977), 431 U.S. 925, 97 S.Ct. 2201, 53 L.Ed.2d 240; De Canas v. Bica (1976), 424 U.S. 351, 357 n. 5, 96 S.Ct. 933, 47 L.Ed.2d 43; and Perez v. Campbell (1971), 402 U.S. 637, 652, 91 S.Ct. 1704, 29 L.Ed.2d 233. Plaintiffs claim to be inheritors of the decision in M'Culloch v. Maryland (1819), 17 U.S. 415 (4 Wheat. 316), 4 L.Ed. 579.

In making its determination on the preemption issue, the District Court examined the following acts of Congress submitted or cited to the District Court as acts which defined the federal policies in the field:

Powerplant and Industrial Fuel Use Act of 1978, Pub. Law No. 95–620, 92 Stat. 3289.

Natural Gas Policy Act of 1978 Pub. Law No. 95–621, 92 Stat. 3351.

Energy Conservation and Production Act Pub. Law No. 94–385, 90 Stat. 1125.

Energy Policy and Conservation Act Pub. Law No. 94–163, 89 Stat. 871.

Federal Nonnuclear Energy Research and Development Act of 1974 Pub. Law No. 93–577, 88 Stat. 1878.

Energy Reorganization Act of 1974 Pub. Law No. 93–438, 88 Stat. 1233.

Energy Supply and Environmental Coordination Act of 1974, Pub. Law 93–319, 88 Stat. 246.

Emergency Petroleum Allocation Act of 1973, Pub. Law No. 93–159, 87 Stat. 627.

Clean Air Amendments of 1970 Pub. Law No. 91–604, 84 Stat. 1676.

From those acts, the District Court determined that there was a national policy to provide incentives to increase the use of other sources of energy, including coal, so as to decrease our dependence on oil. The District Court also determined from those acts, and from cases it examined relating to the subject, that "Congress has not and did not intend to preclude the State of Montana from imposing a tax on mining activities within the State . . ." App. at 240. It is in this conclusion of law that the plaintiffs now contend on appeal that the District Court erred: The plaintiffs do not claim that the federal acts submitted to the District Court establish a national policy which prevents Montana from levying *some* tax on the severance of coal. Instead, plaintiffs contend that the District Court should have allowed a factual hearing to determine whether the *rate* of Montana's coal severance tax substantially frustrates national policy; and that the order of the District Court precluded plaintiffs from proving what the national energy policy was.

Some seventy or eighty years ago it used to be argued that the Constitution of the United States followed the flag. Here, plaintiffs in reality are contending that the Constitution follows the Dow-Jones average.

In examining the whole of the District Court's memorandum in support of its order, we think it implicit in the District Court's opinion not only that Montana is not prohibited by federal enactments and policy from levying a coal severance tax but also that the amount of Montana's coal severance tax is not prohibited. In any event, we find the latter conclusion is a necessary result as a matter of law under the preemption argument.

Out of the welter of cases which has been cited to us on this issue by the parties, we, upon examination of such authorities, find it safe to say that no state excise tax has ever been struck down unless it had clearly conflicted with an act of Congress in the field (M'Culloch v. Maryland, supra); and likewise, that no state excise tax is likely to be held by the United States Supreme Court to be limited as to its amount unless it is expressly or by necessary implication shown to be prohibited or that the amount interferes with a power assumed or delegated to the United States.

The essence of the rule upon which we rely here, and of the rule which we think inheres in any of the United States Supreme Court decisions on the subject is set out in Penn Dairies v. Milk Control Comm'n. (1943), 318 U.S. 261, 275, 63 S.Ct. 617, 623–24, 87 L.Ed. 748, 756–57:

"An unexpressed purpose of Congress to set aside statutes of the states regulating their internal affairs is not lightly to be inferred and ought not to be implied where the legislative command, read in the light of its history, remains ambiguous. Considerations which lead us not to favor repeal of statutes by implication, *United States* v. *Borden Co.*, 308 U.S. 188, 198–9; *United States* v. *Jackson*, 302 U.S. 628, 631; *Posadas* v. *National City Bank*, 296 U.S. 497, 503–5, should be at least as persuasive when the question is one of the nullification of state power by Congressional legislation.

". . . Courts should guard against resolving these competing considerations of policy by imputing to Congress a decision which quite clearly it has not undertaken to make. Furthermore we should be slow to strike down legislation which the state concededly had power to enact, because of its asserted burden on the federal government. For the state is powerless to remove the ill effects of our decision, while the national government, which has the ultimate power, remains free to remove the burden."

The mere statement by the plaintiffs that the Montana coal severance tax substantially frustrates a national policy for the use of western coal is not a sufficient basis to trigger a factual determination in the District Court. The scope and substance of national policy are matters of statutory interpretation. This is a matter of law not requiring the taking of testimony. Again, of course, for purposes of a motion to dismiss, a District Court is not required to accept plaintiffs allegations of law and legal conclusions as true. Newport News Co. v. Schauffler (1938), 303 U.S. 54, 58 S.Ct. 466, 82 L.Ed. 646; Mitchell v. Archibald and Kendall, Inc. (7th Cir. 1978), 573 F.2d 429, 432; Kadar Corporation v. Milbury (1st Cir. 1977), 549 F.2d 230, 233; Blackburn v. Fisk University (16th Cir. 1971), 443 F.2d 121, 124.

Whether we agree here with plaintiffs that the decision of the District Court was only to the effect that no federal enactments prohibited *any* coal tax is of no moment. The reason for the district judge making that finding was that he could find no federal enactment of specific policy with respect to which the Montana coal severance tax conflicted. For the same reason, when we examine plaintiffs' contention that the amount of the tax constitutes a substantial frustration of federal policy, that argument must also fall because of plaintiffs' failure to establish a federal enactment with which the amount of Montana tax conflicts or which is substantially frustrated.

We find ourselves in agreement with the District Court that the federal statutes cited do not establish domestic energy policies wherein Congress intended to nullify other national, state, local or individual policies or interests which may increase the cost of coal production in use.

Stated another way, we do not find a national domestic energy policy or congressional enactments predicated upon a Montana coal severance tax of fifteen percent or less. Indeed, the federal enactment point in other directions. There are incentives for the development of underground coal mines. 42 U.S.C. § 6211. There is a provision for export restrictions, 42 U.S.C. § 6212. Miners of low sulfur coal are not exempted from costly environmental strip mining regulations. 30 U.S.C. § 1251, et seq. Health and safety requirements are enforced upon strip coal miners. 30 U.S.C. § 801, et seq. Royalties on federal lands are payable under the Mineral Lands Leasing Act of 1920 as amended. 30 U.S.C. § 181, et seq. Congress seems to prefer underground coal mining. 30 U.S.C. § 1201, et seq. As the District Court found, to the distaste of the plaintiffs, Congress favors and encourages the production and use of high sulfur eastern and midwestern coal, rather than low-sulfur western coal, the later of which is to be used principally by existing facilities for which technological upgrading of air pollution control equipment is impractical or not feasible. 42 U.S.C. §§ 7411 and 7425. Indeed, § 7411, as amended in 1977, requires users of low-sulfur coal nevertheless to install the "best technological system of continuous emission reduction" required for all stationary sources, even though such systems may be unnecesasry because the low-sulfur coal meets the emission standards. See, U.S. Code Congressional and Administrative News, 95th Congress, 1977 Session, Vol. II, at 1245. Congress would rather that eastern and midwestern plants used "local coal", even coal with higher sulfur content than western low-sulfur coal.

How then can any court determine that the effect of Montana's coal severance tax is to frustrate national policy, when no national policy can be discerned as a matter of law?

The federal constitutional prohibition, under the supremacy clause, is against state laws which contravene "the laws of the United States which shall be made in pursuance of [the federal constitution]." What is wanting in plaintiffs argument is *any* federal enactment, constitutionally adopted, which is clearly, substantially frustrated by Montana's coal severance tax.

The taxing power of the state is an essential power of its sovereignty. Weston v. City Council of Charleston (1829), 27 U.S. 171, 174 (2 Peters 449), 7 L.Ed. 481. This power cannot be set aside or limited on weightless statements that a federal policy is being substantially frustrated.

Contrary to the contention of plaintiffs, De Canas v. Bica, supra, was not sent back by the Supreme Court for a factual determination, but rather for a construction by the California courts of California statutory law. De Canas v. Bica, supra, 424 U.S. at 363–364, 96 S.Ct. at 940, 47 L.Ed.2d at 53–54. In Exxon Corp. v. Governor of Maryland (1978), 437 U.S. 117, 98 S.Ct. 2207, 57 L.Ed.2d 91, reh.den. 439 U.S. 884, the United States Supreme Court rejected a contention that a broad general national policy can preempt state laws which have some indirect effect upon national policy. The court said in *Exxon:*

"Appellants point out . . . the . . . basic national policy favoring free competition, and argue that the Maryland statute 'undermine[s]' the competitive balance that Congress struck between the Robinson-Patman and Sherman Acts. This is just another way of stating that the Maryland statute will have an anticompetitive effect. In this sense, there is a conflict between the statute and the central policy of the Sherman Act—our 'charter of economic liberty.' Northern Pacific R. Co. v. United States, 356 U.S. 1, 4. Nevertheless, this sort of conflict cannot itself constitute a sufficient reason for invalidating the Maryland statute. For if an adverse effect on competition were, in and of itself, enough to render a state statute invalid, the States' power to engage in economic regulation would be effectively destroyed. We are, therefore, satisfied that neither the broad implications of the Sherman Act nor the Robinson-Patman Act can fairly be construed as a congressional decision to pre-empt the power of the Maryland Legislature to enact this law." 437 U.S. at 133–134, 98 S.Ct. at 2217–2218, 57 L.Ed.2d at 104–105.

Again, under this preemption contention, a large number of cases are cited by the parties. Recitation of their holdings and effect would be cumulative here. Plaintiffs have attacked the decision of the District Court upon the ground that no court case was relied on by it to find that Montana's coal severance tax did not contradict a federal national policy. On this point, plaintiffs are stoking the same furnace as did the District Court. Plaintiffs have led us to no decision invalidating a state excise tax based on its rate as in contravention of federal policy.

We conclude that from any viewpoint, whether as a question of the power of the State of Montana to levy any tax, or its power to levy a tax at the rate here set forth, there has been no preemption by the federal government in the field of coal severance taxation, or any national policy derived from Congressional enactments pursuant to the Constitution with which the Montana coal severance tax is in conflict.

THE FEDERAL MINERAL LANDS LEASING ACT OF 1920

Here, plaintiffs assert that the severance tax violates the Supremacy Clause of the United States Constitution on the ground that the tax grossly distorts the "compromise" between the federal government and the states expressed in the Mineral Lands Leasing Act of 1920, Chapter 85, 41 Stat. 437, as amended by the Federal Coal Leasing Amendments Act of 1975, Pub. Law No. 94–377, 90 Stat. 1083.

Plaintiffs contend the federal legislation is a result of a longstanding debate concerning the ownership, disposition and use of federally owned mineral reserves in the western territories and states. The result, claim plaintiffs, is that the federal government retained the minerals for the people of the nation, subject to the payment of a share of the mineral royalties to the states in which the minerals were located.

Under the Act of 1920, as amended, fifty percent of amounts received by the federal government from sales, bonuses, royalties and rental of public lands thereunder are returned to the respective states wherein the leased lands or deposits are located, for uses specified in the Act. Plaintiffs claim Montana is without power, because it substantially frustrates national policy, to tax the "economic rents" remaining over and above the rents and royalty payments. "Economic rents" are defined as the difference between the costs of production, including an acceptable profit, and the price which the products could obtain in the market place. Plaintiffs state that Montana has appropriated the "economic rents," which plaintiffs find to be a fundamental frustration of federal policy.

Here again, plaintiffs argue that they are not required to show an express prohibition under federal law; rather they contend that substantial frustration of the fulfillment of national policy is sufficient to render the state law unconstitutional under the supremacy clause.

The principal factor militating against plaintiffs' position on this part of their complaint is that Congress specifically allowed state taxation under the Mineral Lands Leasing Act of 1920. The Act contains this provision (30 U.S.C. § 189):

". . . Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."

If indeed, a "compromise" was reached with respect to the leasing of federally-owned mineral interests in public lands, that compromise included, under 30 U.S.C. § 189, the right of states to tax the "output of mines". This indeed is a clear expression of federal policy and Montana's coal severance tax is within that policy.

In Mid-northern Oil Co. v. Montana (1925), 268 U.S. 45, 45 S.Ct. 440, 69 L.Ed. 841, affirming Mid-northern Oil Co. v. Walker (1922), 65 Mont. 414, 211 P. 353, the Supreme Court said:

". . . [A]lthough the act deals with the letting of public lands and the relations of the government to the lessees thereof, nothing in it shall be so construted as to affect the rights of the states, in respect of such private persons and corporations, to levy and collect taxes as though the government were not concerned." 268 U.S. at 49, 45 S.Ct at 441, 69 L.Ed. at 843.

The Supreme Court also said:

"No doubt, what Congress immediately had in mind was the necessity of making it clear that, notwithstanding the interest of the government in leased lands, the rights of the states to tax improvements thereon and the output thereof should not be in doubt. . . . We think the proviso plainly discloses the intention of Congress that persons in corporations contracting with the United States under the act, should not, for that reason, be exempt from any form of state taxation otherwise lawful." 268 U.S. at 50, 45 S.Ct. at 441, 169 L.Ed at 843.

Again the District Court was correct in dismissing plaintiffs complaints under count 3 as a matter of law, for no justiciable controversy is presented by such count.

CONCLUSION

The judgment of the District Court in dismissing the plaintiffs complaints is affirmed.●

THE EQUAL RIGHTS AMENDMENT EXTENSION

● Mr. GARN. Mr. President, with the defeat of the proposed equal rights amendment by the Illinois State Legislature, the prospects of ratification grow increasingly dim. Not a single State has ratified this measure in the past 3½ years and only two States have ratified in the past 6½ years. In light of this history, I believe that the action taken

by this body during the 95th Congress in extending the ratification period for this amendment looks increasingly inappropriate. At the cost of what I believe was significant damage to constitutional procedure and regularity, we have only managed to maintain the life-support system of an amendment that clearly does not have the sort of national consensus that is needed for changes in the Constitution.

An excellent survey of this constitutional damage was recently published in the Harvard Journal of Law and Public Policy by our colleague, Senator ORRIN G. HATCH. I would like to call the attention of my other colleagues to this thoughtful and scholarly constitutional analysis of the ERA extension. I ask that it be printed in the RECORD.

The article follows:

THE EQUAL RIGHTS AMENDMENT EXTENSION: A CRITICAL ANALYSIS

(By Orrin G. Hatch*)

(On March 22, 1979, the original deadline for state ratification of the Equal Rights Amendment passed. Prior to that time, however, Congress voted to extend the ratification period until June 30, 1982. Senator Hatch analyzes the propriety of this unprecedented extension from the legal and public policy perspectives, and considers its implications for the integrity of the amending process and of the Constitution itself.)

The proposed 27th Amendment to the Constitution—the Equal Rights Amendment [1]—was approved by Congress on March 22, 1972, and submitted to the States for ratification. House Joint Resolution 208, in proposing the amendment, stated:

"The following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within *seven* years from the date of submission by Congress." [2]

This language was followed by a semicolon which preceded the three sections of the proposed amendment.

By the end of the first week of submission, the amendment had been ratified by seven States; by the end of the first month, it had been ratified by fourteen States; and by the end of the first year, the Equal Rights Amendment had been ratified by thirty States, only eight short of the requisite three-fourths majority.[3] At this juncture, the seven-year time limit contained in the proposing resolution seemed of purely academic interest.

Since March 22, 1973, the first anniversary of the Equal Rights Amendment, however, it had been ratified by only five additional States,[4] just slightly more than the four States that have purported to rescind earlier ratifications.[5] In the fifteen States that have never ratified the amendment, there have occurred a combined total of nearly one hundred floor and committee rejections.[6] As the Equal Rights Amendment has developed into one of the most controversial domestic issues in recent years, its early momentum has been largely dissipated.

HOUSE JOINT RESOLUTION 638

Apparently stalled at 35 States, and facing an approaching ratification deadline of March 22, 1979, a number of proponents of the ERA devised a plan in late 1977 to extend this deadline, an action without constitutional precedent.[7] House Joint Resolution 638, introduced by Representative Elizabeth Holtzman on October 26 of that year, stated simply:

"That notwithstanding any provision of House Joint Resolution 208 of the Ninety-second Congress, second session, to the contrary, the article of amendment proposed to the States in such joint resolution shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within *fourteen* years from the date of submission of such proposed article of amendment."

Identical legislation, Senate Joint Resolution 134, was introduced in the Senate by Senator Birch Bayh on May 17, 1978.

Following six days of hearings in the House of Representatives,[8] House Joint Resolution 638 was approved narrowly in both the Subcommittee and the full Committee. In order to achieve this victory, however, extension proponents were forced to accept an amendment at the full Committee level shortening the proposed period of extension from seven years to slightly less than three and a half years, until June 30, 1982.[9] On August 15, 1978, the full House of Representatives approved the amended resolution by a vote of 233–189.[10]

Shortly before final House passage, the Senate held three days of hearings on Senate Joint Resolution 134.[11] Apparently concerned about insufficient support among members of the Subcommittee for his own resolution, Subcommittee Chairman Bayh refused to place the resolution before the panel for a vote. Instead, Senate Majority Leader Robert Byrd, employing extraordinary parliamentary procedures, brought the House resolution directly to the floor for Senate consideration, circumventing entirely the normal committee process.[12] On October 6, 1978, shortly before the adjournment of the 95th Congress, House Joint Resolution 638 was approved in the Senate by a 60–36 vote.[13] Two weeks later, the resolution was signed by President Carter.

EXTENDING THE ERA

Although one would certainly have been confused on this matter at times during the debate in both the House and the Senate,[14] what is not at issue in the debate over House Joint Resolution 638 are the merits of the Equal Rights Amendment. Congress has already addressed this matter, and the States have had the opportunity to do the same. The issue is the integrity of the constitutional amendment process. Long after the debate over the ERA is resolved, the Constitution will continue to reflect the treatment given it during the debate on House Joint Resolution 638.

Those who support extension and who deplore frequent analogies to sports contests [15] are quite correct: the Equal Rights Amendment effort is not a game. Neither, however, is the legislative process nor the constitutional amendment process. As observed by Professor Charles Alan Wright, speaking on the ERA extension, "Constitutional principles should be resolved on the basis of fundamental principles, not clever stratagems." [16]

CONGRESS AND TIME LIMITS

Article V of the Constitution, pertaining to its amendment, gives to Congress the power to "propose" amendments to the Constitution, determine whether ratification in the States shall be by legislatures or conventions, and establish "subsidiary matters of detail," including the establishment of a "reasonable" time limit for ratification.[17] Congress is thereby entitled to initiate the search for the consensus required in order to amend the Constitution.

The power to establish a "reasonable" time limit does not, however, imply the power to alter such a time limit once established. In *Dillon*, the time limit in controversy was a seven-year limitation contained in Section 3 of the 18th Amendment to the Constitution (Prohibition),[18] the ratification of which had been completed one year earlier. The appellants argued that Congress had no power under Article V to limit the time of deliberation, or otherwise control what the legislatures of the States do in their deliberations, and that the effort to do this through Section 3 rendered the 18th Amendment invalid.[19] The very fact of a time limit tended to encourage "precipitate" action thus working to the advantage of "factions . . . pressing for ratification." [20]

Justice Van Devanter, in delivering the opinion of a unanimous court, observed that, irrespective of what Congress had to say on the matter, ratifications of proposed Constitutional amendments by the States were required, under Article V, to be "sufficiently contemporaneous in that number of States (¾) to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do." [21]

Subject to this standard, and "so that all may know what it is and speculation on what is a reasonable time may be avoided," [22] the Court concluded that Congress was empowered to fix a definite period for ratification. This was a "subsidy matter of detail" [23] with respect to which the Constitution spoke only in general terms.

Coleman v. Miller [24] is the only other significant case dealing with Congressional authority to attach time limits to proposed amendments. In *Coleman*, a group of Kansas State legislators challenged their State's ratification of a proposed Child Labor Amendment to the Constitution on the grounds that there had been an "unreasonable amount of time for ratification. Twelve years had elapsed between the amendment's proposal and its purported ratification by Kansas. No express limitation had accompanied the amendment.

In deferring to the judgment of Congress on this matter, *Coleman* elaborated upon *Dillon* only in stating that the *Dillon* "reasonableness" determination rested with Congress, not the courts. Chief Justice Charles Evans Hughes, in handing down a plurality opinion, stated:

"If it be deemed that such a question is an open one when the limit has not been fixed in advance, we think that it should also be regarded as an open one for the consideration of Congress when, in the presence of the certified ratifications by three-fourths of the States, the time arrives for the promulgation of the adoption of the amendment." [25]

The Court did not say in *Coleman*, as has been suggested, that any Congress was entitled to make the "reasonableness" determination.[26] It simply held that in the absence of a determination in the manner of *Dillon* where the proposing Congress also determines the time limit, it is within the authority of a subsequent Congress to exercise its judgment on this matter.[27] Narrowly read, it seems to suggest that only that Congress in session when the requisite number of States have purported to ratify is eligible to make such a determination.

To permit one Congress to substitute its judgment for that of a previous Congress, in the manner of House Joint Resolution 638, is not only not contemplated by *Coleman*, but is a policy completely at odds with the objectives sought to be promoted in *Dillon* by permitting Congress to fix a time limit—"that all may know what it is and speculation on what is a reasonable time may be avoided." [28] How can "speculation" be avoided when the constancy of a time limit is threatened continually by the transitory political majorities and shifting interest group pressures of successive Congresses?

A Congress, in establishing a time limit where none already exists, as was the case in *Coleman*, is not substituting its judgment in a similar manner. The proposing Congress, by failing to specify a time limit and not having the authority to fix a period for ratification longer than a "reasonable" period, has

Footnotes at end of article.

clearly anticipated that a future Congress will make this decision in its place.

CONGRESS AND THE AMENDMENT PROCESS

Dillon also states the traditional conception of Congressional involvement in the Article V process: "Proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavour, the natural inference being that they are not to be widely separated in time.[29] House Joint Resolution 638 attempts to achieve in two "endeavours" what must constitutionally be achieved in "a single endeavour." The first endeavour, House Joint Resolution 208 from the 92d Congress, having apparently spent its energy, Congress is now attempting, through a second endeavour, House Joint Resolution 638, to refuel the earlier effort. Congress, in attempting to engraft amended terms of consideration upon a proposed constitutional amendment, is imposing itself upon the amendment process on two occasions rather than through the "single endeavor" contemplated by *Dillon*.[30]

In doing so Congress is, for the first time ever, intruding in a substantive manner upon the ratification stage of the amendment process. In the past, the role of Congress, indeed the role of the Federal government, in the Article V process, has been terminated at that point at which an amendment had been proffered to the States.[31] As observed by Dean Erwin Griswold of the Harvard Law School:

"[I]t can be argued with considerable weight that Congress has lost the power to change the Joint Resolution when it was formally communicated to the States. If Congress were to undertake to change it now, this would amount to a new resolution which would have to be submitted to, and acted upon by all of the States." [32]

In a sense, Congress has lost forever possession of a constitutional amendment once it has been proposed and submitted to the States for their consideration.

Proponents of House Joint Resolution 638 argue that with respect to "matters of detail" [33] Congress is possessed of apparently unbounded discretionary authority, and that it may impose itself repeatedly upon the amending process in adjustment of such matters.[34] Nowhere, however, in Article V, is there justification for the distinction sought to be drawn between alterations of substance and alterations of procedure. In referring to "subsidiary matters of detail" being within the discretion of Congress, the Court in *Dillon* made no suggestion that these were to be treated in any different manner from the substantive terms of an amendment. Rather, it stated that the implication of Article V was that Congressional authority to initiate the amendment process contained *within it* the authority to propose incident matters of detail. As a function of that authority, it was certainly no broader than that authority.

Indeed, *Dillon* states precisely that: "Whether a definite period for ratification shall be fixed . . . is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification." [35] If Congress, in its discretion, may act to alter time limits for ratification, may it not then also act, in its discretion to alter the mode of ratification proposed by an earlier Congress? May a Congress, suddenly anticipating the ratification or defeat of an amendment about which it feels differently, attempt to thwart that outcome by discharging State legislatures from further consideration of an amendment and substituting State conventions in their place?

To cast a time extension as a matter of "procedure," even if that description mattered, is more than a little misleading. But for the passage of House Joint Resolution 638, ERA would have failed of adoption definitively as of March 22, 1979. It is clear that Congress would not have undertaken as extraordinary an action as the extension of a time limit of a proposed constitutional amendment had there not been a direct relation to the success or failure of the amendment. The resolution of the controversy over House Joint Resolution 638 will determine more than a matter of neutral procedure.[36] If it is upheld, it will immeasurably improve the prospects for adoption of the ERA. If it is struck down, ERA will be laid to rest alongside the other proposed amendments that have failed to obtain the contemporaneous support contemplated by the Founding Fathers.

FEDERALISM AND ARTICLE V

Allowing Congress to revise time limits at its pleasure is disruptive of the balance of power established in Article V between the national government and the States. This was a matter to which the Founding Fathers were exceedingly sensitive.[37] Alexander Hamilton, one of the staunchest advocates of a strong national government, observed:

"In opposition to the probability of subsequent amendment, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed . . . [W]e may safely rely upon the disposition of the State legislatures to erect barriers against the encroachments of the national authority."

At one point in the Constitutional Convention, it was voted that "provision ought to be made for the amendment [of the Constitution] whensoever it shall seem necessary" without the participation of Congress.[39] Although this proposition was later rejected by the Convention, the pre-eminent role of the States in the process was retained. It is evidenced by the fact that the States, unlike the national government, are deeply involved in both methods of constitutional amendment provided for in Article V,[40] one by which the national legislature proposes amendments, the other by which the State legislatures trigger the process. While the States are invested with responsibility for ratifying the proposals of the national government resulting from the former method of revision, the role of the national government in the latter method of revision involves little more than housekeeping responsibilities.[41]

To permit Congress to extend the time limit would be to limit the role of the States as a "check" in the Article V process. While they would continue, through the exercise of their expressions of approval or disapproval, to influence the actual terms and text of a proposed amendment, the more precise question of whether or not that text or those terms ever *become* part of the Constitution is one with respect to which Congress would be unchecked. For, if Congress can grant time extensions, it presumably can also reduce ratification time periods, or even revive long dormant amendments.[42] Through the exercise of this totally unchecked authority—unchecked by the States, unchecked by the Executive, and according to most extension advocates unchecked by the Judiciary [43]—a persistent Congress can almost always defeat the will of the States. The intention of the drafters of the Constitution, on the other hand, was that the States, if sufficiently persistent, would always be in a position to impose their will upon the national government.[44]

To permit Congress, in effect, to intervene on behalf of its own initiatives while they are pending before the States is also to disrupt the balance established in Article V with respect to the *facility* for amending the Constitution. Not only were its drafters concerned about maintaining a delicate relationship between the States and the national government, but they were concerned about maintaining a Constitution which, although amendable by a determined super-majority, would not be too easily changed.[45] House Joint Resolution 638 would re-interpret Article V in such a way as to entertain within it a bias in behalf of the successful ratification of amendments. This results from the likelihood that Congress will wish to facilitate, through the maneuvering of time limits, the success of its own proposals. The constitutional role of Congress as traditionally understood, has been limited to providing the initial propulsion for an amendment; there is scant authority for it also to provide unlimited towing once an amendatory vehicle runs out of steam.

LOCATION OF TIME LIMITS

Great emphasis has been placed upon the fact that the seven-year time limit accompanying the ERA is contained in the proposing clause of House Joint Resolution 208 rather than in the body of the amendment itself.[46] Proponents of ERA extension contend that Congress may amend the resolution with respect to matters contained in this clause while conceding that Congress is without power to amend the actual body of the articles to be written into the Constitution.[47]

Every constitutional amendment since the 18th, with the exception of the 19th Amendment, has contained language to the effect that the amendment was inoperative unless ratified by three-fourths of the States within seven years. Since the 23d Amendment, however, this language has been included in the proposing clause rather than in the text of the amendment itself.[48] The sole purpose for relocating the time limit was to avoid "cluttering up" the Constitution with language that was meaningless and obsolete from the instant of an amendment's ratification.

Professor Noel Dowling of Columbia Law School, the draftsman of the resolution accompanying the 23d Amendment, explained at the time:

"The seven-year limitation is put in the resolution rather than in the text of the amendment. There is no doubt about the power of Congress to put it there; and it will be equally effective. The usual way, to be sure, has been to write the limitation into the amendment; but we hope such an unnecessary cluttering up of the Constitution can be ended.[49]

The only further legislative comments on the geography of the time limit were made by Senator Estes Kefauver, the author of the 23d Amendment, and the chairman of the Senate Judiciary Subcommittee on the Constitution, who concurred in Professor Dowling's comments.[50]

HOUSE JOINT RESOLUTION 638 AND THE STATES

Even, however, if a practical distinction could be drawn between a time limit contained in the proposing clause of an amendment, and one contained in its body, the former would not imply that Congress is empowered to change the time limit. The States that have ratified the Equal Rights Amendment have not done so unconditionally and under all circumstances. What they have agreed to, more precisely, is that if a sufficient number of their sister States concurred in their approval within the seven-year time span, the Equal Rights Amendment would become a part of the Constitution. Their ratification cannot properly be interpreted as one good for all time, ro even good for as long as Congress wanted to keep it good.

Is such a "conditional" ratification effective? Proponents of House Joint Resolution 638 have placed great emphasis with regard to this question upon the remarks of James Madison in a letter to Alexander Hamilton shortly before the adoption of the Constitution.[51] In that correspondence, Madison ob-

Footnotes at end of article.

served: "Compacts must be reciprocal . . . . The Constitution requires an adoption *en toto* and *forever* . . . . An adoption for a limited time would be defective as an adoption of some articles only. In short, any condition whatever must vitiate the ratification." [52] The lesson to be drawn from these comments, according to the Justice Department, is that a State's ratification must be "unconditional and irrevocable." [53] Thus the States are not only prevented from "conditioning" their ratification upon the ratifications within seven years of a sufficient number of other States, but they are also prohibited from ever rescinding their ratifications.[54]

Apart from the fact that Madison was not speaking of procedure under Article V, since the Constitution had not yet been adopted—he was, in fact, referring to New York State's effort to condition its ratification of the Constitution itself upon the eventual acceptance of the Bill of Rights—there may well be merit in the contention that a State cannot conditionally ratify an amendment.[55] But where such conditions are themselves contained within the amendment proposal made to the States, and there is no doubt of Congress' authority to do this,[56] surely the States are permitted to regard these conditions as being important, and to consider them in deciding whether or not to ratify.

Professor Jules Gerard of the Washington University Law School has concluded after an analysis of State ratification documents that the seven-year limit was a "material consideration" in the ratification of the ERA in at least 24 of the ratifying States.[57] In Ohio, for example, the official certificate of ratification reads:

"Whereas, both Houses of the 92d Congress of the United States of America, at the second session of such Congress, by a Constitutional majority of two-thirds of the members of each House thereof, made a proposition to amend the Constitution of the United States *in the following words*, to wit:"

The language of the entire House joint resolution follows, including the seven-year time limit.[58]

What House Joint Resolution 638 is saying to the Ohio Legislature and its members, as well as to those in every other ratifying State, is, in effect:

"We, in Congress, do not much care that you may have been motivated to vote for the amendment that we proposed perhaps in part because you considered the time limit that accompanied it to have been a reasonable one. If this influenced your vote at all, that is your own folly. You should have known that we might change it on you. The fact that we have never done it before, and the fact that no one ever before thought we had the power to change it, is irrelevant."

The States had every reason to suppose that the seven year limit was binding upon Congress, and every reason to weigh the limit as a factor in their ratification decision. If the provision is important enough for Congress to specify as a condition for ratification, then there is no logical reason that the States may not regard it similarly.

As Professor Gerard emphasizes, the issue is not simply one of *reliance* by the States upon the original time limit, although it is conceded even by extension proponents that this may have occurred on a widespread basis.[59] Instead, he notes: "[T]he time limit was an express, mutually-agreed-upon term of the ratification. . . . I have never heard of a rule of law that requires a party to prove reliance upon an expressly-stated, mutually-agreed-upon term of a bilateral contract as a condition of enforcement." [60] Thus, even if we accept the argument of the Justice Department and other proponents of House Joint Resolution 638 that the States were not *entitled* to rely upon the original time limit [61] (an excessively legalistic and petty point of view considering that we are referring to the amendment of a document that is supposed to reflect some of the most fundamental values of our society), it does not follow that House Joint Resolution 638 achieves a fair objective.

For what Madison and Gerard are both expressing is nothing more than traditional contract theory.[62] If the imposition by a State of "any condition whatever must vitiate the ratification," as Madison observes, it certainly does not follow, as extension proponents suggest, that a conditional ratification operates as a ratification without conditions. The ratification may, in fact, be ineffective, but it cannot be treated as a ratification of only part of the proposal—that part of which extension advocates approve.[63] Although the Justice Department would circumvent this obstacle by treating the time limit as "dispensable language," [64] it is at best a dubious theory which, in the context of a constitutional amendment would treat express language with such disregard, and would suggest that with respect to "dispensable" language one party will not consider itself bound in any manner.

Notions of "unjustified reliance," "dispensable" language, and procedural-substantive distinctions that supporters of House Joint Resolution 638 would read into Article V would substitute, for clear-cut and commonly understood constitutional provisions, provisions understandable only by resort to exotic and contrived legal theories. In the process, the integrity of that Article and the integrity of the Constitution would be seriously undermined.

CONGRESSIONAL PROCEDURES

In approving House Joint Resolution 638, Congress has acted carelessly in a number of respects touching upon both the Constitution and its own internal procedures. Perhaps nowhere is it more evident that the proponents of House Joint Resolution 638 view the Constitution simply as an inconvenient obstacle to short-term legislative objectives, to be circumvented on whatever innovative basis happens along.

Under Article V of the Constitution, the resolution proposing the Equal Rights Amendment in the 92d Congress required, and received, a two-thirds majority vote in each House of Congress.[65] With respect, however, to House Joint Resolution 638, the parliamentary decision was made that a simple majority vote would suffice.[66] While achieving this simple majority, the resolution fell substantially short of a two-thirds majority in both Houses.[67]

In effect, House Joint Resolution 638 (95th Congress) is an amendment to House Joint Resolution 208 (92d Congress). Because Congressional amendments to proposed constitutional amendments are normally subject to simple majority votes [68]—with only final constitutional proposals being subject to the constitutional supermajority requirement [69]—proponents of House Joint Resolution 638 would treat their resolution in the same manner. In the process, however, they would be attempting the remarkable feat of reading into the minds of the 92d Congress the conclusion that House Joint Resolution 208 in that Congress would have received the necessary two-thirds vote regardless of whether or not there had been an accompanying time limit of seven years. Alternatively, the 95th Congress is saying that the time limit contained in House Joint Resolution 208 was meaningless and that it could not possibly have influenced any votes.

In any event, the 95th Congress, through House Joint Resolution 638, is engaging in an effort to "second-guess" legislatively those who fashioned the coalition in behalf of House Joint Resolution 208. It is suggesting that an identical coalition could have been achieved without the seven year limit and that the 95th Congress will re-fashion the coalition in precisely that manner.[70]

In *Powell* v. *McCormack* [71] the Supreme Court refused to speculate that a two-thirds majority, which had been achieved in the House in favor of the "exclusion" of a member-elect, would also have been achieved had the more precise question of "expulsion" been before that body. The Court ruled that the House could not circumvent a constitutionally required two-thirds vote for "expulsions" by re-characterizing them as "exclusions." Justice Brennan remarked:

"The attempt by the House to equate exclusion with expulsion would require . . . speculation that the House would have voted to expel Powell had it been faced with that question . . . [w]e will not speculate what the result might have been if Powell had been seated and expulsion proceedings subsequently instituted." [72]

Thus, neither the Court nor Congress itself can attempt to interpret the votes cast by Members of Congress in any manner other than in the context of the immediate and precise issues then before them. The 95th Congress cannot properly presume that a two-thirds majority would have been achieved in 1972 had the resolution before them been House Joint Resolution 208 as amended by House Joint Resolution 638, rather than simply House Joint Resolution 208. In arguing in behalf of a simple majority vote, supporters of House Joint Resolution 638 would equate congressional amendments adopted prior to passage of a proposing resolution with those adopted afterwards.

As Dean Griswold observes: "[The resolution is] essentially a part of the process of amending the Constitution, as to which the Constitution is explicit that two-thirds majorities are required in both Houses of Congress." [73] It was not the text of the ERA alone that required and received the two-thirds vote; it was the resolution that proposed the amendment.[74] Had, for example, the House during the 92d Congress approved no time limit whatsoever, and had the Senate introduced in their resolution a seven year period for ratification, the House would have been required under its own rules to approve by a two-thirds vote the adoption of the time limit alone.[75]

In seeking to circumvent the two-thirds requirement, proponents again raise the distinction between procedure and substance.[76] Apparently, with respect to "procedure," not only can a subsequent Congress alter the language of an amendment proposal, but it can do so by a lesser majority than required for substantive changes. Again, it is difficult to identify the language in Article V forming the basis for treating these matters in such a diverse manner.

If nothing else one would think that the requirement of parliamentary aesthetics would demand a certain symmetry of the legislative process. Congress, or any other legislative body, cannot generally undo by a simple majority what it originally has done by a two-thirds majority. To provide otherwise is to treat the decisions, and the decision-making processes of previous Congresses with the same disregard with which House Joint Resolution 638 treats the decisions and processes of the 35 State legislatures that have, at one time or another, ratified the ERA.

Procedural regularity aside, the case for requiring a two-thirds vote for an extension in the time period for a proposed constitutional amendment was summarized nicely by Senators Birch Bayh and Edward Kennedy in their "Separate Views" on 1971 legislation establishing procedures for constitutional conventions convened under Article V. In remarking upon one provision of that bill, they noted.

Footnotes at end of article.

"Section 10, which permits the convention to propose amendments by a bare majority vote, should be amended to require a two-thirds majority. As presently written, it undermines the traditional safeguard which has protected the integrity of the Constitution since 1789. That safeguard, of course, is Article V's requirement that amendments be proposed by two-thirds of the Congress. All Senators know very well the difference between persuading half and persuading two-thirds of our colleagues of the wisdom of a course of action. Article V's requirement guarantees that a decisive majority of the members of not one but two deliberative bodies agree that the amendment is the wisest means of dealing with a fundamental national problem, and that they come to that agreement before the amendment is submitted to the States. . . . Only if such a broad consensus is reached at the time the amendment is drafted—a time when viable alternative amendments are still under consideration—can we be confident that there is widespread agreement that the specific language of the amendment proposed best fulfills its purpose. . . . [W]e feel that the founding fathers wisely required in Article V a two-thirds vote by each House before the Congress could propose an amendment." [77]

The same arguments are at least as compelling when the aftermath of the simple majority vote is not ratification by three-fourths of the State legislatures, but ratification by only a handful of States which have not yet ratified. At least in the former instance there is a reasonably secure check upon the most egregious abuses by a headstrong majority.

At the same that proponents of House Joint Resolution 638 argue in opposition to a two-thirds vote requirement on the grounds that no change is involved in the substance of a constitutional amendment,[78] a legislative vehicle is chosen—a joint resolution requiring no Presidential signature—that is provided for nowhere else in the Constitution than Article V.[79] Thus, although the very legislative form of House Joint Resolution 638 is born in Article V, a simple majority vote is permitted on it because it does not involve Article V.

The Constitution confers upon the legislative branch three—and only three—ways to create a legal obligation. With respect to each of these, there is a framework of checks and balances that limits the legislative branch's authority. First, there are simple laws or statutes, with respect to which Congress is subject to the veto of the Executive and the review of the Judiciary.[80] Second, there are treaties, with respect to which the legislative branch itself serves as a check upon Executive authority.[81] Third, there are Constitutional amendments, with respect to which the States of the Union serve as a check.[82]

House Joint Resolution 638 creates an entirely new breed of legislative action—Professor Lawrence Tribe of Harvard Law School describes it as a "unique directive" [83]—that is subject to none of the traditional checks that underlie our system of government. President Carter's decision to attach his signature to the resolution was a purely symbolic gesture, universally conceded to be without legal significance.[84] Under Article V, there is no constitutional role accorded the Executive branch; there is no check exerted by the Executive branch upon proposed constitutional amendments.[85]

Nor does House Joint Resolution 638 contemplate any check by the States themselves. Only those States which have not yet ratified are entitled to pass their judgment upon the propriety of the resolution. Those States that have already ratified are forever to be locked into this decision.[86] In the view of most advocates of House Joint Resolution 638, the judicial branch plays no role in checking the discretion of Congress.[87] Questions relating to Article V, under this view, are all "political questions," to be passed upon by Congress alone.

House Joint Resolution 638 improperly circumvents both Article V and Article I, Section 7 (concerning the role of the Executive in the legislative process). It represents a legislative strain hitherto unknown, and likely to remain as dormant in the future as it has been in the past, unless perhaps, the Equal Rights Amendment remains short of ratifications by mid-1982.

RESCISSION

Unlike Congress, State legislatures are permitted under our form of government to do anything that they are not forbidden to do under the Federal (or their State) Constitutions. As observed by Justice Frankfurther on the scope of action by the States: "The search is not for a specific Constitutional authorization. . . . [R]ather we must find clear incompatibility with the United States Constitution." [88] This basic principle has, of course, as its foundation, the 10th Amendment of the Constitution, which states: "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively, or to the people." [89] Thus, it suffices to say with respect to the permissibility of a State rescinding its ratification of a proposed constitutional amendment [90] (at least until that moment when three-fourths of the States have ratified and the amendment becomes a part of the Constitution) that nothing in Article V, nor anywhere else in the Constitution, prohibits the States from reconsidering or rescinding their ratifications. The act of any single State in ratifying has no positive effect upon the constitutional status of a proposed amendment until combined with similar acts by at least 37 other States.[91]

Further, the right of any legislative body to reconsider its own actions is implicit in its right to prescribe its own rules of procedure, as well as in the inherent nature of an independent legislative body.[92] Nowhere, for example, in the United States Constitution, from which document Congress derives all of its powers, is there reference to authority to repeal or rescind legislation. While it may not engage in that endeavor as frequently as some wish that it would, there is no question of its authority to do so.

While the States have been deemed to be performing a "federal function" in their participation in the amendment process,[93] there is no basis for the argument that they are somehow denied their full freedom of action as a result. As observed by Judge, now Justice, John Paul Stevens, in speaking of a State's efforts at ratification of the ERA:

"The failure to prescribe any particular ratification procedure . . . is certainly consistent with the understanding that State legislatures should have the power and the discretion to determine for themselves how they should discharge the responsibilities committed to them by the Federal government . . . . [The term "ratified"] merely requires that the decision to consent or not to consent to a proposed amendment be made by each legislature, or in each convention, in accordance with the procedures which each such body shall prescribe." [94]

Not least of the problems posed by House Joint Resolution 638 is its implication that, while a Congress cannot bind succeeding Congresses with a time limit expressly contained within a resolution proposing a constitutional amendment, a State legislature can bind its successors forever by the ratification of an amendment.

In effect, this would permanently tie the hands of the citizens and the legislatures of some States with respect to engaging freely in discussion and debate on matters of national importance, while providing free rein to the citizens and legislatures of other States.[95] It being the premise of the First Amendment to our Constitution that the Republic is well served by free and open public discussion—and what matter is more enduringly important to the Republic than the amending of its Constitution—a policy more consistent with the basic values and principles of this nation would ensure that citizens, and their representatives in the legislatures, should never be forced to relinquish their liberties of thought or action so long as the amendment process is underway. Should not doubts as to the precise meaning of a constitutional provision be resolved in favor of more rather than less public discussion?

Proponents of House Joint Resolution 638—many of them described by Yale Law Professor Charles L. Black, Jr., as "people not previously distinguished by excessive reverence for precedent" [96]—place a great deal of emphasis on the supposed precedents in opposition to rescission. Before briefly examining these, it should be borne in mind that no constitutional amendment has ever before been adopted that did not have the unrescinded ratifications of at least three-fourths of the States. That, it seems, is the most persuasive precedent of all.

In January of 1868, Senator Charles Sumner introduced a resolution declaring the ratification by the required three-fourths of the States of the proposed 14th Amendment to the Constitution.[97] Shorly thereafter, two States, Ohio and New Jersey, attempted to rescind their ratifications of the amendment, reducing the number of States with unrescinded ratifications below the three-fourths level. An undated resolution was introduced in July 1868, listing among the ratifying States six Confederate States with newly organized legislatures, as well as Ohio and New Jersey. With virtually no debate with respect to the propriety of rescission, both Houses of Congress, on July 21 and 22, 1868,[98] approved the resolution declaring that 29 States had ratified the amendment.[99] This represented one more than the necessary three-fourths majority. The significance of this action as a precedent for the impermissibility of rescission, however, is sharply diluted by the fact that the House was apprised prior to its adoption of the resolution that the State of Georgia—the 28th ratifying State even in the absence of Ohio and New Jersey—had ratified the amendment the day before.[100] The Speaker of the House, Representative Schuyler Colfax of Indiana, acknowledged the receipt of a dispatch from the Governor of Georgia signifying the ratification by Georgia of the 14th Amendment.[101]

While there is a question whether or not the Governor's dispatch constituted a formal notice of ratification to the federal government, the courts have maintained that "[i]t is the approval of the requisite number of States, not the proclamation, that gives vitality to the amendment and makes it a part of the supreme law of the land." [102] Further weakening the precedential value of the 1868 controversy are: (1) the fact that members of both the House and the Senate considered it necessary in 1869, a mere one year after the 14th Amendment debate, to introduce legislation prohibiting the rescission of proposed amendments; [103] (2) the fact that the Supreme Court, in response to attacks upon the validity of the ratification of the 14th Amendment, has argued that the "acquiescence" in the amendment since 1868 evidenced its validity,[104] thus establishing what amounts to an independent basis for the amendment's validity apart from the Congressional actions of 1868; and (3) the fact that not a single mention was made of the 14th Amendment "precedent" on rescission during debate, only two years afterward, on

Footnotes at end of article.

the propriety of similar occurrences during ratification of the proposed 15th Amendment.[105]

Amidst debate on the permissibility of rescissions following ratifications, and ratifications following rejections, the Secretary of State, in February 1870, proclaimed the ratification of the 15th Amendment.[106] As with the 14th Amendment debate, however, these issues were moot by the time of final action by the federal government because of the existence of the requisite number of uncontested and unrescinded ratifications.[107]

With respect to deliberations surrounding the ratification of the 14th and 15th Amendments, it is worth recalling also the observations of Professor Gottfried Dietze of Johns Hopkins who has referred to the Reconstruction Era's "degradation of civil rights through amendments of dubious procedural validity."[108] The Reconstruction, in his words, was characterized by "a toll in lives, liberty, and property, as well as by a tenuous existence of institutional guarantees of freedom, such as federalism, the separation of powers, and judicial review."[109] The value of "precedents" derived from this troubled period in our nation's history ought to be viewed accordingly.[110]

The third major precedent cited by opponents of a State's right to rescind its ratification of a proposed amendment is *Coleman* v. *Miller*,[111] which confronted, precisely, the question of whether or not a State that had rejected an amendment could later choose to ratify it. Alluding to the matter of the 14th Amendment, while deciding to treat both ratifications following rejections and rescissions following ratifications in the same manner, the Court concluded:

"[W]e think that in accordance with this historic precedent the question of the efficacy of ratifications by State legislatures in the light of previous rejections or attempted withdrawal should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment."[112]

The current value of *Coleman* v. *Miller* and its "political question" doctrine will be discussed at greater length presently, but the identity of treatment accorded rejection followed by ratification and ratification followed by rescission is noteworthy at this point. Proponents of House Joint Resolution 638, while prohibiting the latter, would permit the former without limitation.[113]

Alexander Hamilton argued that "the will of the requisite number" should govern the adoption of constitutional amendments,[114] and that the Constitution would be amended whenever this number of States "were united in the desire of a particular amendment."[115] It is this emphasis on the need for consensus—further elaborated in *Dillon* v. *Gloss* as the need for a "contemporaneous" consensus[116]—that marks the amending process. The Constitution further requires not a simple majority but an overwhelming majority—active agreement by three-fourths of the States. These are the requirements that underlie the amending process, and that ought to be used as standards, where Article V is silent, vague, or ambiguous.

Enabling States to rescind their approval of proposed amendments is simply a means by which to ensure that the Constitution is not amended in the absence of the required consensus. Rescission is a means by which States that are no longer participating in the consensus signal this fact. Why, as a matter of sound constitutional policy, would we want to deny States this signalling mechanism and require them to participate against their will in a purely artificial consensus? As Professor Black observes: "Theoretically . . . it would be possible [if rescission is ineffective] for an amendment to go into effect which only one State, the last to ratify, wanted, all the others having tried vainly to rescind. It would easily be possible . . . to get an amendment not wanted by one-half the States.[117] He proceeds to describe the opponents of rescission as, "people who want to make a sort of one-way lobster trap, or a silly game of tag, out of a serious Constitutional process."[118] Another observer likens the anti-rescission argument to a case of the States "truly being dragged, kicking and screaming into . . . consensus."[119]

Excusing for the moment partisans of a given amendment, what conceivable reason would there be for allowing for the possibility of a contrived consensus by precluding States from registering their most recent sentiment on the wisdom and desirability of a proposed amendment? What alternative policy justifies the subordination of a policy best designed to determine conclusively the existence of an on-going consensus by the States on an amendment? As observed by Professor Orfield in his classic work on constitutional amendments: "Ratification should not be more final than rejection. . . . It is more democratic to allow the reversal of prior opinion. A truer picture of public opinion at the date of ratification is obtained."[120]

Permitting rescissions is not only more consonant with the fundamental policies underlying Article V—the identification of a contemporaneous consensus in behalf of an amendment to the Constitution—but it is also fairer, particularly when the issue is rescission during an extended time period.[121] It is unfair to hold rescinding States to their original posture, while extending an unforeseen "windfall" of time within which nonratifying States, or rejecting States, may continue to reconsider their decisions. What better undermines the integrity of the Constitution than to open up an amendment for reconsideration only in those States in which such reconsideration may possibly promote the passage of the amendment? It is unlikely that the Founding Fathers, concerned with rendering the Constitution "too mutable,"[122] would have contemplated such a policy contained within Article V.[123] If there is to be an extension of the time period for the Equal Rights Amendment, it seems essential that, in the words of Professor Black, this be a time for "action," not for a "particular action."[124]

The argument has been raised that rescission constitutes in essence a "conditional ratification," and that as such it is impermissible.[125] There is no disagreement that a State cannot condition the effectiveness of its ratification upon the occurrence of some subsequent affirmative act,[126] such as the adoption of another amendment in the interim. That is substantially different, however, from saying that a State legislature must forfeit its legitimate and inherent authority to reconsider its decisions at the moment that it approves an amendment. Such a ratification remains effective unless and until that State legislature undertakes, by its own affirmative action, to reconsider the amendment. A genuinely "conditional ratification" contemplates prior affirmative action of one sort or another before the ratification becomes effective. In real property terms, a conditional ratification is one with a condition precedent, while a reservation of the right of rescission is a condition subsequent which is rendered null and void at the instant that an amendment becomes effective.[127] Ratification, reserving the right to rescind, constitutes all the action necessary by a ratifying State to enable them to participate in the constitutional coalition of States required under Article V to amend the Constitution.

To permit a State at any juncture to "take" an amendment in its entirety or to "leave" it in its entirety does not make it any more difficult to determine the existence of a "consensus" for amendment. To allow States, however, each to ratify on the basis of different terms and preconditions would make it far more difficult to make such a determination with any degree of certainty. Whether or not a State was properly to be counted in a "consensus" would depend upon an unlimited number of factors, not simply on whether the last action by the State legislature was ratification or rescission.

POLITICAL QUESTIONS

Although the Justice Department uniquely holds the view that rescission is impermissible in the absence of a constitutional amendment of Article V,[128] other proponents of House Joint Resolution 638 incant, in opposition to rescission, that it is a "political question" for the determination of Congress in its unbridled discretion.[129] To be decided in the same manner are such questions arising out of Article V as the "reasonableness" of a ratification time limit, the propriety of an extension in that time limit, the necessity of a two-thirds vote on "procedural" matters, and the propriety of internal processes of ratification within the States. Indeed, as summarized by Professor Ronald Rotunda of the University of Illinois College of Law, "It may be the rule that all amendment questions relating to the Constitutionality of the amendment procedure should be regarded as political. . . . Congress is free to do as it will. . . . [I]t alone will be the ultimate arbiter."[130]

The less-than sturdy foundation for this argument is *Coleman* v. *Miller*.[131] The "Opinion of the Court" was that the question of whether or not a State may ratify an amendment after it has first rejected it was a "political question," and as such, a matter purely for the determination of Congress.[132] In determining questions deemed to fall within this category, "the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations."[133]

Dean Griswold in testimony before the House Judiciary Committee, carefully referred to *Coleman* as a "case" rather than a "decision" because:

"[I]t is extremely difficult to tell what, if anything, was there decided. There is an opinion written by Chief Justice Hughes, which is designated the opinion of the court. But, there are four members of the court who concurred in an opinion that the case should be dismissed for want of standing on the part of complainants, and two members of the court who dissented from the main opinion. Thus, these were six members of the court who would not have reached the result stated in the so-called opinion of the court. This leaves only three justices who concurred in the decision expressed in that opinion."[134]

Coleman is at best a shaky foundation for the sweeping assertion that Congress can do what it wants with Article V, even, as suggested by Professor Rotunda, to the extent of being "unfair."[135] In fact, if matters concerning Article V are categorized as "political questions," Professor Rotunda is understating the case; a "political question" is properly defined as one with respect to which Congress can act in whatever manner it wishes, totally invulnerable to judicial review. "Congress could, for instance, propose an amendment on Monday, then pass a resolution on Tuesday 'judging' its proposal to have been ratified by 38 States."[136] Fortunately for the Republic, however, the notion of "political questions" that the House Joint Resolution 638 proponents purport to discover in the *Coleman* case has been sharply eroded since *Coleman*,[137] a case in which the divisions of New Deal politics undoubtedly exercised a major influence. In 1962, the

Footnotes at end of article.

Court radically transformed the doctrine in deciding that apportionment, a matter which had been treated as a "political question" in *Colgrove* v. *Green*,[138] seven years after *Coleman*, was no longer a matter reserved solely for the State legislatures.[139] Justice Brennan stated the general rule on "political questions" in his majority opinion:

"Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question." [140]

These criteria were later applied in *Powell* v. *McCormick*,[141] where the Court found that the doctrine did not prevent judicial review of an action by the House of Representatives in "excluding" a member-elect.[142] This result was reached despite the fact that unlike rescission, where there is no "textually demonstrable" commitment, the Constitution speaks directly to the authority of Congress to "determine the rules of its proceedings," [143] to "be the judge of the . . . qualifications of its own members," [144] and to "punish . . . and . . . expel a member." [145] The "political questions" doctrine was dissipated still further in *United States* v. *Nixon*,[146] where the Court decided that a dispute within the Executive Branch between the President and a Special Prosecutor presented a controversy for the resolution of the courts.

Coleman v. *Miller* deviated sharply from earlier cases in which matters of interpretation under Article V had been considered by the courts. In *Hollingsworth* v. *Virginia*,[147] the Supreme Court reviewed the regularity of procedures used in the adoption of the 11th Amendment. In *Rhode Island* v. *Palmer* (*The Prohibition Cases*),[148] the Court interpreted the two-thirds requirement in Article V to mean two-thirds of members of Congress present, not two-thirds of the entire membership. In *Hawke* v. *Smith*,[149] the Court ruled that States could not resort to the use of referenda to make decisions reserved in Article V for "State legislatures." In *Dillon* v. *Gloss*,[150] the Court reviewed the propriety of a time limit imposed by Congress upon the ratification process. In *Leser* v. *Garnett*,[151] the Court found justiciable the matter of official notice by ratifying legislatures to the federal government. In *United States* v. *Sprague*,[152] the Court reviewed Congress' authority to select modes or ratification. And in *Coleman* itself, the Court was "equally divided in opinion" as to whether or not the propriety of a State Lieutenant Governor's participation in the ratification process was a justiciable matter.[153]

Dean Griswold summarizes his assessment of *Coleman* v. Miller today as follows:

"[T]he conclusion . . . resting as it does on the political questions doctrine can no longer be regarded as having any particular vitality. Even if it can be regarded as a decision, the foundation of the decision has been undermined by many more recent decisions of the Court dealing with the 'political questions' doctrine. *Coleman* v. *Miller* is of dubious standing now.[154]

Even the Justice Department, in agreement with proponents of House Joint Resolution 638 in virtually every other particular, observes:

"[House Joint Resolution 638] goes to the very essence of the amending process. For that reason and in light of more recent Supreme Court decisions narrowly limiting the scope of the political questions doctrine, it is far from clear that the Court today would say that these questions concerning the interpretation and application of Article V are exclusively reserved to the Congress.[155]

Invocation of the political questions doctrine is a process that results necessarily in the subordination of principles of separation of powers and checks and balances. It contemplates the unreviewable decisionmaking of a single branch of government. Thus, there would seem to be a burden upon those arguing in behalf of the treatment of the issue as a political question to show that there exist compelling reasons for exempting such an issue from the normal constraints of the American political and governmental processes.

I would suggest, however, that not only are there few matters more important as "Cases . . . arising under this Constitution" [156] than the method for amending it, but that there are few matters with respect to which the need for a framework of checks and balances is more necessary. What is the durability of the constitutional relationships existing between the branches of the federal government, as well as between the federal and State governments, if these relationships are perpetually placed in jeopardy by the existence of an amending clause free, in important respects, from its own balance of powers? As an interested party in the amendment process—the initiator of proposed amendments—it seems particularly questionable to place Congress in the unchallengable position of adjudicator of all matters of dispute arising out of the amending process. [157] This is especially true when we recall that it was concern for an excessively powerful national legislature that, in large part, motivated the drafters of Article V.[158]

Even if it is conceded that any or all of the questions surrounding the proposed extension of the ERA ratification period are political questions, it does not follow that these matters are to be decided politically, as some proponents of House Joint Resolution 638 seem to suggest. Quite the contrary. Professor William Van Alstyne observes:

"[To urge a determination of non-justiciability] is to urge that the question is indeed a constitutional question which Congress should consider earnestly and fairly—*more* earnestly than in other types of circumstances, moreover, precisely because its own view of the constitutional property of what it is about to do is very likely to be final.[159]

The absence of judicial review does not mean that the issues are not constitutional ones. As stated by Justice Black (joined by three other Justices) in his concurring opinion in *Coleman v. Miller:* "In the exercise of power to control submission of constitutional amendments, Congress, of course, is governed by the Constitution." [160] The courts are bound by the "adjudication" of Congress of matters arising from Article V.

REASONABLENESS OF ERA EXTENSION

In weighing the "reasonableness" of extending the time period for the ERA, even a Congress subject to a total absence of review by any other branch might fairly consider at least some of the following matters:

1. No other constitutional amendment in the history of the nation has ever taken as long as four years to achieve ratification.[161] The entire Bill of Rights was ratified in 27 months, while the average ratification time for all subsequent amendments has been only 19 months.

2. The ERA was approved by margins, and with a brevity of hearings and debate, in the earliest ratifying legislatures that, in the words of one observer, "do not normally occur when complexities are considered." [162]

The amendment was approved, for example, by the State of Hawaii within several hours of proposal, while unanimous votes in behalf of ratification occurred in at least fifteen legislative bodies among the earliest ratifying States.[163] As the debate has grown more extensive, the amendment has fared less well.

3. The ERA has been rejected on nearly one hundred occasions by non-ratifying States, either in committee or on the floor.[164] It has dominated entire sessions of State legislatures, to the exclusion of other issues.[165]

4. Extension of the ERA ratification period is likely to result in the extension of the highly questionable secondary boycott engaged in by ERA proponents against businesses located in nonratifying States.[166]

5. Mitigating in behalf of a shorter ratification period than was enjoyed by previous amendments to the Constitution are the facts of modern communications and transportation, national mass media, and the existence of annual State legislative sessions in most States. It may well be that "contemporaneousness" today is a much more short-lived phenomenon than in the past.

6. In view of a number of legislative enactments and court rulings since the proposal of the ERA,[167] the amendment represents something far different today from what it did in 1972. As an increasing number of legitimate instances of sex bias are eliminated by means other than the ERA, the ERA becomes an increasingly radical amendment in content.

7. Not only has the ERA apparently lost much of its steam, but State "equal rights" provisions have fared increasingly less well. Popular referenda have been defeated in such "liberal" States as New York, Wisconsin, and New Jersey, all early ratifiers of the ERA.[168]

8. The ERA is a more divisive and controversial issue today than it has ever been in the past. Far from being an argument for extension,[169] as suggested by advocates of extension, this fact argues in opposition to extension. The Constitution is to be amended only when a genuine consensus exists, not when substantial debate is flaring.

9. Extension of the ERA ratification period, whatever the precise legal merits, is certain to result in a widespread impression of "unfairness" among opponents of the ERA. Is eventual passage of the ERA such an important objective as to justify undermining and doing long-term damage to the integrity of the Constitution? In addition, the ERA extension lays the groundwork for a first-class constitutional crisis upon ratification by the 38th State.[170]

CONCLUSION

Our nation has undergone several extremely troubling periods in recent years. The Constitution has rarely served us better than it did during the "Watergate era." It served us well because it was no respector of the existence of any higher short-term goals that would justify its subordination. The Constitution was more than a scrap of paper containing often inconvenient provisions to be circumvented in the pursuit of more immediate and more "important" objectives.

We can only undermine the integrity of this document, and in turn the integrity of our system of government, by manipulating and maneuvering it for the sake of short-term political goals. It is imperative that when this body deals with the Constitution, it not only acts fairly and with maximum procedural regularity, but that it conveys this impression to the citizens of the coun-

Footnotes at end of article.

try. The illusion of unfairness can be nearly as detrimental to the probity of the Constitution, and to the respect accorded the government, as actual unfairness.

The consensus of the sort necessary to amend the organic law of our nation must be a real and an active consensus, not a paper consensus, stitched together in erratic bits and pieces over a lengthy period of years. There must be a genuine constitutional majority, not a phantom majority derived only through resort to the casuistry and sophistry of constitutional lawyers.

I would suggest, too, that even the staunchest proponents of the Equal Rights Amendment recognize the extent to which resort by Congress to dubious constitutional procedures in pursuit of the ERA may undermine the eventual acceptance by society of the amendment. Constitutional amendments have traditionally been accorded respect because they have represented the highest expression of the will of the country. Once they are no longer perceived in this light, the absorption by society of the values underlying these amendments will be a far more difficult and arduous process. It is not only the opponent of ERA who must be concerned about the ERA extension; rather, it is all those who cherish the principles and values expressed by the Constitution.

FOOTNOTES

*Orrin Hatch is the junior United States Senator from Utah and a member of the Senate Judiciary Committee.

[1] Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification. H.R.J. Res. 208, 92d Cong., 2d Sess. (1972).

[2] *Id.* (emphasis added)

[3] Following are the States that ratified within the first year and the dates of ratification: Hawaii (March 22, 1972); Delaware (March 23, 1972); New Hampshire (March 23, 1972); Idaho (March 24, 1972); Iowa (March 24, 1972); Kansas (March 28, 1972); Nebraska (March 29, 1972); Texas (March 30, 1972); Tennessee (April 4, 1972); Alaska (April 5, 1972); Rhode Island (April 14, 1972); New Jersey (April 17, 1972); Colorado (April 21, 1972); West Virginia (April 22, 1972); Wisconsin (April 26, 1972); New York (May 18, 1972); Michigan (May 22, 1972); Maryland (May 26, 1972); Massachusetts (June 21, 1972); Kentucky (June 26, 1972); Pennsylvania (September 27, 1972); California (November 13, 1972); Wyoming (January 26, 1973); South Dakota (February 5, 1973); Oregon (February 8, 1973); Minnesota (February 8, 1973); New Mexico (February 28, 1973); Vermont (March 1, 1973); Connecticut (March 15, 1973); Washington (March 22, 1973).

[4] Maine (January 18, 1974); Montana (January 25, 1974); Ohio (February 7, 1974); North Dakota (March 19, 1975); Indiana (January 24, 1977).

[5] States purporting to rescind their ratifications are: Idaho (February 8, 1977); Nebraska (March 15, 1973); Tennessee (April 23, 1974); and Kentucky (March 20, 1978). The Lieutenant Governor of Kentucky vetoed that State's rescission effort, an action that remains of questionable constitutionality apart from the controversy surrounding rescission itself. In addition, significant rescission efforts have taken place in Kansas, Montana, North Dakota, South Dakota, West Virginia, and Wyoming.

[6] The Heritage Foundation, *The ERA: Is Seven Years Enough?* 8 (1977).

[7] *See* NAT'L J., Dec. 31, 1977, at 2006–08; CONG. Q. WEEKLY REP., Nov. 5, 1977, at 2369–71.

[8] *Hearings on H.R.J. Res. 638 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 95th Cong. 1st & 2d Sess. (1977–1978) [hereinafter cited as *House Hearings*].

[9] *See* CONG. Q. WEEKLY REP., July 22, 1978, at 1852.

[10] The House defeated, by a vote of 227–196, an amendment to allow rescission during the extension period; and by a vote of 230-183 agreed to "table" (kill) an amendment to require a ⅔ vote for extension. *See* CONG. Q. WEEKLY REP., Aug. 19, 1978, at 2214; 124 CONG. REC. 26194 (Aug. 15, 1978).

[11] *Hearings on S.J. Res. 134 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 95th Cong., 2d Sess. (1978) [hereinafter cited as *Senate Hearings*].

[12] SENATE RULE 14.4; JEFFERSON'S MANUAL § 24. *See* 124 CONG. REC. 26391 (Aug. 16, 1978); 124 CONG. REC. 31104 (Sept. 23, 1978).

[13] The Senate rejected amendments to permit rescission during the extension period (54–44); to require a ⅔ vote for extension (58–3); to permit rescission during the extension period and to recognize rescissions prior to that time (64–26); to amend the language of the ERA (79–14); to permit rescissions after March 22, 1979 (55–39); to establish January 1, 1980, as ratification deadline (84–10); and to express the opinion of Congress that H.R.J. Res. 638 contains no implication one way or the other on the rights of States to rescind (92–4). *See* CONG. Q. WEEKLY REP., Oct. 7, 1978, at 2724; 124 CONG. REC. 33138, 33192, 33220 (Oct. 3, 1978); *id.* at 33337 (Oct. 4, 1978); *id.* at 34279 (Oct. 6, 1978).

[14] *See, e.g.*, 124 CONG. REC. 26216 (Aug. 15, 1978) (remarks of Rep. Mikulski); *id.* at 26219 (remarks of Rep. Schroeder); *id.* at 26225 (remarks of Rep. C. Collins); 124 CONG. REC. 33142 (Oct. 3, 1978) (remarks of Sen. Kennedy); *id.* at 33346 (Oct. 4, 1978) (remarks of Sen. Hodges); *id.* at 33363 (remarks of Sen. Proxmire).

[15] *See, e.g., House Hearings, supra* note 8, at 236, 238.

[16] Letter to Rep. Don Edwards (Oct. 20, 1977), *reprinted* in 124 CONG. REC. at 32613 (Sept. 29, 1978).

[17] Dillon v. Gloss, 256 U.S. 368, 376 (1920).

[18] Although the subject of a time limit for ratification had been discussed in the past, the 18th Amendment was the first amendment which actually contained such a time limit. *See* text accompanying note 48 *infra*.

[19] 256 U.S. at 369.

[20] *Id.*

[21] *Id.* at 375. "[A]n alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today and . . . if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon unless a second time proposed by Congress." JAMESON, CONSTITUTIONAL CONVENTIONS § 585 (4th ed.), *quoted in* Dillon v. Gloss, 256 U.S. 368, 375 (1920).

[22] 256 U.S. at 376.

[23] *Id.*

[24] 307 U.S. 433 (1938).

[25] *Id.* at 454. *Cf.* Wise v. Chandler, 270 Ky. 1,108 S.W.2d 1024 (1937).

[26] *See House Hearings, supra* note 8, at 5–7 (statement of Assistant Attorney General John Harmon).

[27] 307 U.S. at 454.

[28] *See* text accompanying note 22 *supra*.

[29] 256 U.S. at 374.

[30] Professor Gerard observes that proponents of extension attempt to draw a distinction between "proposing" an amendment and "submitting" an amendment. Article V reads, "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution. . . ." According to Gerard, proponents of extension would insert after this phrase, "and, whenever a majority of both Houses concur, shall submit the proposal. . . ." *Senate Hearings, supra* note 11, at 11.

[31] On the purely administrative responsibilities of the Federal government in ascertaining the existence of the requisite number of ratifying States, *see* Cong. Research Serv., *Amending the Federal Constitution: Procedures of the General Services Administration and of the States Legislatures; Senate Hearings, supra* note 11 (statement of James E. O'Neill); 1 U.S.C. § 106(b); 65 Stat. 710.

[32] *House Hearings, supra* note 8, at 108, 110. Dean Griswold raises two analogies. First, he observes, "There is a strong doctrine in the law that after the Congress has acted on a paper, on a matter, a bill, or a confirmation, and has sent it out, that Congress loses power to change it." Second, "With respect to confirmation by the Senate, the Senate loses power to reconsider after it has sent a communication to the President and he has acted on it." United States v. Smith, 286 U.S. 6 (1932).

[33] These matters are sometimes referred to as "procedural," as distinguished from "substantive."

[34] *House Hearings, supra* note 8, at 35 (statement of Assistant Attorney General John Harmon).

[35] 256 U.S. at 376.

[36] *Cf. Senate Hearings, supra* note 11, at 3 (statement of Sen. Donald W. Riegle) ("And a time extension is non-coercive in any way. No State's freedom to act or not to act, is altered in any way. So a simple extension harms no interest. It merely provides additional time to consider the question. Hence the time extension is neutral in its impact—and grants no favor to those on either side of this debate.")

[37] J. MADISON, JOURNAL OF THE FEDERAL CONVENTION 737 (Scott ed. 1893) (quoting George Mason on an original draft of Article V permitting amendments to be proposed only by the national legislature: "The proposal as it stands is exceptional and dangerous. . . . [N]o amendments of the proper kind would ever be obtained by the people if the government should become oppressive. . . ."); 1 J. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 203 (rev. ed. 1937).

[38] THE FEDERALIST, No. 85.

[39] *See* 1. J. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 22, 202–03, 237 (rev. ed. 1937).

[40] *But cf.* H. CHASE & C. DUCAT, CORWIN'S THE CONSTITUTION AND WHAT IT MEANS TODAY 268 (14th ed. 1978) ("[W]hen acting upon amendments proposed by Congress, the State legislatures—and doubtless the same is true of conventions within the States—do not act as representatives of the states, or the populations thereof, but in performance of a 'federal function' imposed upon them by this article [V] of the Constitution."); Hawke v. Smith, 253 U.S. 221 (1920); Walker v. Dunn, 498 S.W. 2d 102 (Tenn. 1972).

[41] THE FEDERALIST, No. 85; 5 DOCUMENTARY HISTORY OF THE CONSTITUTION 141, 143 (citing Madison's letter of January 2, 1789); 4 J. ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 178 (2d ed. 1937).

[42] "If the seven-year limit that was initially specified in 1972 had expired before an intervening Congress took action to extend that limit . . . it would be *arguable* that the amendment should be regarded as incapable of such belated resurrection. But even that argument would most properly be addressed in Congress rather than the courts." *Senate Hearings, supra* note 11, at 5 (statement of Laurence H. Tribe).

[43] *See* text accompanying notes 128–160 *infra*.

[44] *See* text accompanying notes 37–39 *supra*.

[45] "Article V guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults." THE FEDERALIST, No. 43; 3 J. STORY, COMMENTARIES ON THE CONSTITUTION 1821 (1833); 3 J. FARRAND, RECORDS OF THE FEDERAL CONVENTION OF 1787 at 127 (rev. ed. 1937).

[46] *House Hearings, supra* note 8, at 121 (statement of Ruth Bader Ginsburg); *id.* at 6 (statement of Assistant Attorney General John Harmon).

[47] *Id.*

[48] The proposed amendment providing the District of Columbia with voting representation in Congress, approved by Congress in the midst of the ERA extension debate, placed the limit back within the actual text of the amendment. H.J. Res. 554, 95th Cong., 2d Sess. (1978).

[49] *Hearings on S.J. Res. 8 Before the Subcomm. on the Constitution of the Senate Committee on the Judiciary*, 84th Cong., 1st Sess. 34 (1955).

[50] 101 CONG. REC. 6628 (1955). It is interesting to observe that John Harmon, the Assistant Attorney General, when questioned on the existence of any legislative history behind placing the time limit in the proposing clause, responded that the "only" discussion that he had been able to find on this matter occurred in conjunction with the 20th Amendment during which the suggestion had been made to place the time limit in the proposing clause. *House Hearings, supra* note 8, at 31 Harmon also observed that, "By placing the time period in the proposing resolution rather than in the text of the amendment, the 92d Congress effectively decided that the proposal should remain viable for *at least* seven years. . . ." *Id.* (emphasis added).

[51] *See, e.g.*, Memorandum from Robert J. Lipshutz, Counsel to the President, to the Department of Justice, concerning the Constitutionality of Extending the Time Period for Ratification of the Proposed Equal Rights Amendment (Oct. 31 1977), *reprinted in House Hearings supra* note 8, at 19; *Senate Hearings, supra* note 11, at 8 (statement of Prof. Laurence Tribe).

[52] Letter from James Madison to Alexander Hamilton (July 20, 1788), *quoted in House Hearings, supra* note 8, at 19.

[53] *House Hearings, supra* note 8, at 7 (statement of Assistant Attorney General John Harmon).

[54] *See* text accompanying notes 88–127 *infra*.

[55] *See, e.g.*, Leser v. Garnett, 258 U.S. 130, 137 (1922); Hawke v. Smith, 253 U.S. 221 (1920).

[56] Dillon v. Gloss, 256 U.S. 368, 376 (1920).

[57] *Senate Hearings, supra* note 11, at 6.

[58] For the wording of each of the State ratifying documents, see K. KEESLING, STATE RATIFICATION OF THE PROPOSED EQUAL RIGHTS AMENDMENT (1978).

[59] *See, e.g.*, Cong. Reference Serv., *State Ratifications of the Proposed Equal Rights Amendment* 4 (1978).

[60] *Id.* at 7; Letter from Professor Jules B. Gerard to Rep. Harold L. Volkmer (July 14, 1978). This letter was written by Professor Gerard in response to a request from Rep. Volkmer to respond to the criticisms of his testimony by the Department of Justice. Letter from Rep. Volkmer to Rep. Don Edwards, Chairman, Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary (undated).

[61] *Id.* at 4; Memorandum from the Justice Department to Rep. Don Edwards (undated); *Senate Hearings, supra* note 11, at 7 (statement of Prof. Laurence Tribe); *id.* (statement of Assistant Attorney General Patricia Wald).

[62] A memorandum on the ERA extension by Grover Rees, III, author of *Rescinding Ratification of Proposed Constitutional Amendments—A Question for the Court*, 37 LA. L. REV. 896 (1977), asserts that "Authorities on constitutional amendments have frequently applied principles of contract law to the amending process: *see, e.g.*, JAMESON, CONSTITUTIONAL CONVENTIONS 629–33 (4th ed. 1887); ORFIELD, AMENDING THE FEDERAL CONSTITUTION 52 (1942)."

[63] *See* sources cited in note 61 *supra*.

[64] This term has been used extensively by women's groups supporting the ERA extension.

[65] On October 12, 1971, the House approved H.R.J. Res. 208 by a vote of 354–23. The Senate approved the same resolution on March 22, 1972, by a vote of 84–8.

[66] *See* 124 CONG. REC. 26194 (Aug. 15, 1978); *id.* at 33174 (Oct. 3, 1978).

[67] H.J. Res. 638 fell 49 votes short of a two-thirds majority in the House and 4 votes short of a two-thirds majority in the Senate.

[68] 5 HINDS PRECEDENTS § § 1029–32.

[69] JEFFERSON'S MANUAL § 192.

[70] "In an effort to gain united support for the amendment, however, three minor technical changes have been incorporated into H.J. Res. 208. The time allowed to the States to ratify the amendment has been limited to an ample seven years . . ." *Hearings on H.R.J. Res. 208 Before the House Comm. on the Judiciary*, 92d Con., 1st Sess. 41 (1971) (statement of Rep. Martha Griffiths). *See* 124 CONG. REC. 33178 (Oct. 3, 1978) (remarks of Prof. Guido Calabresi).

[71] 395 U.S. 486 (1969).

[72] *Id.* at 508.

[73] *House Hearings, supra* note 8, at 132.

[74] 5 HINDS PRECEDENTS § 7027.

[75] JEFFERSON'S MANUAL § 192; HINDS PRECEDENTS §§ 7033–34.

[76] *See, e.g., House Hearings, supra* note 8, at 64 (statement of Professor Thomas I. Emerson.)

[77] S. REP. No. 336, 92d Cong., 1 Sess. 18 (1971). (Separate Views of Messrs. Bayh, Burdick, Hart, Kennedy, and Tunney).

[78] *See* text accompanying note 76 *supra*.

[79] *See* Hollingsworth v. Virginia, 3 U.S. (3 Dall.) 378 (1978); U.S. CONST. art. I, § 7, cl. 3; Black, *On Article I, Section 7, clause 3 and the Amendment of the Constitution*, 87 YALE L.J. 896 (1978). *Cf. Senate Hearings, supra* note 11, at 7 (statement of Prof. Ronald Rotunda) (legislative vetoes as joint resolutions not subject to Presidential signatures).

[80] U.S. CONST. art. I, § 7, cl. 2.

[81] U.S. CONST. art. II, § 2, cl. 2.

[82] U.S. CONST. art. V.

[83] *Senate Hearings, supra* note 11, at 15 (statement of Prof. Laurence Tribe). Rather than being a "unique directive," one might argue that H.J. Res. 638 has only the effect of a concurrent resolution of Congress. *See generally* K. Lewis, *Analysis Regarding the Issue of Extending the Ratification Deadline of the Proposed Equal Rights Amendment* (August 19, 1977) (Congressional Research Service, Library of Congress).

[84] "As a matter of Constitutional law we believe it is clear that the President has no role to play in the amendment process. If for some non-constitutional reason, the President's signature is desirable on whatever form of resolution is passed by Congress, we believe that no problem would arise from the President's affixation of his signature, so long as it was clearly recognized that this act on the President's part did not constitute an assertion of any claim of power to veto the proposed resolution. *Senate Hearings, supra* note 11, at 10 (statement of Assistant Attorney General Patricia Wald). Presidents were also involved symbolically in signing the proposed 13th, 24th, and 25th Amendments to the Constitution.

[85] Hollingsworth v. Virginia, 3 U.S. (3 Dall.) 378 (1978).

[86] *See* text accompanying notes 88–127 *infra*.

[87] *See* text accompanying notes 128–160 *infra*.

[88] New York v. O'Neill, 359 U.S. 1 (1959).

[89] U.S. CONST. amend X.

[90] *See generally* Comment, *Rescinding Ratification of Proposed Constitutional Amendments—A Question for the Court*, 37 LA. L. REV. 896 (1977); Elder, *Article V, Justiciability, and the Equal Rights Amendment*, 31 OKLA. L. REV. 63, 97–109; Ervin, *Can a State Rescind the Equal Rights Amendment?*, THE PHYLLIS SCHLAFLY REPORT (May 1978); Kanowitz & Klinger, *Can a State Rescind Its Equal Rights Amendment Ratification: Who Decides and How?*, 28 HASTINGS L. REV. 979 (1977); Note, *The Equal Rights Amendment: Will States Be Allowed to Change Their Minds?*, 49 NOTRE DAME LAW. 657 (1974); *Reversals in the Federal Constitutional Amendment Process: Efficacy of State Ratifications of the Equal Rights Amendment*, 49 IND. L.J. 147 (1973); Burke, *Validity of Attempts to Rescind Ratification of the Equal Rights Amendment*, 8 U.C.L.A. L. REV. 1 (1976); Fasteau & Fasteau, *May a State Legislature Rescind Its Ratification of a Pending Constitutional Amendment*, 1 HARV. WOMEN'S L.J. 27, (1973); Killian, *The Efficacy of State Rescission of Ratification of a Federal Constitutional Amendment* (March 15, 1977) (Congressional Reference Service, Library of Congress); Note, *The Amending Process: Extending the Ratification Deadline of the Proposed Equal Rights Amendment*, 9 RUTGERS CAMDEN L.J. 91 (Fall 1978).

[91] *See* ROTTSCHAEFFER, HANDBOOK ON AMERICAN CONSTITUTIONAL LAW 395 (1939).

[92] *Cf.* S. ROBERT, ROBERT'S RULES OF ORDER NEWLY REVISED 265 (1970) ("The purpose of reconsidering a vote is to permit correction of hasty, ill-advised, or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the vote.").

[93] Leser v. Garnett, 258 U.S. 130 (1922).

[94] Dyer v. Blair, 390 F. Supp. 1291, 1307 (N.D. Ill. 1975).

[95] Given that the term "debate" implies discussion by both sides on a matter in disagreement, as a prelude to making a decision *one way or the other*, it is clearly not the objective of those who argue for the ERA extension (without allowing rescission) that there be a genuine debate during the extension period.

[96] Black, *Statement on Legality of State Rescission of Ratification of an Amendment*, (February 21, 1978) (submitted to Members of Congress).

[97] CONG. GLOBE, 40th Cong., 2d Sess. 453 (1868).

[98] CONG. GLOBE, 40th Cong., 2d Sess. 4230, 4266, 4296 (1868).

[99] *Id.* at 4266.

[100] *Id.*

[101] *See* CONG. GLOBE, 41st Cong., 2d Sess. 1477, 1479 (1870).

[102] United States v. Colby, 265 F. 998, 1000 (D.C. Cir. 1920). *See* sources cited in note 31 *supra*.

[103] CONG. GLOBE, 41st Cong., 2d Sess. 28, 3971 (1869).

[104] Maryland Petition Committee v. Johnson, 265 F. Supp. 823 (D. Md. 1967); Negrich v. Hohn, 246 F. Supp. 173 (W.D. Pa. 1965). *See also* The Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873).

[105] Corwin & Ramsey, *The Constitutional Law of Constitutional Amendment*, 26 NOTRE DAME LAW, 185, 204–06 (1951).

[106] 16 Stat. app. 10, 1131 (1870); CONG. GLOBE. 41st Cong., 2d Sess. 203–04, 2290 (1870).

[107] Corwin & Ramsey, *supra note* 105, at 203–04 *et seq.*

[108] G. DIETZE, AMERICA'S POLITICAL DILEMMA 113 (1968).

[109] *Id.* at 61.

[110] "That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date." Powell v. McCormack, 395 U.S. 486, 547 (1969).

[111] 307 U.S. 433 (1939).

[112] *Id.* at 450.

[113] There have been at least 13 floor votes, for example, in the Illinois legislature on the Equal Rights Amendment. Illinois remains one of the non-ratifying States.

[114] THE FEDERALIST, No. 85.

[115] *Id. see also* THE FEDERALIST, No. 39; THE FEDERALIST, No. 43.

[116] 256 U.S. at 375.

[117] Black, *supra* note 96, at 1.

[118] *Id.*

[119] Comment, *Rescinding Ratification of Proposed Constitutional Amendments—A Question for the Court*, 37 LA L. REV. 896, 925 (1977). *See also* Rees, *When the Voting Should Have Stopped*, 30 NAT'L REV. 1010–11 (1978).

[120] ORFIELD, AMENDING THE FEDERAL CONSTITUTION 72 (1942).

[121] On the distinctions between permitting rescission during the regular seven-year period and during an extended ratification period, see *House Hearings, supra* note 8, at 117 (statement of Prof. William Van Alstyne); *id.* at 40 (statement of Prof. Laurence Tribe); letter from Prof. Herbert Wechsler to Rep. Don Edwards (February 13, 1978), *reprinted in* 124 CONG. REC. S16668 (daily ed. Sept. 29, 1978).

[122] *See* note 45 *supra.*

[123] *See* Orfield, *supra* note 120, at 72; note 45 *supra.*

[124] *House Hearings, supra* note 8, at 70.

[125] Memorandum from Dep't. of Justice to Robert J Lipshutz, Counsel to the President (October 31, 1977), *reprinted in House Hearings, supra* note 8, at 18–26

[126] Hawks v. Smith 253 U.S. 221 (1920); Leser v. Garnett, 258 U.S. 130 (1922), *aff'g* Leser v. Bd. of Registry, 139 Md. 46, 114 A. 840. *See* text accompanying note 52 *supra.*

[127] Jung, *Validity of a State's Rescission of Its Ratification of a Federal Constitutional Amendment*, 2 HARV. J.L. & Pub. POL'Y 233 (1979).

[128] *House Hearings, supra* note 8, at 6 (statement of Ass't Attorney General John Harmon).

[129] *See, e.g., House Hearings, supra* note 8, at 61–65 (statement of Prof. Thomas Emerson); *Id.* at 121–25 (statement of Prof. Ruth Bader Ginsburg); *Id.* at 5–7 (statement of Ass't Attorney General John Harmon).

[130] *Senate Hearings, supra* note 11, at 1, 6 (statement of Prof. Ronald Rotunda).

[131] 307 U.S. 433 (1939).

[132] See text accompanying note 112 *supra.*

[133] 307 U.S. at 454.

[134] *House Hearings, supra* note 8, at 106.

[135] *Senate Hearings, supra* note 11, at 6 (statement of Prof. Ronald Rotunda).

[136] Rees, *supra* note 119, at 1013.

[137] On the ERA extension as a "political question," *see generally* Elder, *Article V, Justiciability, and the Equal Rights Amendment*, 31 OKLA. L. REV. 63 (1978); Comment, *Constitutional Amendments—The Justiciability of Ratification and Retraction*, 41 TENN. L., REV. 93 (1973).

[138] 328 U.S. 549 (1946).

[139] Baker v. Carr, 369 U.S. 186 (1962).

[140] *Id.* at 217 (1962).

[141] 395 U.S. 486 (1969).

[142] *Id.* at 518 (1968).

[143] U.S. CONST. art. I, § 5, cl. 2.

[144] U.S. CONST. art I, § 5, cl.1.

[145] U.S. CONST. art. I, § 5, cl. 2.

[146] 418 U.S. 683 (1974).

[147] 3 U.S. (3 Dall.) 378 (1798).

[148] 253 U.S. 350 (1920).

[149] 253 U.S. 221 (1920).

[150] 256 U.S. 368 (1921).

[151] 258 U.S. 130 (1922).

[152] 282 U.S. 716 (1931).

[153] 307 U.S. at 447.

[154] *House Hearings, supra* note 8, at 106–07. *See* Letter from Prof. Charles Alan Wright to Rep. Don Edwards (Oct. 20, 1977), *reprinted in* 124 CONG. REC. S16669 (daily ed. Sept. 29, 1978).

[155] *House Hearings, supra* note 8, at 7 (statement of Ass't Attorney General John Harmon).

[156] "The judicial power shall extend to all cases, in law and equity, arising under this Constitution. . . ." U.S. CONST. art. III, § 2, cl. 1.

[157] "Since it is impossible to find a final arbiter without an institutional conflict of interest, it is essential that the ultimate power of decision rest with the branch most likely to find and apply the law without injecting its own interests and passions." Comment, *Rescinding Ratification of Proposed Constitutional Amendments—A Question for the Court*, 37 LA. L. REV. 896, 915 (1977).

[158] "It has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed." THE FEDERALIST, No. 85.

[159] *House Hearings, supra* note 8, at 115 (statement of Prof. William Van Alstyne). "What the proponents are suggesting in relying on *Coleman* is that the absence of judicial review *creates* the power for Congress to create the time conditions." H.R. REF. No. 95–1405, 95th Cong., 2d Sess. 38 (1978) (Minority Views of Rep. Charles Wiggins).

[160] 307 307 U.S. at 457.

[161] Bill of Rights Proposed September 25, 1789, Ratified December 15, 1791; 11th Amendment, Proposed March 4, 1794, Ratified February 7, 1795; 12th Amendment, Proposed December 9, 1803, Ratified June 15, 1804; 13th Amendment, Proposed January 31, 1865, Ratified December 6, 1865; 14th Amendment, Proposed June 13, 1866, Ratified July 9, 1869; 15th Amendment, Proposed February 26, 1869, Ratified February 3, 1870; 16th Amendment Proposed July 12, 1909, Ratified February 3, 1913; 17th Amendment, Proposed May 13, 1912, Ratified April 8, 1913; 18th Amendment, Proposed December 18, 1917, Ratified January 16, 1919; 19th Amendment, Proposed June 4, 1919, Ratified August 18, 1920; 20th Amendment, Proposed March 2, 1932, Ratified January 23, 1933; 21st Amendment, Proposed February 20, 1933, Ratified December 5, 1933; 22d Amendment, Proposed March 21, 1947, Ratified February 27, 1951; 23d Amendment, Proposed June 17, 1960, Ratified March 29, 1961; 24th Amendment, Proposed Auugst 27, 1962, Ratified January 23, 1964; 25th Amendment, Proposed July 6, 1965. Ratified February 10, 1967; 26th Amendment, Proposed March 23, 1971, Ratified July 1, 1971.

[162] George Will, Newsweek, Nov. 14, 1977, at 128.

[163] Congressional Research Service, Library of Congress, Equal Rights Amendment, Issue Brief No. IB74122 at 9-13.

[164] *See* text accompanying note 6 *supra.*

[165] *See, e.g., House Hearings, supra* note 8, at 183 (statement of State Sen. Robert Egan of Illinois); *id.* at 187 (statement of State Rep. Donna Carlson of Arizona).

[166] *See, e.g.*, New York Times, Feb. 22, 1979, at A-18; Chicago Tribune, Jan. 12, 1979; Ms., May, 1978, at 80.

[167] Some of the more important court decisions have been Reed v. Reed, 404 U.S. 71 (1971); Frontiero v. Richardson, 411 U.S. 677 (1973); Taylor v. Louisiana, 419 U.S. 522 (1975); Weinberger v. Weisenfeld, 420 U.S. 636 (1975); Stanton v. Stanton, 421 U.S. 7 (1975); Craig v. Boren, 429 U.S. 190 (1976); Califano v. Goldfarb, 430 U.S. 199 (1977). *Cf.* Kahn v. Shevin, 416 U.S. 351 (1974); Schlesinger v. Ballard, 419 U.S. 498 (1975).

Some of the most important new pieces of legislation include: Equal Employment Opportunities Enforcement Act of 1972, Pub. L. No. 92–261; Equal Treatment for Married, Female, Federal Employees, Pub. L. No. 92–187 (1972); Education Act Amendments of 1972, Pub. L. No. 92–318; Social Security Act Amendments of 1972, Pub. L. No. 92–603; Department of Defense Appropriation Authorization Act of 1976, Pub. L. No. 94–106; Equal Credit Opportunity Act Amendments of 1976, Pub. L. No. 94–239; Tax Reform Act of 1976, Pub. L. No. 94–455; Education Amendments of 1976, Pub. L. 94–482; Pregnancy Disabilities Act of 1978, Pub. L. No. 95–555; *See* U.S. COMM'N ON CIVIL RIGHTS, A GUIDE TO FEDERAL LAWS AND REGULATIONS PROHIBITING SEX DISCRIMINATION (July 1976).

[168] Wisconsin rejected an equal rights amendment to its State Constitution in a statewide referendum on April 3, 1973, while New York and New Jersey rejected similar referenda on November 4, 1975.

[169] *See, e.g.*, H.R. REP. No. 95–1405, 95th Cong., 2d Sess. (Concurring Views of Rep. Hamilton Fish, Jr.); *House Hearings, supra* note 8, at 162–64, 168 (statement of Liz Carpenter).

[170] With respect to early efforts at challenging the ERA ratification extension in the courts, see 64 A.B.A.J. 1838 (1978); NAT'L L. J., Oct. 23, 1978, at 11; Chicago Tribune, Oct. 8, 1978, at 2.●

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I intend to speak on the subject of the U.S. Senate. I say to the distinguished acting Republican leader that there will be no further business transacted. I can assure him that no action will be taken in any transaction of any business without his being notified. At the moment, I have no knowledge that there will be any business at all which will require that notification. Therefore, if he wishes to leave the floor to work in his office or to transact any other duties, I want him to feel free to do so, with the understanding that the majority leader will protect him on the floor.

Mr. TOWER. If the distinguished majority leader will yield, I wonder if he will make it clear that there will be no more record votes today so we may pass that word.

Mr. ROBERT C. BYRD. I think that is a good idea. Mr. President, there will be no more rollcalls votes today. Our respective cloakrooms may dispatch that information to Senators.

Mr. TOWER. If the distinguished majority leader will further yield, I should like very much to remain here and listen to what he has to say because I know it will be fascinating and enlightening and inspirational. I note that he has his shoes off and that means that the rhetoric should flow very easily and in a very lucid way. But in that there are other aspects of the people's business that I must be about, I shall take my leave and assure him that I shall read his remarks in the RECORD.

Mr. ROBERT C. BYRD. I thank my friend from Texas for his observations and for his kind remarks.

May I say that if any Senator wishes the floor, I shall be very glad to yield it. I do not want to impose on the time of the Senate when other Senators wish to

speak. I take this moment because there is no further business to be transacted today.

(The remarks of Mr. ROBERT C. BYRD on the U.S. Senate are printed later in today's RECORD, by unanimous consent.)

ORDER OF BUSINESS

(The following address by Mr. RIEGLE was made earlier today and is printed at this point by unanimous consent.)

THE DEMOCRATIC PRESIDENTIAL CONVENTION

Mr. RIEGLE. Mr. President, yesterday, Senator EXON and I sent a letter that was addressed to President Carter and Senator KENNEDY to ask both men to publicly announce that their Democratic Presidential Convention delegates be free of any binding commitment to their respective Presidential candidacies.

We did so because we feel that would guarantee a truly open Democratic Convention and could assure the best prospect for a unified campaign in terms of the general election for our party.

We also made it clear that we were not making that request for the benefit of any one candidate and that we both intended to support whatever Presidential ticket is produced by an open convention process.

Mr. President, I would like to read the letter. It is addressed to President Carter and Senater KENNEDY jointly. It is as follows:

JULY 30, 1980.

The PRESIDENT,
The White House,
Washington, D.C.
Hon. EDWARD KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT AND SENATOR KENNEDY: As Democratic Senators, we believe it would serve the best interests of the country and the Democratic Party if both of you were to announce publicly that your Presidential convention delegates are free of any binding commitment to your respective candidacies, and that you urge them to follow their own individual consciences in selecting our 1980 Presidential ticket.

Such a development would guarantee a true "open", as opposed to a "closed", convention and best assure a unified Party for the campaign.

Whether the eventual nominee is either of you, or someone else, we are each committed to support whatever Presidential ticket is produced by his open convention process.

We thank you for your consideration of our request, and assure you both that we are not making this request for the benefit of any one candidate.

Sincerely,

J. JAMES EXON,
Nebraska.
DON RIEGLE,
Michigan.

Mr. RIEGLE. Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks two recent news items, one, a column from the New York Times of Wednesday, July 30, entitled "Carter's Garden Strategy," written by Mr. James Reston; and the second is an editorial out of today's Baltimore Sun, the lead editorial, entitled "Democrat's Triple Quandry."

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. RIEGLE. Mr. President, I asked to have these printed at the end of my remarks because they both go to the issue of why an open convention, where the delegates would be free of any binding commitment to any particular candidate, will lead, in the end, to the best possible result.

If this were to be done, it might well be that the nominee will be President Carter, possibly Senator KENNEDY, maybe even Vice President Mondale or Secretary of State Muskie, or Senator JACKSON, or one of the other names that have been mentioned as possibilities.

But whoever it might be, I think that candidate and that ticket would be in the strongest possible position to give leadership to the country and to go out and wage a successful campaign in terms of race against the Republican nominee, Ronald Reagan.

I think it is essential our party have the strongest possible ticket, that it be as united as possible, and that it go out and be successful in this critical Presidential year.

I think the way for us to maximize the chance for that success is with an open convention process.

So I think it is important these items be in the RECORD so our colleagues can understand what our thinking is in terms of our decision to take this step at this time, and to have as part of this suggestion the thoughts of others in the forms of these two news items I have mentioned, which also provide very strong rationale and reasoning that support this suggestion.

EXHIBIT 1

CARTER'S GARDEN STRATEGY

(By James Reston)

WASHINGTON, July 29.—There are practical and moral reasons why President Carter, who prides himself on being a practical and moral man, should welcome instead of opposing an "open" or free-voting Democratic National Convention.

The practical reason is that he can't unify his party without an "open" convention, and he's not likely to beat Ronald Reagan if he rejects it. For while Mr. Carter has the votes to overwhelm and even humiliate his Democratic opponents and doubters in August, he will need them in November. And in his present mood, he could easily win the nomination in New York, divide the Democratic Party and lose the general election.

There is another practical reason for Carter to risk a free vote by the delegates in Madison Square Garden: The risk is not all that risky. The delegates are even more divided about Senator Kennedy or Senator Jackson than they are about Carter. If they put Vice President Mondale or Secretary of State Muskie in nomination, both would undoubtedly and immediately refuse to run.

The risk to Carter in the convention, therefore, is really not defeat but division. By rejecting him, the delegates would be confirming Reagan's main argument: that not only Carter but the whole Democratic Party has failed, and should not only be tossed out of the White House but out of the House and Senate leadership as well.

The moral or philosophical argument for an "open" convention is in many ways even more compelling. The Carter people argue that the President ran against Kennedy in the primaries and caucuses and beat him soundly, fair and square. Carter did so in accordance with the rules, they say, and got enough votes by the will of the people to assure his renomination, while his opponents, having lost, are now trying to change the rules at the end of the game, and play tennis with the net down.

This is an effective argument, but it leaves out of account the facts and atmosphere in which the President gained his victories. He didn't really "run" in the primaries at all. He stayed in the White House. He didn't run against Kennedy, but against Ayatollah Khomeini. His argument was that he was struggling for the honor of the nation and that a vote for Kennedy or anybody else was a vote against the President's efforts to liberate the hostages. It was a persuasive argument at that time.

This is not to imply that Mr. Carter was insincere in concentrating on the release of the hostages, but his appeal to patriotism did undoubtedly persuade a lot of voters that they should vote for the President rather than vote against him when he was in trouble in Iran and Afghanistan.

On the President's own testimony, the world has changed since this election campaign began many months ago. During the last year or so, Mr. Carter has changed his own mind about how to deal with the Soviets, and what to do about inflation and unemployment among many other problems. He does not want to be held to the judgments or decisions he made last year, or even last spring. He argues that as the facts change, he must be free to change his mind about what is best for the nation.

That is also precisely what many of the members of his own party are now saying when they ask for an "open" convention. No doubt many of them are trying to get rid of Carter for selfish reasons because they have been watching the polls and think he's a "loser"; but many more are insisting that it's not quite fair for Carter to change his policies in a changing world and still demand that they vote for him in August as they did in the spring.

There is another reason why Jimmy Carter may have to think in the next few days about an "open" convention. He must know that, even among the people who wish him well, there is a feeling of doubt and disappointment about his performance.

What is lacking in Mr. Carter's mind seems to be an understanding of why he was elected in the first place. He came to Washington proclaiming the moral order, crying for understanding, generosity and peace after a generation of division and violence, and condemning all calculating politicians and legalistic contrivances.

But now he is calculating himself—every delegation, every vote, every rule, down to the last comma. His people are not worried that he will be defeated in Madison Square Garden, but that the fight over an open convention may dominate the proceedings during prime television time.

They are concentrating, not for the first time, on the short run and not on the long run—in this case on winning the nomination even if they bloody the opposition, rather than on uniting the party for the battle against Reagan.

It is a puzzling strategy, and the final irony is that Jimmy Carter is insisting on votes collected during the hostage crisis in Iran which he exaggerated and then mismanaged, and is forgetting what he has often preached: that sometimes you have to risk throwing away your soul to save it. And that always you must be fair, as he has said so many times, and "open."

DEMOCRATS' TRIPLE QUANDARY

There really are three separate questions at issue in the controversies now engulfing the Democratic Party. The first is whether the Democratic National Convention should dump Jimmy Carter, this on the debatable theory that the president is unelectable. The second is whether convention delegates should be iron-bound to vote for the candidate under whose banner they ran during this year's primaries. The third is whether the convention should apply this rule to convention delegates in future presidential elections.

The last question is the easiest. This newspaper believes the Democratic Party should reject its proposed Rule 11-H because it is too rigid, too arbitrary and too destructive to the deliberative obligations of a national convention. Consider its wording: "All delegates to the national convention shall be bound to vote for the presidential candidate whom they were elected to support for at least the first convention ballot, unless released in writing by the presidential candidate. Delegates who seek to violate this rule may be replaced with an alternate of the same presidential preference by the presidential candidate or that candidate's authorized representative at any time up to and including the presidential balloting at the national convention."

This proposed rule makes no provision for circumstances that can arise between primary season and convention time. A candidate might be overcome by physical or mental disabilities that he refuses to acknowledge; he might be found to have engaged in past activities that make him unacceptable; he might have made policy pronouncements or decisions that undercut party or national interests. Rule 11-H seeks to control a delegate's vote not only on the first presidential rollcall but on the rules, platform and credentials decisions that come first. It seems to contravene the right of each quadrennial political convention to set its own rules, a right given precedence even over state laws by the Supreme Court in 1975. It limits a convention's ability to utilize the discretion and judgment so necessary to a democratic society.

The second question—whether delegates elected in this year's primary are legally or morally obligated to vote for their chosen candidate—is more difficult. The Democratic National Committe adopted Rule 11-H in 1978 without dissent and without discussion. That made it a unanimous decision. It also made it a thoughtless, irresponsible decision. Proposed by a White House political operative, it was one of many devices adopted in the name of "reform" to insure that the will of the people, as expresed in the primaries, not be thwarted by oldtime convention brokerage. Unfortunately, Rule 11-H is too extreme, too neatly adaptable to an incumbent's strategy. We do not believe delegates elected under this *proposed* rule are legally obligated to vote for Mr. Carter or Mr. Kennedy. But we would respect any delegates who feel morally obligated to do so since they ran knowing that Rule 11-H existed.

Which brings us to the ultimate question facing Democrats, which is whether to nominate a president far down in the polls and profoundly embarrassed by the Brother Billy affair. Mr. Carter could yet stage a Harry Truman comeback. But to convince delegates he is electable, we believe he should repudiate Rule 11-H and free them to vote their conscience. These delegates are for the most part rank-and-file Carter loyalists. If the president cannot count on their support, how can he count on the votes of the mass electorate? A nomination from a convention unshackled from the iron bonds of Rule 11-H would be infinitely more valuable than a nomination executed in lockstep.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that these remarks appear in the RECORD immediately following those of the Senator from Michigan (Mr. RIEGLE) on this related subject.

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

Mr. HUDDLESTON. Mr. President, earlier today the distinguished Senator from Michigan (Mr. RIEGLE) placed in the RECORD a letter that he had sent, along with the distinguished Senator from Nebraska (Mr. EXON), to the two leading candidates for the nomination of the Democratic Party for President of the United States. That letter urged the two candidates to release their delegates who are pledged on the basis of primary elections for the convention that is coming up very shortly in New York.

The appeal was made that the best interests of the party and the best interests of the country would be served by a so-called open convention.

I just thought some comment to our colleagues might be appropriate expressing a contrary view. My earliest recollections as a participant in Democratic Party politics was the frustration and the sense of helplessness that many of our party members, our rank and file members, and many citizens felt in the nominating process, a feeling that there was little opportunity for input by citizens in the process of selecting the nominees of the party.

The conventions would convene every 4 years. The delegates would go. On arriving at the convention, they would be subjected to various persuasions by any number of groups of individuals and special interests, trying to make the determination as to who would represent the party as its nominee for President.

I would not say that this system did not work effectively. I could not say that the results of this kind of procedure produced any less capable candidates than a more open system.

But the fact is because of this dissatisfaction, the Democratic Party set out several years ago to bring about certain reforms that would encourage and provide a way that a larger number of citizens could participate in this process and could make their wishes known before a candidate was nominated for the office of President.

As this reform movement evolved, the primary system began to expand and the natural inclination and assumption was that this was a method by which the voice of the people could be heard and could be felt in the nominating process.

That brings us to 1980, when we have just come through the most expansive Presidential primary season in the history of the country and more citizens participated in the determination as to who the delegates to the convention would be and what position they would take, at least on the first ballot, as far as the nomination of the individual to represent the party in the race for the President situation.

It is ironic, I think, that some of the same people who years ago were pushing for a broader system—one which would involve the people rather than solving these questions in the back rooms of the convention process—now seem to think that the way to serve the public best would be to say to 19.5 million Americans who participated in these primaries that we are going to change the course; we are not going to recognize the decision that you have made; we are going back to the convention and assemble all of the delegates there and have a free-for-all and the candidate who can put together the most coalitions, who can make the most arrangements that will attract this delegation or that delegation in the light of the situation that might exist at that particular time on that Thursday of the week of the convention, will be the candidate who gets the nod and gets the nomination to represent the party in the race for President.

It seems to me it would be a tremendous step backwards and contrary to the course which the Democratic Party set upon a number of years ago to just say all of a sudden that we are going to change the rules, we are going to change the intent, after the game is over, to say to the candidates who spent vast sums of money, who expended great amounts of time and effort and energy in the various States in the primaries and the caucuses, that this was all for naught, that we are not going to count that now, does not seem to me to be a fair way to deal with this particular situation.

And even more importantly to say to those individuals, those citizens, those Americans who went to the polls with the expectation that their voice would be heard, that they had a chance to make a difference in the nominating process, that they had a chance to express their opinion and that expression as demonstrated by the majority vote in the primaries would be reflected by the delegates chosen in the balloting at the National Convention.

So I think that this is a suggestion that ought to be given a great deal of consideration before we rush headlong into a plan that would be contrary to the principles that we have established and that many believe to be very important in the process of nominating and electing the President of the United States.

The distinguished Senator from Michigan made it clear in his presentation that he was not making the suggestion on the basis of helping or hindering any of the candidates for the nomination. And I believe he is sincere in that. I have no reason to question it and I certainly would not question the motives or the intent of the Senator from Michigan.

But the fact is, as everyone knows, that such a move can only benefit one candidate; not only could it benefit one candidate, it is the only possible way that one particular candidate could have of overcoming the voice of the people, the decision of the people, and receiving the nomination.

So while I say I do not question at all the motives of the distinguished Senator from Michigan, I certainly do question those of many others who have put forth this proposition and are advancing

it and advocating it at the present time. I think we should move with great caution.

Mr. President, one further observation. I think it is somewhat interesting that of all the 3,000-plus delegates at the National Democratic Convention, there are only 8 Senators among them and only 39 Members of the House of Representatives. Those figures, when I saw them, startled me somewhat. I do not know that there is any significance at all to them. I do not know whether it means that the Congress is abrogating its necessary responsibility or its interest in the nominating process for the Presidency of the United States. But I think it is interesting to note.

It does this one thing. It does, it seems to me, reduce the propensity that we might have here, at least reduce the effectiveness that we might have, to in any way control that convention, since we have elected, as individuals, not to take part in it.

As I say, I do not know whether there are any ramifications to this fact or not. I just toss it out as an interesting point that might be worth thinking about.

I thank very much the distinguished Senator from West Virginia, the majority leader for yielding to me. I yield back the floor.

Mr. ROBERT C. BYRD. The distinguished Senator is welcome.

Mr. EXON. The junior senator from Nebraska would like to pose a question to the majority leader. Since I am very new here, I am not certain as to what role partisan politics should play as far as the official record of the U.S. Senate is concerned.

It so happens that I have been involved in the activities with Senator RIEGLE that the good Senator from Kentucky (Mr. HUDDLESTON) has just made reference to. I just, by the sheerest of chance, happened to be on the floor to hear the remarks from my good friend from Kentucky.

I am posing this question: Is it appropriate for me as a Member of the U.S. Senate to make remarks that were induced by the statements that I have just heard made by my friend from Kentucky?

Mr. ROBERT C. BYRD. I beg the Senator's pardon. Will the Senator address his question to me?

Mr. EXON. My question was, as the junior Senator from Nebraska who is not sure of what is proper procedure on the floor of the U.S. Senate, is it proper, in the majority leader's opinion, and is it in order for me to make some remarks with regard to the partisan political matter of the Democratic National Convention in response to the statements that were just made by my friend from Kentucky?

Mr. ROBERT C. BYRD. Yes; it would be in order, Mr. President.

Mr. EXON. I therefore request that the distinguished majority leader yield to me sufficient time to make whatever comments I care to enter into the RECORD at this time.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator, with the understanding that I not lose the floor, and with the further understanding that the statement I have been making not show an interruption.

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

AN OPEN DEMOCRATIC CONVENTION

Mr. EXON. Mr. President, as I said a moment ago, it was by happenstance that I came into the U.S. Senate Chamber during the remarks just made by the Senator from Kentucky. I wish to say for the record that I would not have been on the floor of the Senate in this regard had those remarks not been made. I suspect that my friend from Kentucky made no reference to this particular Senator.

Nevertheless, the remarks that he had reference to involved a letter that was sent by Senator RIEGLE of Michigan and this Senator to two of the Democratic candidates for President of the United States, those being the President of the United States and Senator TED KENNEDY, a Member of this body.

Mr. President, I should like to say, if I may, that I thank the Senator from Kentucky for saying that the intentions stated by the distinguished Senator from Michigan seem to be exactly what they were, without any devious intent whatsoever. I am sure the Senator from Kentucky was sincere in that regard, and I suspect that, since the Senator from Nebraska places himself in the same position as the Senator from Michigan, the Senator from Kentucky would also agree that the Senator from Nebraska is likewise taking this action in good conscience.

It is certainly not the intention of the Senator from Nebraska to interfere with whom the Democrats, assembled at the New York City convention starting a week from Monday, will select as the nominees of this party. As a man who has had considerable experience at Democratic National Conventions, I know that that could and, I hope, will be an interesting convention and a meaningful one.

This Senator would simply like to emphasize the fact that all—I emphasize "all"—Senator RIEGLE and I did in our letter to the two candidates, the whole thrust of that is simply to say, "allow the Democrats at the convention to make their free choice, to exercise their good conscience and what they believe at this time to be the wishes of the majority of their constituents when they represent all of us in New York."

Mr. President, I have not revealed this before, but if we had the other side here, those who are screaming and moaning and complaining about what obviously had been the White House position—and that simply is that if we have an open convention, somehow, we are going to disenfranchise 13 million or 19 million Democratic voters in these United States—they would agree that would be a terrible thing to do.

Who is representing the junior Senator from Nebraska at the National Convention in New York? I did not seek to be a delegate and I have no intention whatsoever of being there. As to the reason that I phrased that question of the President and that I would like to of some of those who now are crying "Foul, foul, foul" as to who is going to represent me, I wish to reveal publicly for the first time that when I voted in the all-star primary in Nebraska in May, I did not vote for President Carter, who was one of the nominees, and I did not vote for Senator KENNEDY, who was the other nominee. I voted myself uncommitted. Therefore, I ask those who are taking the other side of this question, who is representing a voter from Nebraska who voted uncommitted?

Mr. President, that might be only a facetious way of getting at what I believe to be something that requires some mature judgment today with regard to the Democratic Party meeting in convention in New York City a week from Monday. It is not sufficient to say that all those votes were for naught. It is not fair to say or to cast those of us who are calling for an open convention in the light of the smoke-filled room politicians, harking back to the days of yesteryear.

Mr. President, the winner of most of the Democratic primaries was President Carter, and that candidate goes to the National Convention in New York City with some 300-plus votes over and above what he needs to assure him the nomination. It is my personal belief, Mr. President, that President Carter will be and probably should be the nominee of the Democratic Party assembled in New York. But I hope that after we emerge from that convention, we shall have a united Democratic Party that is capable of carrying on the semblance of a successful campaign in the fall election.

Frankly, I resent some of the implications of some of the statements that have been made—not on the floor of the Senate, and I am not referring to my friend from Kentucky, but some of the implications that have come from some of the White House operators that, somehow, anyone who wants and calls for an open convention is trying to undermine the very principles of the Democratic Party.

Am I to believe, Mr. President, that it is the wish of the majority of the Democratic voters of the United States that, somehow, we elect some robots who go to New York City and push a button, as they were instructed to do last January or February or March or April or May or June or July—whenever the all-star primaries were held in the various States?

The very foundation of the letter that Senator RIEGLE and I sent to the two candidates was simply to say, "In the interests of unifying the Democratic Party, would you both simply release the personal commitments that those delegates now have to each of you, and thereby allow those delegates to vote their own convictions?"

Mr. President, I try to be a reasonable and realistic man. I think any reasonable and realistic person would have to agree that anyone going to the convention

with handpicked delegates, 300-plus committed to one candidate, will, in all probability, emerge from that convention as a nominee of the party. In those situations and under those circumstances, that is the way it should be.

Senator RIEGLE and I are not saying that a single delegate to the National Convention should violate his personal commitment or violate any legal restraints that he has or she has when they were elected from their States.

They should not violate that unless—and that is an important word "unless"—they are released by the candidates themselves, so that the Democratic Party could have a chance of coming out of our national convention with unity.

I think it is not fair to leave the subject without some concluding remarks about a possible third or consensus candidate.

If, for example, the two main nominees, or potential nominees, of the party were to release their delegates, and if through some set of circumstances President Carter and his forces were unable to convince the vast majority of handpicked delegates that they have that the President should not be the nominee of the party once again, then, naturally, it would be thrown open.

I do take exception to the statement made by the Senator from Kentucky that should an open convention take place, it is only going to benefit one individual. Obviously, whether he named him or not, he was talking about Senator KENNEDY.

I am only speaking for myself, Mr. President.

In my opinion, the interests of the Democratic Party, I am speaking again as an individual, would not be served by Senator KENNEDY being the ultimate candidate if the Carter forces cannot prevail, as I think they will.

But if that event should occur, then I would say, and I would hope, that those people there assembled not being robots, but having the intelligence to do what they think is in the best interest of carrying on the tradition of the Democratic Party and the principles in which we believe, would be able to come up with an alternate candidate that I hope would be able to carry proudly the banner of the Democratic Party.

If that be the will of the delegates to that convention, those who are whining and complaining and crying wolf about disenfranchising voters are, in essence, saying we want to march those robots to New York and we want them to cast unthinking votes, the way we are told by the candidates to which they are currently pledged.

In closing, Mr. President, I simply say, and I emphasize, the letter Senator RIEGLE and I have sent to the two candidates was simply to say that we are not picking and choosing.

Our action was not designed to benefit any candidate named, or otherwise. It was simply to say that if we are going to be a united party after New York, we better do something else and we better travel a different road than the one on which we are now driving.

I thank the majority leader for his patience. I thank the Chair.

Mr. RIEGLE. Mr. President, I would like to add a little to the remarks of my friend and colleague from Nebraska.

I, too, was not on the floor earlier. So I do not have a firsthand understanding of what may have been said by the Senator from Kentucky with reference to the letter that Senator EXON and I have sent, which has been referred to here.

But I do think it is important to note that what is being proposed by those who want to close the Democratic Convention is that they want to close it for the first time since 1832.

This change in the rules that is being proposed by those who would prefer a closed convention is a clear break from the history and the long tradition of the Democratic Party. This is something the delegates there gathered will have to decide.

I am not a delegate. I will not have a vote then, or later, in the convention. But I think that decision, by itself, is a momentous one, because clearly, we are turning away from a practice, an open convention practice, that goes back all those years and decades, well over a century, almost a century and a half.

Of course, I think that does raise a real question as to whether or not we really are at a point where we now want to change our practice and go to a closed convention and to tell the delegates that regardless of any other circumstances that they are not free to vote their conscience when the time comes to call the roll, and if they should vote their conscience at that time and that turned out to be different than the result of the primary in their State, that might otherwise bind them, that they will be removed as a delegate from the convention.

I must say that I do not think that is a very good procedure. But, even stepping away in terms of those implications for the party and to think about what it means for the country, I think from the point of view of a country as a whole, the American people, as they look in on them—they are not delegates, either, some are Democrats, others are not—they look at this and they are trying to make a judgment about our party and the degree to which we are trying to focus on legitimate issues and problems facing the American people.

It would seem to me if we are going to earn the confidence of the American people in the election period, at a time of great stress for the United States, with unemployment, health care issues, a host of issues, that the way we might best do that is by going into the convention and deliberating in a fashion, in a way, where we try to select and put forward the strongest and the best possible ticket and candidacy that we can.

I think the delegates chosen, when they get there, will have to reflect and make the best choice they can at that time. I have confidence, if they are free to exercise their conscience, that they will do so, and that they will make a good judgment.

If they are able to do it in that kind of fashion in open convention, I am prepared to say, here and now, that I will support that decision and I will support it actively. If that process results in the renomination of President Carter, he will have my active support. If it results in the nomination of Senator KENNEDY, he will have my active support. If it results in the nomination of FRITZ MONDALE or Secretary of State Muskie or Senator JACKSON or anyone else whose name has been spoken about, or who might be spoken about, whoever it is, he will have my active support.

The Senator now acting as Presiding Officer of the Senate, the Senator from New York (Mr. MOYNIHAN), was mentioned today by the mayor of New York City; and I make the same statement to him. If the delegates at that convention decide that he would be the best standard bearer for our party—and he blushes appropriately; winningly, I might say—he will have my active support, and I believe he will have the active support of all Democrats.

So let us not be misled. This is not an issue of trying to stampede or an effort to undo something. It is a question of trying to reach an open, rational, and sound judgment. I believe that if the delegates are asked to follow their best instincts and their own wisdom and conscience, they will give us a ticket that will be good for the country. It will be good for attacking the issues. It will be good for mounting a successful campaign in November.

I thank the majority leader for his patience and kindness in yielding the floor so that I might have an opportunity to add my remarks to those of my friend from Nebraska.

I emphasize again that if any charge has been made that this initiative the Senator from Nebraska and I have undertaken is designed to help any particular candidate, I want to lay that absolutely to rest. That is not the case. I am not here, and I have not signed that letter, in an effort to help any one candidate at the expense of any other candidate. I do not know who the best candidate would be for that convention to select, if it is an open convention and has a chance to express itself freely. I believe it should have that chance; and if it does, in its own way, it will find the nominee and the ticket that our party and the country deserve.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I dislike to impose upon the Senate, but I cannot complete my speech

right now. I have a meeting in my office. I have tried to accommodate everybody else, and I suppose I will have to suggest that the Senate be in recess for a little while.

Other Senators may wish to come to the floor and speak, so I ask unanimous consent that the time for routine morning business continue for another hour and that Senators may speak therein.

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess awaiting the call of the Chair, with the understanding that the Senate will be in morning business at any time a Senator calls it into session.

I ask unanimous consent that the Chair recess the Senate, awaiting the call of the Chair, after any interruption by any Senator, until such time as I can get back to the Chamber and complete my speech, which I do not intend to insert in the RECORD. My statements on the U.S. Senate are of such value that they should not be inserted in the RECORD but should be spoken. Therefore, I make those requests.

The PRESIDING OFFICER. Speaking as a Senator from Michigan, the Chair inquires of the Senator from West Virginia: If nobody is here between now and 5:30 p.m., would there be any objection to recessing between 5:30 and 6, to accommodate a scheduling problem of the Presiding Officer?

Mr. ROBERT C. BYRD. No; I will be back by 5:30.

In the meantime, I ask the cloakroom to ask another Senator to substitute for the distinguished Senator from Michigan, who is in the Chair.

The PRESIDING OFFICER. The Chair thanks the Senator from West Virginia.

Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Thereupon, at 5:07 p.m., the Senate recessed, subject to the call of the Chair.

The Senate reassembled at 5:17 p.m., when called to order by the Presiding Officer (Mr. LEVIN).

THE UNITED STATES SENATE

THE SENATE DEMOCRATIC CONFERENCE

Mr. ROBERT C. BYRD. Mr. President, this is the 17th in a series of speeches which I have been making on the subject of the United States Senate, the series having begun on March 21 of this year.

Mr. President, each of the two parties in this Chamber, Democratic and Republican, meets from time to time in conference to discuss issues before they reach the Senate floor, to select party leaders and candidates for such offices as Secretary of the Senate, Sergeant at Arms, and Chaplain, and to distribute committee assignments among party members. There is no mention of party conferences in our Constitution because the Constitution did not envision political parties. But because parties did evolve, quite shortly after the inauguration of the federal government in 1789, the conferences—or caucuses as they were first known—have played an important role in Congressional history.

The first caucus met on April 2, 1796. It was a gathering of Democratic-Republicans who opposed the controversial Jay Treaty with England and they met to discuss the appropriation of funds to implement that treaty. As I said in earlier remarks about the Secretary of the Democratic Conference, the Congressional caucuses were most significant in those days because they selected their party's presidential candidates. And it was in the caucuses that the Democratic and Whig parties first emerged during the age of Andrew Jackson.

There were no official party floor leaders then, although certain individuals later of the stature of a Henry Clay, a Daniel Webster, a John C. Calhoun, or a Thomas Hart Benton, certainly were recognized for their leadership capacities. As the parties developed, their members met in caucus to organize themselves and present a united front. By the mid-1840's, the caucuses assumed the responsibility of naming party members to the various committees. During and immediately after the Civil War, the new Republican party began to utilize its caucus for scheduling legislation and planning strategy, The Democratic party, then the minority, adopted a similar structure when it became the majority party in 1879, setting up a committee on committees, which also served as a steering committee.

Throughout most of the late nineteenth century, the Democrats were the minority in the Senate, and the caucus was not a particularly powerful instrument. Its leader, Senator Arthur Gorman of Maryland, was a highly capable man, but there were too many divergent viewpoints in the party to maintain any real unity or party discipline. On the other hand, the Republican caucus demanded more obedience from its members, since various splinter and third party blocs left them only a thin majority. As a result, the Republicans exhibited an impressive unity on roll call votes during the last decade of the nineteenth century.

In 1903, the Senate Democratic Caucus adopted a motion to bind its members to vote according to a two-thirds decision of the caucus. This attempt to create a binding caucus was not successful. I believe it would be instructive to look back to examine the attempt and the reasons for its failure.

The need to present a common front is important for any party in any legislative body. But political parties in the United States are not ideologically unified as are political parties in other nations. Our parties are broadly-built coalitions, surviving on consensus and tradition. Within each party we find a wide spectrum of opinion, and it would not be practical to expect individual senators to be bound to the dictates of a party caucus. On any given roll call in either house of the Congress it is not unusual to find members of both parties voting together in the majority and the minority. Indeed, it is a strict party vote that is unusual and draws press attention.

The minutes of the Democratic Conference, which date back to 1903, provide a fascinating glimpse into Senate history and into the particular question of a binding caucus. I hasten to add that in discussing these minutes I reveal no secrets and betray no confidences. The information I am about to cite was entered into the *Congressional Record* at the time of the original controversies and was a matter of open and public debate on the Senate floor.

These minutes indicate that on December 15, 1903, the Democratic Caucus adopted the following resolution:

"That hereafter all members of the Democratic Caucus shall be bound to vote in accordance with its decisions, made by a two-thirds vote of all its members, on all questions except those involving a construction of the Constitution, or upon which a Senator has made pledges to his constituents, or received instructions from the legislature of the State which he represents."

Even with all the exceptions to this rule, which allowed senators to vote according to their campaign pledges, some members found the attempt to bind their votes to be objectionable, and there is no evidence that the rule was ever enforced.

In 1906, for example, Senator Thomas Patterson of Colorado objected to the Democratic Caucus' decision to vote against ratification of the treaty with Santo Domingo. The caucus had voted 20 to 4 against the treaty, and since a two-thirds vote of the Senate was necessary for ratification, the unity of the minority party threatened the defeat of the treaty on the floor. But Patterson disagreed with the majority of his caucus and cast his vote in favor of the treaty, declaring that the attempt to bind his vote had been in violation of the spirit and intent of the United States Constitution.

Other members of the Democratic Caucus took no disciplinary action against Patterson for breaking ranks, but as the floor leader, Senator Joseph Bailey of Texas, said during the debate: "The Democratic party has simply and only defined his duty as a Democrat, and it is for him to determine how far his duty as a Senator requires him to disregard his duty as a Democrat." Bailey also added that: "The Senator is free to defy the caucus and to vote as his conscience directs. He only takes a responsibility at home between his Democratic constituents and his Democratic associates here." As it happened, Patterson voted for the treaty and against the caucus, remained a member of the caucus, but did not stand for reelection to the Senate.

In 1913, the Democratic party became the majority party in the Senate for the first time in two decades, and concurrently, Woodrow Wilson was elected as only the second Democratic president since the Civil War. The party realized that it had won this election because of a split in the Republican party, a split

which could—and did—easily heal, and that to remain in office the Democrats had to demonstrate their ability while they had the opportunity. It was essential, therefore, that the Democratic majority in Congress work closely with the new president to enact his program. The Democratic Caucus, therefore, elected Senator John Worth Kern of Indiana as its chairman and, under a reorganization adopted in 1911, as its floor leader as well. Kern was an astute politician who had run for vice president with William Jennings Bryan in 1908. As chairman, Senator Kern convened the caucus frequently during 1913 and 1914 to hold the party together throughout the intense floor debates that followed on the Underwood Tariff, the Federal Reserve Act, and the Federal Trade Act, winning enactment of all three of these pillars of the first Wilson administration. Parenthetically, it was in May of 1913, as I mentioned in an earlier discussion, that the Democratic party appointed the first "whip" in the Senate's history. Senator J. Hamilton Lewis of Illinois, who helped round up senators for quorums and roll call votes.

Party unity, while quite impressive at that time, was still no bar to individual conscience. In July 1913 Senator Gilbert Hitchcock of Nebraska resigned from the Democratic caucus rather than follow its dictates on the matter of a graduated tax on trusts. Two years later, Hitchcock again broke with the caucus and introduced a resolution in the Senate requiring that all senators should "vote in accordance with their own convictions and judgment, and they shall not subordinate them to the decree of secret party caucuses or other outside influences." As an indication that Senator Hitchcock was not ostracized for his independence, I should point out that he later returned to the Democratic Caucus and in fact became its chairman in 1919.

From the end of the first World War until the outset of the Great Depression, the Democratic party was again the minority in the Senate, and use of the caucus—or conference as it was officially called beginning in 1925—fell off sharply. Then beginning with the 73rd Congress, the Democratic party became the majority in the Senate and the House, as it has remained for every Congress save two right through to this day. In 1933, the new majority leader, Senator Joseph Robinson of Arkansas, proposed a resolution that all members of the conference would vote on the floor in accordance with the decision of a simple majority in the conference. Considering the exigencies of the Great Depression then facing the nation, the conference adopted this resolution by vote of 50 to 3, although they added the provisions that no Democrat would be bound to vote for a bill that proved "contrary to his conscientious judgment" or violated his pledges made while a candidate for office. So once again, while use of the caucus helped to mobilize the party during the "first hundred days" of the New Deal—when essential economic legislation was being enacted—party members remained free to follow their own consciences.

Mr. President, during this discussion I have referred to "secret caucuses," as they were described so often at the time. The word "secret" has pejorative tone to it today, after our various "sunshine" reforms have opened the doors to so many previously closed meetings. But in an earlier era much of the work of the Senate was conducted behind closed doors. It was not until 1929, for instance, that executive sessions of the Senate on nominations and treaties were routinely opened to the public and the press. However, I do not want to leave the mistaken impression that our predecessors were somehow better at plugging "leaks" or keeping secrets. I note the remarks of Senator Robert L. Owen of Oklahoma, a former secretary of the Democratic Caucus, on the Senate floor on February 16, 1915. Said Senator Owen:

"There is nothing in the party caucus that I would not be willing to make public. I think there is nothing that occurs in a party caucus that is not made public. You can not get a half a dozen Senators together and retain anything secret among them. You can not get 53 Senators together and have any hope of secrecy, and to attempt to have it secret is absurd and ridiculous."

Mr. President, within the Democratic Conference, as with our counterpart organization on the Republican side of the aisle, a leadership and committee structure has evolved over the years. In earlier remarks I have discussed the various officers of the conference, the chairman and floor leader, the party whip, and the secretary to the conference. Now I would like to speak on the various committees which have played such a significant role in the translation of party policies into legislative action, and in ensuring the cohesiveness and effectiveness of the party in the legislative process.

I note, for instance, a discussion held in the Democratic Caucus in December of 1907, that it was the custom then and in earlier years for the chairman of the caucus to appoint a steering committee to assign party members to Senate committees. This is a most important function, for, as we know, a Senator's particular committee assignments will shape his activities throughout his career in the Senate. Once on a committee, members rise through seniority, although on occasion the caucuses also exerted their influence over the seniority system.

In 1859, the Democratic Caucus removed Senator Stephen Douglas as chairman of the Committee on Territories because he broke with President Buchanan over the issue of slavery in the territories. This did not stop Douglas from becoming the party's presidential nominee the following year. The Republican Caucus also removed one of its members from a committee chairmanship when it replaced Senator Charles Sumner of Massachusetts as chairman of the Foreign Relations Committee in 1871 because of his opposition to the Grant administration's plan to annex the Dominican Republic. In 1913, the Democratic Caucus also passed over Senator Benjamin "Pitchfork Ben" Tillman of South Carolina for chairman of the Appropriations Committee, on the grounds that a stroke had seriously impaired Tillman's ability to fill that post.

But these were exceptions, Mr. President, and the Steering Committee—also known for a time as the Committee on Committees—was generally involved in making assignments to committees. Membership on the Steering Committee was once limited to the most senior senators, although today we have a far broader range of members. In the 96th Congress the Democratic Steering Committee, of which I serve as chairman, includes Senators Birch Bayh, Howard Cannon, Lawton Chiles, Alan Cranston, John Culver, Dennis DeConcini, Thomas Eagleton, Wendell Ford, Daniel Inouye, Henry Jackson, Edward Kennedy, Patrick Leahy, Russell Long, Howard Metzenbaum, Robert Morgan, Daniel Moynihan, Gaylord Nelson, Sam Nunn, Jim Sasser, John Stennis, Harrison Williams, and Edward Zorinsky.

The most persistent question involving the Democratic Steering Committee has been who would appoint its members. As I mentioned, the caucus minutes for 1907 indicate that the custom had already been long established for the chairman of the caucus to appoint members of the Steering Committee. But over the years there have been periodic challenges, generally proposing that the conference as a whole elect members of the Steering Committee. These proposals have all been defeated, but in 1943 they caused a dramatic clash in the conference when Senator Kenneth McKellar of Tennessee moved that the conference elect the Steering Committee. The then chairman of the conference, Alben Barkley of Kentucky, advised the conference that he would resign immediately as chairman if the motion was adopted. Subsequently the motion was defeated by a vote of 33 to 20 in a secret ballot.

Senator McKellar's action was apparently motivated by an incident the previous year when Majority Leader Barkley had the Sergeant-at-Arms arrest absent members and escort them to the Senate to break a filibuster.

As I indicated in one of my statements some time ago, Senator McKellar was aroused from his sleep at home and was on his way to the Capitol in a cab before he realized what the nature of the summons was and found it difficult to forgive the majority leader for his action. The two men eventually mended their differences.

The issue of appointing the Steering Committee was still a matter of some contention during the 1960's, following the very strong leadership of Senator Lyndon Johnson as Conference Chairman and Majority Leader. When Senator Johnson became Vice President and the 87th Congress met in January 1961, Senator Albert Gore of Tennessee proposed to strip the conference chairman of the power to name members of the Steering Committee and Policy Committee. When Senator Mansfield became party leader that year, he opposed the Gore resolution and proposed a compromise whereby the Leader would consult with the President Pro Tempore, the Majority Whip, and the Secretary of the Conference before as-

signing members to the Steering and Policy Committees and afterwards his choices would be subject to confirmation by the conference. This was further modified in 1967 with the provision that in the future no senator, with the exception of the conference chairman, would serve on both the Steering and Policy Committees (although Senators Carl Hayden, Richard Russell, and Stuart Symington were permitted to continue their membership on both committees).

Mr. President, I have mentioned the Democratic Policy Committee, and in a moment I will describe its history and functions in greater depth. But I should add that prior to the creation of the Policy Committee in 1947, the Democratic Steering Committee was often assigned the tasks of deciding the order of legislative business and of proposing reforms for the Democratic Conference.

Of course, that, as I have indicated, no longer remains to be a duty, responsibility, or task of the Democratic Steering Committee.

Mr. President, under Senator Lyndon Johnson's leadership between 1953–1960, few conferences were called by his direction. These included only one each in the years 1953, 1954, 1955, 1957, 1958, and 1959. None was scheduled in 1956 and only four were called in 1960. This minimal number of conferences during his leadership was, at times, questioned by his Democratic colleagues. For example, at a Conference on January 7, 1960, Senator Clark from Pennsylvania offered a resolution calling for the Democratic Conference to meet every two weeks or upon the request of fifteen Senators. This motion was also supported by Senator McNamara who said,

As a candidate for re-election, I feel that I would benefit from such discussions."

Senator Proxmire further concurred by stating:

I want a caucus in which the Leadership explains what is on the program and why. I want a caucus where we can get frank partisan arguments. In a presidential year we can make a much better record if we can get the kind of intelligence assembled here focused on our problems.

Although Majority Leader Johnson did not see the need to call frequent caucuses because of the difficulty in bringing members to a meeting, he subsequently scheduled three more conferences during his last year as Leader. This number was the highest in the eight years he held that office.

During the years 1961–1976, Majority Leader Mike Mansfield operated under the premise that a Leader should call conferences at such times as in his judgment the legislative and national situation justified such action. He also took the position that any time any single Senator wished a conference to be called, a conference would be called. Throughout his leadership, he called numerous conferences including: five in both 1961 and 1962; four in 1963; eight in both 1964 and 1965; three in 1966; four in 1967; one in 1968; five in 1969; seven in 1970; six in 1971; eight in 1972; seventeen in 1973; fourteen in 1974; twenty in 1975; and seven in 1976.

When I was elected Majority Leader on January 4, 1977 by the Democratic Conference, I subsequently called sixteen other conferences that year. In 1978, there were four conferences; seven in 1979; and as of June 26, 1980, nine have already been called in 1980.

Mr. President, I ask unanimous consent that the number of Democratic conferences held by Majority Leaders Lyndon Johnson, Mansfield, and myself be printed in the RECORD at this point.

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

Majority Leader Lyndon Johnson chaired the following Democratic Conferences:

January 2, 1953.
March 9, 1954.
January 4, 1955.
January 3, 1957.
January 7, 1958.
January 7, 1959.
January 7, 1960.
January 20, 1960.
February 15, 1960.
February 18, 1960.

Majority Leader Mike Mansfield chaired the following Democratic Conferences:

January 3, 1961.
January 4, 1961.
January 5, 1961.
January 10, 1961.
February 27, 1961.
February 7, 1962.
March 13, 1962.
May 2, 1962.
June 6, 1962.
June 7, 1962.
January 9, 1963.
February 7, 1963.
March 28, 1963.
November 4, 1963.
January 8, 1964.
January 28, 1964.
May 19, 1964.
July 20, 1964.
July 27, 1964.
August 3, 1964.
August 10, 1964.
August 17, 1964.
January 4, 1965.
January 7, 1965.
January 26, 1965.
March 8, 1965.
May 4, 1965.
July 19, 1965.
August 19, 1965.
September 28, 1965.
January 11, 1966.
May 3, 1966.
September 27, 1966.
January 10, 1967.
April 13, 1967.
July 18, 1967.
December 8, 1967.
January 18, 1968.
January 3, 1969.
January 7, 1969.
January 13, 1969.
May 20, 1969.
December 19, 1969.
January 19, 1970.
January 20, 1970.
January 23, 1970.
May 7, 1970.
June 18, 1970.
October 6, 1970.
November 16, 1970.
January 21, 1971.
January 22, 1971.
January 26, 1971.
February 10, 1971.
February 23, 1971.
June 17, 1971.
January 25, 1972.
April 13, 1972.
May 3, 1972.
May 8, 1972.
May 9, 1972.
May 31, 1972.
July 28, 1972.
August 2, 1972.
January 3, 1973.
January 4, 1973.
January 11, 1973.
January 18, 1973.
January 31, 1973.
February 22, 1973.
March 15, 1973.
May 2, 1973.
May 9, 1973.
May 21, 1973.
June 4, 1973.
September 13, 1973.
October 3, 1973.
October 12, 1973.
October 13, 1973.
October 30, 1973.
November 14, 1973.
January 24, 1974.
January 30, 1974.
February 19, 1974.
March 7, 1974.
April 24, 1974.
July 18, 1974.
July 25, 1974.
August 8, 1974.
September 5, 1974.
September 12, 1974.
September 19, 1974.
October 10, 1974.
November 21, 1974.
December 5, 1974.
January 14, 1975.
January 15, 1975.
January 16, 1975.
January 17, 1975.
January 20, 1975.
January 24, 1975.
January 30, 1975.
February 27, 1975.
March 13, 1975.
April 14, 1975.
June 5, 1975.
June 12, 1975.
July 10, 1975.
July 31, 1975.
September 4, 1975.
September 8, 1975.
September 11, 1975.
September 25, 1975.
December 10, 1975.
December 18, 1975.
January 22, 1976.
March 4, 1976.
March 18, 1976.
March 25, 1976.
April 1, 1976.
July 22, 1976.
August 5, 1976.

Majority Leader Robert C. Byrd chaired the following Democratic Conferences:

January 4, 1977.
January 5, 1977.
January 6, 1977.
January 10, 1977.
January 11, 1977.
January 13, 1977.
January 24, 1977.
February 10, 1977 (2).
March 3, 1977.
March 9, 1977.
March 17, 1977.
May 5, 1977.
June 9, 1977.
Juy 21, 1977.
September 22, 1977.
November 4, 1977.
January 24, 1978.
January 26, 1978.
May 18, 1978.
July 11, 1978.
January 15, 1979.
January 17, 1979.
January 18, 1979.
March 1, 1979.
September 12, 1979.

December 5, 1979.
December 10, 1979.
February 5, 1980.
March 5, 1980.
March 11, 1980.
March 20, 1980.
May 13, 1980.
June 10, 1980.
June 11, 1980.
June 24, 1980.
June 26, 1980.

Majority leader	Caucuses called	Year
Lyndon Johnson: Average caucuses per year—1.43 (10÷7)	1	1953
	1	1954
	1	1955
	1	1957
	1	1958
	1	1959
	4	1960
Total	10	
Mike Mansfield: Average caucuses per year—7.62 (122÷16)	5	1961
	5	1962
	4	1963
	8	1964
	8	1965
	3	1966
	4	1967
	1	1968
	5	1969
	7	1970
	6	1971
	8	1972
	17	1973
	14	1974
	20	1975
	7	1976
Total	122	
Robert C. Byrd: Average caucuses per year—10.57 (37÷3.5)	17	1977
	4	1978
	7	1979
	9	1980
Total	37	

Mr. ROBERT C. BYRD. Mr. President, as to the Democratic Policy Committee, the Senate Democratic Policy Committee, established in 1946, was an outgrowth of recommendations developed during the course of a study undertaken in the 79th Congress by the LaFollette-Monroney Joint Committee on the Organization of Congress. The bipartisan Joint Committee, created in February 1945, was directed to "make a full and complete study of the organization and operation of the Congress of the United States" and "recommend improvements with a view toward strengthening the Congress, simplifying its operations, improving its relationships with other branches of the United States Government, and enabling it better to meet its responsibilities under the Constitution."

The Joint Committee held public hearings in 1945, and certain witnesses advanced proposals relating to the establishment of legislative "policy committees" or similar formalized groups. It was suggested that these legislative groups could assume responsibility for organizing and promoting broad legislative programs; plan, coordinate and guide the legislative affairs of Congress; initiate action in connection with legislative matters not clearly falling within the province of any one standing committee; provide for a more orderly flow of bills to the House and Senate floors; implement party platforms; constitute a focus of responsibility and accountability for party action or inaction; synthesize divergent interests in each House; improve Congressional performance on fiscal matters; and enhance communication, cooperation, and understanding between the executive and legislative branches of government.

On March 4, 1946, the Joint Committee on the Organization of Congress filed a report containing its recommended changes in the organization and operation of Congress. Included in its recommendations was a proposal that both the House and the Senate establish formal committees for the determination and expression of majority policy and minority policy. Each of the four policy committees was to be composed of seven members appointed at the opening of each new Congress by the respective majority and minority conferences. The membership on all policy committees was automatically to expire at the close of each Congress.

These Committees were provided for in Section 244 of the Legislative Reorganization Act of 1946 as it passed the Senate on June 10, 1946, by a vote of 49–16. However, that section was knocked out of the Act by the House with little or no debate. George B. Galloway, Staff Director of the LaFollette-Monroney Joint Committee, said that the Policy Committee provisions for the House of Representatives met the combined opposition of Speaker Rayburn, Majority Leader McCormack, Minority Leader Martin, and House Parliamentarian Lew Deschler, because they feared that the Policy Committees would take too much power away from the Speaker.

Although there were not parallel fears on the part of the Senate leadership, the Senate agreed to accept the House version of the bill, with the understanding that action would be taken at an early date after the passage of the Reorganization Act to otherwise provide for Senate Policy Committees.

A few days after the Senate agreed to the House changes to the Legislative Reorganization Act, the Senate passed the Supplemental Appropriation Bill for 1947. That Bill included the following provision for Majority and Minority Policy Committees in the Senate:

For maintenance of a staff for a majority policy committee and a minority policy committee in the Senate, consisting of seven members each, for the formulation of overall legislative policy of the respective parties, the members of such staffs to assist in study, analysis and research on problems involved in policy determinations, and to be appointed, and their compensation fixed, by the policy committee concerned, at rates not to exceed $8,000 per annum in any case, $15,000 for each such committee, in all, fiscal year 1947, $30,000, to be available at the beginning of the Eightieth Congress.

This provision was accepted by the House, and the bill, H.J. Res. 390, which established the Majority and Minority Policy Committees for the Senate, was signed by President Truman on August 8, 1946, as Public Law 79–663.

Since that first Supplemental Appropriations Bill in 1946, the existence of both Committees has been perpetuated merely as line items in the annual Legislative Appropriations Acts. In addition, there is relatively little legislative history to indicate how the Committees were to be organized and how they were to function to achieve the objectives set out in the hearings for the Legislative Reorganization Act.

Consequently, the workings and purposes of the Committees and their staffs have changed in the intervening years depending on a variety of factors, including:

1) whether the Democratic Party has retained a Majority in the Senate or—Heaven forbid—whether the Committee has had to function as the Minority Policy Committee; this has only happened twice in its 33 years of history: at its establishment in the 80th Congress, from 1947–1949 and in the 83rd Congress, from 1953–1955;

2) whether there has been a Democratic administration or if the Policy Committee has needed to formulate the policy for the Democratic Party to follow in the Senate; and

3) the personal style of the Committee Chairman, the Party's Leader in the Senate.

Mr. President, at the Democratic Conference on January 2, 1947, Senator McKellar of Tennessee proposed that the Conference select the members, as was suggested by the LaFollette-Monroney Committee. Wyoming Senator O'Mahoney proposed instead that the Party Leader select the members, and he made this motion:

"Resolved, that the Chairman of the Conference be authorized to appoint the membership of the Minority Policy Committee (the Democrats were in the Minority in the 80th Congress) provided for by PL 663, 79th Congress, and that he is hereby named Chairman of such Committee."

Senator O'Mahoney's resolution was adopted by voice vote with the only dissenting vote being cast by Senator McKellar.

Senator Alben Barkley of Kentucky, Chairman of the Conference and Minority Leader, stated he would give careful consideration to the choice of members and that geographical distribution would be a factor in making the appointments. The resolution was reaffirmed at the first Conference of the 82nd Congress in January, 1951, and the procedure set by it has been followed in all succeeding Congresses.

At the next meeting of the Conference on January 15, 1947, Chairman Barkley announced the appointment of the members of the Policy Committee. He also suggested that the Democratic Whip and the Secretary of the Conference be invited to meet with the Policy group. The suggestion was accepted and the Whip and Secretary became *ex officio* members of the Committee.

The number of members has remained at seven and the practice of appointing the Democratic Whip and the Secretary of the Democratic Conference *ex officio* members has been followed in all Congresses to date. On January 25, 1971, Sen. Mike Mansfield, Majority Leader and Chairman of the Policy Committee, proposed to the Democratic Steering Committee that all Presidents Pro Tempore be members *ex officio* of the Policy

Committee. The suggestion was unanimously approved.

Since the initial appointments were made in 1947, new members have been appointed only when vacancies occurred as a result of death, retirement, or defeat. The Chairman, the Democratic Whip, and the Secretary of the Conference are, of course, elected by the Conference at the beginning of each Congress.

LEGISLATIVE REVIEW COMMITTEE

For the past twenty years, the Democratic Policy Committee and the Democratic Legislative Review Committee have been very closely affiliated, and they should be discussed together. The Legislative Review Committee or Calendar Review Committee, was created in 1953. Minority Leader Lyndon Johnson designated two junior Senators to assist him and the Whip in their floor duties and in monitoring the flow of legislation for the Senate Chamber.

The Membership of the Legislative Review Committee was from 1953–54—Albert Gore, Tenn.; George Smathers, Fla. 1955–56—Sam J. Ervin, N.C.; Alan Bible, Nev. 1957–58—Alan Bible, Nev.; Joseph S. Clark, Pa.

On March 6, 1959, at a Policy Committee meeting, Chairman of the Committee, Senator Lyndon Johnson, suggested that the two members of the Legislative Review Committee be invited, "from time to time," to sit with the Policy Committee.

At the meeting of February 2, 1971, Chairman of the Policy Committee, Mike Mansfield, said: "It is the practice of this Committee to make no distinction between the Legislative Review Committee and the Majority Policy Committee proper. That applies to discussions, to clearing legislation for the floor, and to adopting resolutions which define party positions."

The Legislative Review Committee was expanded to three members on April 14, 1959, and to four members on January 10, 1961. On March 9, 1977, the Democratic Conference approved my recommendation that the Legislative Review Committee be expanded to eight members.

VOTING PRIVILEGES

P.L. 79–663 authorized only seven members to constitute the Policy Committee. Statutorily, then, only seven people would have a vote in the Committee, while seventeen are actually participating. In practice, votes rarely occur. Those votes that do take place are not recorded. Discussion is open to all who are invited to the meetings, in addition to the "official" members.

CHRONOLOGY OF MEMBERS

Senator Alben W. Barkley of Kentucky, the Democratic Leader, appointed six members at the Democratic Conference held on January 15, 1947, with the Whip and Secretary of the Conference named as *ex officio* members of the Committee.

1947–48: Alben W. Barkley, Kentucky, Chairman and Minority Leader; Millard E. Tydings, Maryland; Theodore F. Green, Rhode Island; Lister Hill, Alabama; Richard B. Russell, Georgia; Carl A. Hatch, New Mexico; Joseph C. O'Mahoney, Wyoming; Scott W. Lucas, Illinois, *ex officio* as Minority Whip; Brien McMahon, Connecticut, *ex officio* as Secretary of the Minority Conference.

In 1949, Senator Lucas was elected Chairman at the beginning of the 81st Congress to succeed Senator Barkley who had been elected Vice President with Truman in 1948. Senator Francis J. Myers of Pennsylvania was chosen to take Senator Lucas' place as Whip. Senator Hatch retired at the conclusion of the 80th Congress and his place remained vacant throughout the 81st.

1949–50: Scott W. Lucas, Illinois, Chairman and Majority Leader; Millard E. Tydings, Maryland; Theodore F. Green, Rhode Island; Lister Hill, Alabama; Richard B. Russell, Georgia; Joseph C. O'Mahoney, Wyoming; (Vacancy); Francis J. Myers, Pennsylvania, *ex officio* as Majority Whip; Brien McMahon, Connecticut, *ex officio* as Secretary of the Majority Conference.

Both Senator Lucas and Senator Myers were defeated for reelection to the Senate in November, 1950. On January 3, 1951, Senator Ernest W. McFarland of Arizona was elected Majority Leader, and concurrently as Chairman of the Policy Committee. Senator Lyndon B. Johnson of Texas was elected Majority Whip.

Senators Robert S. Kerr of Oklahoma and Virgil M. Chapman of Kentucky were appointed to the Committee to fill the vacancies created by the retirement of Senator Hatch and the defeat of Senator Tydings. On July 24, 1951, Senator Earle C. Clements of Kentucky was appointed to fill the vacancy created by the death of Senator Chapman on March 8. Senator McMahon died July 28, 1952, but his seat remained vacant on the Committee until the next Congress.

1951–52: Ernest W. McFarland, Arizona, Chairman and Majority Leader; Theodore F. Green, Rhode Island; Lister Hill, Alabama; Richard B. Russell, Georgia; Joseph C. O'Mahoney, Wyoming; Virgil S. Chapman, Kentucky [1]; Robert S. Kerr, Oklahoma; Earle C. Clements, Kentucky [2]; Lyndon B. Johnson, Texas, *ex officio* as Majority Whip; Brien McMahon, Connecticut, *ex officio* as Secretary of the Majority Conference.

On January 3, 1953, Senator Johnson of Texas became Chairman when he was elected Minority Leader, and Senator Clements and Senator Thomas C. Hennings, Jr., of Missouri, became *ex officio* members as Whip and Secretary of the Conference, respectively. Senators James E. Murray of Montana and Edwin C. Johnson of Colorado were appointed to fill the seats vacated by Senators O'Mahoney and Clements. Senator O'Mahoney had been defeated for reelection and Senator Clements succeeded to Whip.

1953–54: Lyndon B. Johnson, Texas, Chairman and Minority Leader; Theodore F. Green, Rhode Island; Lister Hill, Alabama; Richard B. Russell, Georgia; Robert S. Kerr, Oklahoma; James E. Murray, Montana; Edwin C. Johnson, Colorado; Earle C. Clements, Kentucky, *ex officio* as Minority Whip; Thomas C. Hennings, Jr., Missouri, *ex officio* as Secretary of the Minority Conference.

In 1955 Senator Carl Hayden of Arizona was chosen in place of Senator Johnson of Colorado, who retired at the end of the 83d Congress. The other members of the Committee remained the same.

1955–56: Lyndon B. Johnson, Texas; Chairman and Majority Leader; Theodore F. Green, Rhode Island; Lister Hill, Alabama; Richard B. Russell, Georgia; Robert S. Kerr, Oklahoma; James E. Murray, Montana; Carl Hayden, Arizona; Earle C. Clements, Kentucky, *ex officio* as Majority Whip; Thomas C. Hennings, Jr., Missouri, *ex officio* as Secretary of the Majority Conference.

Senator Mike Mansfield of Montana was elected Majority Whip on January 3, 1957, in place of Senator Clements who had been defeated for reelection. Senator Mansfield thus became an *ex officio* member of the Policy Committee.

1957–58: Lyndon B. Johnson, Texas, Chairman and Majority Leader; Theodore F. Green, Rhode Island; Lister Hill, Alabama; Richard B. Russell, Georgia; Robert S. Kerr, Oklahoma; James E. Murray, Montana; Carl Hayden, Arizona; Mike Mansfield, Montana, *ex officio* as Majority Whip; Thomas C. Hennings, Jr., Missouri, *ex officio* as Secretary of the Majority Conference.

1959–60: Lyndon B. Johnson, Texas, Chairman and Majority Leader; Theodore F. Green, Rhode Island; Lister Hill, Alabama; Richard B. Russell, Georgia; Robert S. Kerr, Oklahoma; James E. Murray, Montana; Carl Hayden, Arizona; Mike Mansfield, Montana, *ex officio* as Majority Whip; Thomas C. Hennings, Jr., Missouri, *ex officio* as Secretary of the Majority Conference.

Legislative Review Committee: E. L. Bartlett, Alaska [3]; Philip A. Hart, Michigan [3]; Clair Engle, California.[4]

Senator Mansfield became Chairman in 1961 when he was elected Majority Leader, succeeding Senator Johnson who has been elected Vice President with Kennedy. The Conference elected Senator Hubert H. Humphrey of Minnesota to fill Mr. Mansfield's place as Whip, and chose Senator George A. Smathers of Florida for Secretary of the Conference; Senator Hennings died on September 13, 1960.

Senator Mansfield expanded the Legislative Review Committee to four members, with the appointment of Senator Edmund S. Muskie of Maine, on January 28, 1961. The other three Assistant Whips remained in their posts.

Senators John O. Pastore of Rhode Island and Warren G. Magnuson of Washington were appointed to replace Senators Green and Murray who retired on January 3, 1961. On February 13, 1962, Senator Stuart Symington of Missouri was appointed in place of Senator Kerr, who died on January 1, 1962.

1961–62: Mike Mansfield, Montana, Chairman and Majority Leader; Lister Hill, Alabama; Richard B. Russell, Georgia; Robert S. Kerr, Oklahoma [5];

[1] Died March 8, 1951.

[2] Appointed to replace Senator Chapman, July 24, 1951.

[3] Appointed March 6, 1959.

[4] Appointed April 14, 1959.

[5] Died January 1, 1962.

Carl Hayden, Arizona; John O. Pastore, Rhode Island; Warren G. Magnuson, Washington; Stuart Symington, Missouri [6]; Hubert H. Humphrey, Minnesota, *ex officio* as Majority Whip; George A. Smathers, Florida, *ex officio* as Secretary of the Majority Conference.

Legislative Review Committee: E. L. Bartlett, Alaska; Clair Engle, California; Philip A. Hart, Michigan; Edmund S. Muskie, Maine.

Senator Daniel B. Brewster of Maryland was appointed to the Legislative Review Committee on April 3, 1963, to replace Senator Bartlett. Senator Muskie was designated Chairman of the Review Committee on the same date.

1963–64: Mike Mansfield, Montana, Chairman and Majority Leader; Lister Hill, Alabama; Richard B. Russell, Georgia; Carl Hayden, Arizona; John O. Pastore, Rhode Island; Warren G. Magnuson, Washington; Stuart Symington, Missouri; Hubert H. Humphrey, Minnesota, *ex officio* as Majority Whip; George A. Smathers, Florida *ex officio* as Secretary of the Majority Conference.

Legislative Review Committee: Edmund S. Muskie, Maine, Chairman [7]; Clair Engle, California; Philip A. Hart, Michigan; Daniel B. Brewster, Maryland.[8]

Senator Russell B. Long of Louisiana was elected Majority Whip on January 4, 1965, to succeed Senator Humphrey, who was elected Vice President the previous November. Senator Daniel K. Inouye of Hawaii was appointed to the Review Committee to succeed Senator Engle, who retired at the close of the 88th Congress.

1965–66: Mike Mansfield, Montana, Chairman and Majority Leader; Lister Hill, Alabama; Richard B. Russell, Georgia; Carl Hayden, Arizona; Warren G. Magnuson, Washington; John O. Pastore, Rhode Island; Stuart Symington, Missouri; Russell B. Long, Louisiana, *ex officio* as Majority Whip; George A. Smathers, Florida, *ex officio* as Secretary of the Majority Conference.

Legislative Review Committee: Edmund S. Muskie, Maine, Chairman; Philip A. Hart, Michigan; Daniel B. Brewster, Maryland; Daniel K. Inouye, Hawaii.

Senator Robert C. Byrd of West Virginia was elected Secretary of the Conference on January 10, 1967, to replace Senator Smathers who did not seek reelection as Secretary.

1967–68: Mike Mansfield, Montana, Chairman and Majority Leader; Lister Hill, Alabama; Richard B. Russell, Georgia; Carl Hayden, Arizona; Warren G. Magnuson, Washington; John O. Pastore, Rhode Island; Stuart Symington, Missouri; Russell B. Long, Louisiana *ex officio* as Majority Whip; Robert C. Byrd, West Virginia, *ex officio* as Secretary of the Majority Conference.

Legislative Review Committee: Edmund S. Muskie, Maine, Chairman; Philip A. Hart, Michigan; Daniel B. Brewster, Maryland; Daniel K. Inouye, Hawaii.

On January 7, 1969, Senators J. W. Fulbright of Arkansas and Philip A. Hart of Michigan were appointed to replace Senators Hayden and Hill, who both retired at the close of the 90th Congress. Senator Edward M. Kennedy of Massachusetts won the Conference election for Whip, to assume that *ex officio* seat on the Committee.

In the Legislative Review Committee, Senators Ernest F. Hollings of South Carolina and Harold E. Hughes of Iowa replaced Senator Hart, who succeeded to the Policy Committee proper, and Senator Brewster, who was defeated for reelection.

1969–70: Mike Mansfield, Montana, Chairman and Majority Leader; Richard B. Russell, Georgia; Warren G. Magnuson, Washington; John O. Pastore, Rhode Island; Stuart Symington, Missouri; J. W. Fulbright, Arkansas; Philip A. Hart, Michigan; Edward M. Kennedy, Massachusetts, *ex officio* as Majority Whip; Robert C. Byrd, West Virginia, *ex officio* as Secretary of the Majority Conference.

Legislative Review Committee: Edmund S. Muskie, Maine, Chairman; Daniel K. Inouye, Hawaii; Ernest F. Hollings, South Carolina; Harold E. Hughes, Iowa.

Senator Russell died on January 21, 1971. Senator Herman E. Talmadge of Georgia was appointed to replace Senator Russell on January 26, 1971.

At the Conference of January 26, 1971, Senator Byrd was elected Majority Whip. Senator Frank E. Moss of Utah was elected Secretary of the Conference succeeding Senator Byrd.

Senator Ellender died July 27, 1972. He was succeeded as President *Pro Tempore* by Senator James O. Eastland of Mississippi on August 2, 1972.

1971–72: Mike Mansfield, Montana, Chairman and Majority Leader; Warren G. Magnuson, Washington; John O. Pastore, Rhode Island; Stuart Symington, Missouri; J. W. Fulbright, Arkansas; Philip A. Hart, Michigan; Herman E. Talmadge, Georgia; Allen J. Ellender, Louisiana, *ex officio* as President *Pro Tempore* [9]; James O. Eastland, Mississippi, *ex officio* as President *Pro Tempore* [10]; Robert C. Byrd, West Virginia, *ex officio* as Majority Whip; Frank E. Moss, Utah, *ex officio* as Secretary of the Majority Conference.

Legislative Review Committee: Edmund S. Muskie, Maine, Chairman; Daniel K. Inouye, Hawaii; Ernest F. Hollings, South Carolina; Harold E. Hughes, Iowa.

The Policy Committee was unchanged during the 93d Congress.

On January 17, 1975, Senator Ernest Hollings of South Carolina was appointed to replace Senator J. W. Fulbright who was defeated for reelection.

In the Legislative Review Committee, Senators Vance Hartke of Indiana and Dale Bumpers of Arkansas replaced Senator Hollings, who succeeded to the Policy Committee proper, and Senator Hughes who retired at the close of the 93d Congress.

1975–76: Mike Mansfield, Montana, Chairman and Majority Leader; Warren G. Magnuson, Washington; John O. Pastore, Rhode Island; Stuart Symington, Missouri; Philip A. Hart, Michigan; Herman E. Talmadge, Georgia; Ernest F. Hollings, South Carolina; James O. Eastland, Mississippi, *ex officio* as President *Pro Tempore;* Robert C. Byrd, West Virginia, *ex officio* as Majority Whip; Frank E. Moss, Utah, *ex officio* as Secretary of the Majority Conference.

Legislative Review Committee: Edmund S. Muskie, Maine, Chairman; Daniel K. Inouye, Hawaii; Vance Hartke, Indiana; Dale Bumpers, Arkansas.

At the beginning of the 95th Congress, Robert C. Byrd was unanimously elected Majority Leader and Chairman of the Democratic Policy Committee. New members were appointed to the committee and certain changes were made. Edmund S. Muskie moved from Chairman of the Legislative Review Committee to full membership to fill the seat of John O. Pastore who retired. Quentin M. Burdick was named to fill the seat of Stuart Symington who retired. Adlai E. Stevenson became a member *vice* Philip A. Hart who retired and subsequently died. Alan Cranston and Daniel Inouye became *ex officio* members as Whip and Secretary of the Conference, respectively.

New members appointed to the Legislative Review Committee were William Proxmire *vice* Vance Hartke, Abraham Ribicoff *vice* Edmund S. Muskie, and Floyd K. Haskell *vice* Daniel K. Inouye.

On March 3, 1977, the Majority Leader named four additional Senators to the Legislative Review Committee under the procedure adopted by the Democratic Caucus on January 13, 1977, under which the Majority Leader gives notice of a vacancy to each member of the Democratic Conference and then announces his selection no sooner than three legislative days later at a Democratic Conference. Those appointed were Frank Church, Claiborne Pell, Lloyd Bentsen and John Glenn.

At the Democratic Caucus on March 9, these appointments were approved.

1977–1978: Robert C. Byrd, West Virginia, Chairman; Warren G. Magnuson, Washington; Herman E. Talmadge, Georgia; Ernest F. Hollings, South Carolina; Edmund S. Muskie, Maine; Quentin N. Burdick, North Dakota; Adlai E. Stevenson, III, Illinois; James O. Eastland, Mississippi, *ex officio* as President *Pro Tempore;* Hubert H. Humphrey, Minnesota, *ex officio* as Deputy President *Pro Tempore* [11]; Alan Cranston, California, *ex officio* as Majority Whip; Daniel K. Inouye, Hawaii, *ex officio* as Secretary of the Democratic Conference.

Policy Legislative Review Committee: Dale Bumpers, Chairman, Arkansas; William Proxmire, Wisconsin; Abraham Ribicoff, Connecticut; Floyd Haskell, Colorado; Frank Church, Idaho; Claiborne Pell, Rhode Island; Lloyd Bentsen, Texas; John Glenn, Ohio.

At the beginning of the 96th Congress, Warren Magnuson, already a member

[6] Appointed to succeed Senator Kerr, February 13, 1962.
[7] Position created April 3, 1963.
[8] Appointed April 3, 1963.

[9] Died July 27, 1972.
[10] Succeeded as President *Pro Tempore*, August 2, 1972.

[11] Died January 13, 1978.

of the committee, succeeded James O. Eastland, an *ex officio* member, as President *Pro Tempore*. Edmund S. Muskie resigned from the Senate on May 7, 1980, and was sworn in as Secretary of State. At a meeting of the Democratic Conference on May 13, 1980, Abraham Ribicoff was selected to fill the vacant position on the Committee and Daniel Patrick Moynihan was appointed to succeed Senator Ribicoff on the Legislative Review Committee.

1979–1980: Robert C. Byrd, West Virginia, Chairman; Warren G. Magnuson, Washington; Herman E. Talmadge, Georgia; Ernest F. Hollings, South Carolina; Edmund S. Muskie, Maine [12]; Quentin N. Burdick, North Dakota; Adlai E. Stevenson, III, Illinois; Abraham Ribicoff, Connecticut [13]; Alan Cranston, *ex officio* (as Whip); Daniel K. Inouye, *ex officio* (as Secretary of Conference).

Policy Legislative Review Committee: Dale Bumpers, Chairman, Arkansas; William Proxmire, Wisconsin; Abraham Ribicoff, Connecticut [13]; Frank Church, Idaho; Claiborne Pell, Rhode Island; Lloyd Bentsen, Texas; John Glenn, Ohio; John Melcher, Montana; Daniel Patrick Moynihan, New York.[14]

FUNCTION OF THE COMMITTEE

In the 1950's and 1960's, the Democratic Policy Committee was largely responsible for the programming of legislation. Meetings were scheduled depending on the backlog of bills on the calendar and on the need to determine the order in which legislation would be considered by the Senate. The Policy Committee cleared all bills which could be passed by unanimous consent—frequently clearing from 50 to 100 bills at a time—and determined which controversial bills should be brought up and which should be deferred. Although members frequently disclaimed any desire to function as the Senate equivalent of the House Rules Committee, Committee members could, and occasionally did, "hold" up legislation which they personally felt was ill-advised.

The Policy Committee met sporadically under the chairmanship of Majority Leader Johnson, unusually meeting for several hours once every six weeks to two months. Majority Leader Johnson cleared the schedule for recesses and adjournment with the members of the Committee; the Committee determined when to adjourn *sine die* and which bills to pass by that time. At one point, the minutes indicate that the Committee discused a letter from a Senator who asked that legislative activity be suspended for a week to ten days in May, so that Senators could make commencement addresses at colleges. The Committee decided against that suggestion. Times have changed over the years . . . Senators don't even dream of such luxuries in the 1980's.

Under the chairmanship of Majority Leader Mansfield, the Policy Committee continued to program legislation and discuss matters relating to the legislative process. With the election of a Democratic administration, the Committee also developed into a forum for the expression of legislative views for transmittal to the executive. Vice-President Johnson attended sessions of the Democratic Policy Committee with great regularity, and Vice-President Humphrey continued this practice after his election in 1964. During the 1960's, the Committee usually met every two months, although in several of the years only four or five meetings were held; from 1969 to 1976, the Committee met quite frequently—usually every two weeks.

In recent years, the Policy Committee has had fewer formal meetings, and members meet unofficially instead to discuss the advisability of scheduling very controversial legislation.

In addition the Policy Committee no longer meets to clear all the bills to be passed by unanimous consent from the calendar. Now, any Senator on the Democratic side can notify the staff of the Policy Committee if he desires to study a bill further before it passes; and Senators inform the Leadership when they have an amendment to a bill or want notified before passage.

STAFF FUNCTIONS

I have mentioned the Democratic Policy Committee staff. The Committee now has a staff of 24 persons who are capably directed and assisted by Mary Jane Checchi. Mary Jane, as Chief Counsel and Staff Director of the Policy Committee, is the tenth person—and the first woman—to carry that heavy load since the Committee's formation in 1947, and she is only the second woman staff director of any Committee in the history of the Senate.

The first staff director of the Democratic Policy Committee was Leslie L. Biffle, appointed by Majority Leader Alben Barkley for the 80th Congress from January 3, 1947, to December 31, 1948. He was followed by Alfred G. Vigderman in the 81st Congress and by James H. Green, Jr. in the 82nd. Gerald W. Siegel served as Chief Counsel of the Committee from the 83rd through the 85th Congresses. Mr. Siegel was succeeded by James W. Wilson as General Counsel in the 86th Congress, by Harry C. McPherson in the 87th and the 1st Session of the 88th, and by Kenneth Teasdale in the 2nd Session. In 1965, Charles D. Ferris assumed the directorship as General Counsel and remained in that position from the 89th through the 94th Congresses. He was succeeded by Thomas D. Hart in the 95th Congress. Mary Jane Checchi was appointed Chief Counsel and Staff Director in the 96th Congress.

The staff of the Policy Committee conducts a wide range of important legislative responsibilities. Various members of the staff are experts in specific subject areas—for instance, foreign policy, economics, energy, human resources, the judiciary, etc.—and advise the Leadership and Democratic Senators on problems in those areas. Members of the staff also assist the Leadership in carrying out its duties on the Senate floor.

In addition, the Policy Committee staff provides many services for Democratic Senators, including:

1) Preparation of the Senate Agenda each day, which details the legislative business for that day and any time agreements that may be applicable;

2) Legislative Bulletins—the Policy Committee staff prepares bulletins on bills reported from Committee. They include a summary of the bill's major provisions, possible amendments to be offered, and reference to previous related rollcall votes. They are distributed to Senators on the floor and to Senators' offices.

3) Voting Records—Printed records of every rollcall vote the Senate takes are prepared and distributed to offices.

4) Individual Voting Record Booklet—After adjournment of each session, the staff publishes a composite of the votes of the session with subject and chronological indexes, which is distributed to each Senator.

5) Summary of Major Achievements—the staff prepares a report for the Majority Leader which contains a summary of all bills the Senate has passed. This report is organized by major topics ranging from "Agriculture" to "Veterans." The Majority Leader often inserts this report in the *Congressional Record* prior to a recess. After adjournment, this material is further edited, updated, and published as a Senate document. This legislative history of the session of Congress has been printed every year since 1947.

6) Attendance Records—records of attendance at roll call votes are maintained for each Senator; and

7) Legislative Activity—information is maintained regarding hours in session, days in session, bills, passed, number of votes taken, etc., on a daily basis which can be compared with previous sessions going back to 1933. Information regarding public laws, vetoes, cloture votes, etc., is also available from the office.

Mr. President, as I indicated at the beginning, this is the 17th in a series of speeches I have made on the United States Senate, the first speech having occurred on March 21 of this year. I have stated before, that I feel that these statements will be of interest and usefulness to the Senate as it approaches its 200th anniversary in 1989.

Anent that anniversary, I call attention to the fact that the Senate today passed S. Res. 381, a resolution which I introduced on behalf of myself, Mr. BAKER, Mr. STEVENS, and Mr. HARRY F. BYRD, JR. on March 5 of this year. That resolution was reported to the Senate from the Judiciary Committee on July 30 without amendment and with a preamble.

Mr. President, I ask unanimous consent that the resolution be printed in the RECORD at this point as a part of this 17th statement.

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

S. RES. 381

Whereas the Senate of the United States in the year 1989 will celebrate the two hun-

[12] Resigned on May 7, 1980, to become Secretary of State.

[13] Resigned from Legislative Review Committee on May 13, 1980, to become member of Policy Committee.

[14] Appointed May 13, 1980.

dredth anniversary of its establishment under the Constitution, and;

Whereas the Senate's historical development has been inextricably bound to the development of our national heritage of individual liberty, representative government, and the attainment of equal and inalienable rights, and;

Whereas it is appropriate and desirable to provide for the observation and commemoration of this anniversary: Now, therefore, be it

Resolved, That there is hereby established a Study Group on the Commemoration of the United States Senate Bicentennary (hereafter in this resolution referred to as the "Study Group") to plan the commemoration of the United States Senate bicentennial.

SEC. 2. The Study Group shall be composed of the following members:

(a) the majority leader and minority leader of the Senate;

(b) the executive secretary of the Senate Commission on Art and Antiquities;

(c) five members of the Senate to be appointed by the President of the Senate upon the recommendation of the majority and minority leaders of the Senate;

(d) three former Members of the Senate to be appointed by the President of the Senate upon the recommendation of the majority and minority leaders of the Senate.

(c) the chairman of the Senate Historical Office Advisory Committee;

(f) the Librarian of Congress, or his designee;

(g) the Archivist of the United States, or his designee; and

(h) two members of the Senate Historical Office Advisory Committee to be appointed by that committee's chairman.

SEC. 3. The Study Group shall select a chairman from among its members. Five members of the Study Group shall constitute a quorum. Any vacancy in the membership of the Study Group shall be filled in the same manner in which the original appointment was made.

SEC. 4. It shall be the duty of the Study Group to prepare an overall plan for commemorating the bicentennial of the Senate of the United States through an appropriate program of publications, exhibits, symposia, and related activities. The objective of this commemoration is to inform and emphasize to the Nation the role of the Senate from its historic beginnings through two hundred years of growth, challenge, and change. The Study Group in its planning is directed to develop a program that will draw upon the resources of current and former members, scholars, and the general public.

SEC. 5. Not later than eighteen months after the date of agreement to this resolution, the Study Group shall submit to the President of the Senate a comprehensive report incorporating its specific recommendations for the commemoration of the Senate's bicentennial. The report may recommend activities such as, but not limited to, the following:

(a) the production, publication, and distribution of books, pamphlets, films, and other educational materials focusing on the history and traditions of the Senate;

(b) bibliographical and documentary projects and publications;

(c) conferences, symposia, lectures, seminars, and other programs;

(d) the development of exhibits, including mobile exhibits;

(e) ceremonies and celebrations commemorating specific events; and

(f) the issuance of commemorative stamps.

SEC. 6. The report shall include proposals for such legislative enactments and administrative actions as the Study Group considers necessary to carry out its recommendations.

SEC. 7. The members of the Study Group shall receive no compensation for their services as such. Members appointed from private life shall be allowed necessary per diem and travel expenses to and from Washington, District of Columbia, to be paid from the contingent fund of the Senate upon vouchers signed by the chairman of the Study Group and approved by the majority leader and the minority leader of the Senate.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday is as follows:

The Senate will convene at 9 o'clock. After the two leaders have been recognized under the standing order, which for Monday has been reduced to a total of 5 minutes to be equally divided between the two leaders, there will be six orders for recognition of Senators for not to exceed 15 minutes. That will more than consume the 1 hour under the cloture rule.

Consequently, at the conclusion of the orders for the recognition of Senators, the automatic quorum call will occur, and when a quorum is established, the automatic rollcall vote will occur on the motion to invoke cloture on the nomination of Don Alan Zimmerman, of Maryland, to be a member of the National Labor Relations Board.

If cloture is invoked, that nomination then will be the business of the Senate, to the exclusion of all other business, until completed. If the vote to invoke cloture fails, the Senate will return immediately to legislative session, by unanimous consent.

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

Mr. ROBERT C. BYRD. When the Senate returns to legislative session, the Senate will again resume consideration of the Alaska lands bill. Rollcall votes will occur during the day on that bill and/or other measures that have been cleared for action.

Mr. President, only 3 days remain before the August break—Monday, Tuesday, and Wednesday. During those 3 days, I anticipate that rollcall votes will likely occur daily and then the Senate will recess until after the convention.

RECESS UNTIL 9 A.M. ON MONDAY, AUGUST 4, 1980

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move that the Senate stand in recess until the hour of 9 o'clock a.m. on Monday next.

The motion was agreed to; and, at 5:38 p.m., the Senate recessed until Monday, August 4, 1980, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate August 1, 1980:

INTER-AMERICAN FOUNDATION

The following-named persons to be Members of the Board of Directors of the Inter-American Foundation for the terms indicated:

For the remainder of the term expiring September 20, 1982:

Guy Feliz Erb, of California, vice Carolyn R. Payton, resigned.

For the term expiring October 6, 1984:

Doris B. Holleb, of Illinois, vice Charles A. Meyer, term expired.

For the term expiring September 20, 1986:

Paula Stern, of the District of Columbia, vice Arnold Nachmanoff, term expiring.

For the term expiring October 6, 1986:

Luis Guerrero Nogales, of California, vice Manuel R. Caldera, term expiring.

ARMY

The following-named officers for promotion in the Regular Army of the United States, under the provisions of title 10, United States Code, sections 3284 and 3299:

ARMY PROMOTION LIST

To be major

Aaron, Larry D., xxx-xx-xxxx
Abrams, John N., xxx-xx-xxxx
Adair, Lawrence J., xxx-xx-xxxx
Adams, Ben P., xxx-xx-xxxx
Adams, Jerome, xxx-xx-xxxx
Adams, Robert H., Jr., xxx-xx-xxxx
Adams, Robert L., xxx-xx-xxxx
Adams, Walter H., xxx-xx-xxxx
Adkins, Richard C., xxx-xx-xxxx
Adkins, Terrence L., xxx-xx-xxxx
Albright, Robert H., xxx-xx-xxxx
Alexander, Charles L., xxx-xx-xxxx
Alich, James A., xxx-xx-xxxx
Allen, Douglas L., Jr., xxx-xx-xxxx
Allen, James B., xxx-xx-xxxx
Allen, Roderic D., xxx-xx-xxxx
Alley, John E., xxx-xx-xxxx
Allred, Kenneth L., xxx-xx-xxxx
Altieri, Richard T., xxx-xx-xxxx
Alton, John F., xxx-xx-xxxx
Alton, Ronnie D., xxx-xx-xxxx
Alvord, Harold F., xxx-xx-xxxx
Ament, Robert J., xxx-xx-xxxx
Amstutz, Richard E., xxx-xx-xxxx
Anderson, Andrew K., xxx-xx-xxxx
Anderson, Charles V., xxx-xx-xxxx
Anderson, Charles W., III, xxx-xx-xxxx
Anderson, Frank H., III, xxx-xx-xxxx
Anderson, George L., Jr., xxx-xx-xxxx
Anderson, Jerry F., xxx-xx-xxxx
Anderson, John C., xxx-xx-xxxx
Anderson, Larry D., xxx-xx-xxxx
Anderson, Michael L., xxx-xx-xxxx
Anderson, Phillip A., xxx-xx-xxxx
Anderson, Robert C., xxx-xx-xxxx
Anderson, Roger E., xxx-xx-xxxx
Anderson, Thomas W., xxx-xx-xxxx
Andrews, Michael A., xxx-xx-xxxx
Andrews, Teddy G., xxx-xx-xxxx
Andrighetti, John, xxx-xx-xxxx
Angeli, Robert R., xxx-xx-xxxx
Ansel, Raymond B., xxx-xx-xxxx
Applehans, Robert B., Jr., xxx-xx-xxxx
Arango, Roger J., Jr., xxx-xx-xxxx
Archer, David M., xxx-xx-xxxx
Archibald, David J., Jr., xxx-xx-xxxx
Arens, Noel J., xxx-xx-xxxx
Arlauskas, Joseph, xxx-xx-xxxx
Arnold, Henry H., III, xxx-xx-xxxx
Ashcraft, Jack G., xxx-xx-xxxx
Aylor, Robert L., xxx-xx-xxxx
Ayscue, John A., xxx-xx-xxxx
Baggett, David L., xxx-xx-xxxx
Baggett, Judson B., xxx-xx-xxxx
Bahr, James J., xxx-xx-xxxx
Bailey, Albert W., xxx-xx-xxxx
Bailey, Arthur W., xxx-xx-xxxx
Bailey, Max P., III, xxx-xx-xxxx
Baillon, Larry P., xxx-xx-xxxx
Baker, James R., xxx-xx-xxxx
Baker, Marvin H., xxx-xx-xxxx
Baldridge, James H., Jr., xxx-xx-xxxx
Balentine, Jimmie L., xxx-xx-xxxx
Banisch, Werner W., xxx-xx-xxxx
Barbee, Steve G., xxx-xx-xxxx
Barber, Preston W., xxx-xx-xxxx

Barber, Russel J., xxx-xx-xxxx
Barnes, Sidney L., xxx-xx-xxxx
Barr, Brian, xxx-xx-xxxx
Bartlett, Charles D., Jr., xxx-xx-xxxx
Bassett, Richard S., xxx-xx-xxxx
Bates, Bernie L., xxx-xx-xxxx
Bates, William M., xxx-xx-xxxx
Baybrook, Thomas G., xxx-xx-xxxx
Beach, Martin H., xxx-xx-xxxx
Beatty, Eugene E., Jr., xxx-xx-xxxx
Beauchamp, Charles E., Jr., xxx-xx-xxxx
Beauchamp, Roy E., xxx-xx-xxxx
Beck, Dwight A., xxx-xx-xxxx
Beck, Raymond G., xxx-xx-xxxx
Beddow, Sidney W., II, xxx-xx-xxxx
Beeson, Frank J., xxx-xx-xxxx
Behrens, Jon S., xxx-xx-xxxx
Behuniak, Thomas E., xxx-xx-xxxx
Bell, Carl H., III, xxx-xx-xxxx
Bell, Patrick J., xxx-xx-xxxx
Bell, Robert J., xxx-xx-xxxx
Bell, William L., xxx-xx-xxxx
Belt, Julia A., xxx-xx-xxxx
Bemis, Al H., xxx-xx-xxxx
Bennett, George C., xxx-xx-xxxx
Benoit, James A., xxx-xx-xxxx
Benson, Terry R., xxx-xx-xxxx
Berg, Thomas R., xxx-xx-xxxx
Berganini, Steven J., xxx-xx-xxxx
Berger, Joseph B., Jr., xxx-xx-xxxx
Bergsagel, Errol R., xxx-xx-xxxx
Bernier, Robert G., xxx-xx-xxxx
Beumler, Timothy C., xxx-xx-xxxx
Bevill, Edward E., xxx-xx-xxxx
Bevington, Richard L., Jr., xxx-xx-xxxx
Beyer, Melvin L., xxx-xx-xxxx
Bieneman, William C., xxx-xx-xxxx
Biesemeier, Paul A., xxx-xx-xxxx
Bigelman, Paul A., xxx-xx-xxxx
Bird, David O., xxx-xx-xxxx
Black, Richard A., xxx-xx-xxxx
Blackshire, Benny W., xxx-xx-xxxx
Blackwell, Brendan P., xxx-xx-xxxx
Blake, Peter J., III, xxx-xx-xxxx
Blanc, George J., xxx-xx-xxxx
Blanton, Dennis R., xxx-xx-xxxx
Block, Bruce A., xxx-xx-xxxx
Blue, Donald G., xxx-xx-xxxx
Boddie, James W., Jr., xxx-xx-xxxx
Boggs, David L., xxx-xx-xxxx
Bohn, Bartholomew B., II, xxx-xx-xxxx
Boland, Hayden E., xxx-xx-xxxx
Bondanella, John R., xxx-xx-xxxx
Bonner, Robert E., xxx-xx-xxxx
Borland, William E., xxx-xx-xxxx
Bornmann, John A., Jr., xxx-xx-xxxx
Bortner, Jerry L., xxx-xx-xxxx
Boudreau, Michael W., xxx-xx-xxxx
Bovais, Don A., xxx-xx-xxxx
Bowden, Gerald, xxx-xx-xxxx
Bowdoin, Charles D., xxx-xx-xxxx
Bowman, Lewis A., xxx-xx-xxxx
Boyd, Morris J., xxx-xx-xxxx
Braddock, Richard R., xxx-xx-xxxx
Braden, John W., Jr., xxx-xx-xxxx
Brady, William H., Jr., xxx-xx-xxxx
Branch, Larry R., xxx-xx-xxxx
Brehm, Robert L., xxx-xx-xxxx
Brigadier, William L., xxx-xx-xxxx
Brillante, Phillip L., xxx-xx-xxxx
Bristow, William D., Jr., xxx-xx-xxxx
Britton, Randall T., xxx-xx-xxxx
Brohm, Gerard P., xxx-xx-xxxx
Bronson, James R., xxx-xx-xxxx
Brown, Carlton W., Jr., xxx-xx-xxxx
Brown, Kenneth L., xxx-xx-xxxx
Brown, Michael J., xxx-xx-xxxx
Brown, William D., xxx-xx-xxxx
Brown, William R., xxx-xx-xxxx
Bruni, Salvatore M., xxx-xx-xxxx
Bruns, Thomas E., xxx-xx-xxxx
Brusitus, James M., xxx-xx-xxxx
Bryant, Boyd C., xxx-xx-xxxx
Bryant, William K., xxx-xx-xxxx
Bryla, Edward A., xxx-xx-xxxx
Buckley, Geoffrey J., xxx-xx-xxxx
Bufkin, Henry P., xxx-xx-xxxx
Burcher, David P., xxx-xx-xxxx
Burckhardt, Marland J., xxx-xx-xxxx
Burdine, Roy J., xxx-xx-xxxx
Burger, James A., xxx-xx-xxxx
Burghart, Frank G., III, xxx-xx-xxxx
Burnett, Ira S., xxx-xx-xxxx
Burney, Linwood E., xxx-xx-xxxx
Burns, Jonathan K., xxx-xx-xxxx
Burns, Terry L., xxx-xx-xxxx
Burroughs, Ralph E., xxx-xx-xxxx
Burrow, Troy E., xxx-xx-xxxx
Bush, Robert F., Jr., xxx-xx-xxxx
Butler, Daniel E., xxx-xx-xxxx
Butler, Gary R., xxx-xx-xxxx
Butler, James M., xxx-xx-xxxx
Buzzell, Calvin A., xxx-xx-xxxx
Caddy, Nathan V., Jr., xxx-xx-xxxx
Cadorette, Richard E., xxx-xx-xxxx
Cake, Donald R., xxx-xx-xxxx
Caldwell, John E., xxx-xx-xxxx
Caldwell, John S., Jr., xxx-xx-xxxx
Calvaresi, Salvatore P., xxx-xx-xxxx
Camden, Joseph C., xxx-xx-xxxx
Cameron, Alexander W., xxx-xx-xxxx
Cameron, Ronald F., xxx-xx-xxxx
Campbell, John D., xxx-xx-xxxx
Campbell, Robert W., Jr., xxx-xx-xxxx
Cannici, John S., xxx-xx-xxxx
Cannon, Charles C., Jr., xxx-xx-xxxx
Cannon, James C., xxx-xx-xxxx
Caporiccio, Richard C., xxx-xx-xxxx
Cappone, Theodore T., Jr., xxx-xx-xxxx
Carkhuff, Michael G., xxx-xx-xxxx
Carney, John F., xxx-xx-xxxx
Carr, Stewart D., xxx-xx-xxxx
Carrigo, Edward A., III, xxx-xx-xxxx
Carson, Charles R., Jr., xxx-xx-xxxx
Carter, Leslie W., xxx-xx-xxxx
Carthage, Philip G., xxx-xx-xxxx
Cartier, Eugene N., xxx-xx-xxxx
Carvill, Richard A., xxx-xx-xxxx
Casey, James R., II, xxx-xx-xxxx
Castro, Albert C., xxx-xx-xxxx
Cecil, Thomas W., xxx-xx-xxxx
Chalmers, Jefferson W., xxx-xx-xxxx
Chandler, Edward D., xxx-xx-xxxx
Cheatham, James H., Jr., xxx-xx-xxxx
Cheeks, Robert F., xxx-xx-xxxx
Chesser, Cecil D., xxx-xx-xxxx
Chessnoe, John M., xxx-xx-xxxx
Chewning, William R., xxx-xx-xxxx
Chinn, David W., xxx-xx-xxxx
Chipps, James D., xxx-xx-xxxx
Chiverton, Frederick W., xxx-xx-xxxx
Chunn, Warren A., xxx-xx-xxxx
Chwalibog, Andrew J., xxx-xx-xxxx
Clark, Asa A. V., xxx-xx-xxxx
Clark, Charles G., Jr., xxx-xx-xxxx
Clark, Elliot J., Jr., xxx-xx-xxxx
Clark, Jack L., xxx-xx-xxxx
Clark, James J., xxx-xx-xxxx
Clark, James W., xxx-xx-xxxx
Clark, Roy L., III, xxx-xx-xxxx
Clarke, Harold R., Jr., xxx-xx-xxxx
Clements, Donnell S., xxx-xx-xxxx
Cleveland, Horst H., xxx-xx-xxxx
Clifford, Gayne A., xxx-xx-xxxx
Close, Fred L., Jr., xxx-xx-xxxx
Coates, Dennis E., xxx-xx-xxxx
Coberly, Theodore R., xxx-xx-xxxx
Cochran, Charles D., xxx-xx-xxxx
Coffey, Andrew W., xxx-xx-xxxx
Colburn, Cordis B., xxx-xx-xxxx
Cole, John M., Jr., xxx-xx-xxxx
Cole, Stephen J., xxx-xx-xxxx
Collat, Carlos M., xxx-xx-xxxx
Collings, Laurence K., xxx-xx-xxxx
Collins, Van A., xxx-xx-xxxx
Collins, William P., xxx-xx-xxxx
Conant, Robert A., xxx-xx-xxxx
Conley, Hampton P., xxx-xx-xxxx
Conroy, Bruce, xxx-xx-xxxx
Conroy, Richard A., xxx-xx-xxxx
Cook, James T., xxx-xx-xxxx
Cook, Rolf L., xxx-xx-xxxx
Cooley, Daniel B., xxx-xx-xxxx
Cooper, Brian P., xxx-xx-xxxx
Cooper, James W., xxx-xx-xxxx
Corning, Bruce L., xxx-xx-xxxx
Corsentino, Thomas A., xxx-xx-xxxx
Cousins, William R., III, xxx-xx-xxxx
Covington, James E., Jr., xxx-xx-xxxx
Cowan, William L., xxx-xx-xxxx
Cox, Danny C., xxx-xx-xxxx
Cox, Michael J., xxx-xx-xxxx
Craig, John E., xxx-xx-xxxx
Craig, William R., xxx-xx-xxxx
Crocker, Larry D., xxx-xx-xxxx
Cronin, Daniel F., xxx-xx-xxxx
Crowder, William S., xxx-xx-xxxx
Crowley, James C., xxx-xx-xxxx
Cruce, Douglas O., xxx-xx-xxxx
Crutcher, Michael H., xxx-xx-xxxx
Culbreth, Roy, Jr., xxx-xx-xxxx
Culley, William F., Jr., xxx-xx-xxxx
Cumming, James M., xxx-xx-xxxx
Cupp, Lloyd G., Jr., xxx-xx-xxxx
Curry, Paul M., Jr., xxx-xx-xxxx
Curry, Ronald E., xxx-xx-xxxx
Curtsinger, Jerry J., xxx-xx-xxxx
Daane, John H., xxx-xx-xxxx
Dacey, Richard P., xxx-xx-xxxx
Dalton, Peter J., xxx-xx-xxxx
Daniel, Kenneth E., xxx-xx-xxxx
Daniels, John E., xxx-xx-xxxx
Daniels, William E., xxx-xx-xxxx
Darnell, Louis J., xxx-xx-xxxx
Daugherity, Richard D., II, xxx-xx-xxxx
Davenport, John D., xxx-xx-xxxx
Davidson, Allen E., xxx-xx-xxxx
Davidson, Donald O., xxx-xx-xxxx
Davidson, James H., Jr., xxx-xx-xxxx
Davidson, Jay P., xxx-xx-xxxx
Davidson, John C., xxx-xx-xxxx
Davidson, Van M., Jr., xxx-xx-xxxx
Davies, Thomas E., xxx-xx-xxxx
Davis, Alfred J., xxx-xx-xxxx
Davis, Cecil F., xxx-xx-xxxx
Davis, Gaylerd E., xxx-xx-xxxx
Davis, Gene C., xxx-xx-xxxx
Davis, Larry L., xxx-xx-xxxx
Davis, Terrance M., xxx-xx-xxxx
Davis, William S., xxx-xx-xxxx
Day, Overton, xxx-xx-xxxx
Deal, Clifford L., Jr., xxx-xx-xxxx
Dean, Arthur T., xxx-xx-xxxx
Delisanti, Neal J., xxx-xx-xxxx
Delleo, Michael F., Jr., xxx-xx-xxxx
Deming, Michael D., xxx-xx-xxxx
Demont, Francis T., Jr., xxx-xx-xxxx
Denney, Michael E., xxx-xx-xxxx
Dennis, Kirby E., xxx-xx-xxxx
Dennis, Theodore H., xxx-xx-xxxx
Denton, Jeffrey M., xxx-xx-xxxx
Deters, Robert H., Jr., xxx-xx-xxxx
Devaughan, William L., xxx-xx-xxxx
Dewey, Edward J., xxx-xx-xxxx
Dewolfe, Franklyn J., xxx-xx-xxxx
Dickson, Richard G., xxx-xx-xxxx
Diehl, William J., Jr., xxx-xx-xxxx
Dietzel, Joe M., Jr., xxx-xx-xxxx
Dileonardo, Anthony D., xxx-xx-xxxx
Dillon, Dana B., xxx-xx-xxxx
Dinkel, Ernest H., Jr., xxx-xx-xxxx
Dinoto, Joseph M., xxx-xx-xxxx
Dionne, Ronald E., xxx-xx-xxxx
Dippel, Erich H., xxx-xx-xxxx
Dix, Leslie F., Jr., xxx-xx-xxxx
Dixon, Richard W., xxx-xx-xxxx
Dodson, Stanley D., xxx-xx-xxxx
Doheny, Robert C., xxx-xx-xxxx
Donnan, Edward F., Jr., xxx-xx-xxxx
Donnell, Alton P., Jr., xxx-xx-xxxx
Donovan, Jack R., Jr., xxx-xx-xxxx
Donovan, James J., xxx-xx-xxxx
Dooley, George E., xxx-xx-xxxx
Dowd, Douglas L., xxx-xx-xxxx
Downie, Terry C., xxx-xx-xxxx
Downing, John T., xxx-xx-xxxx
Downing, Patrick H., xxx-xx-xxxx
Downs, Gary T., xxx-xx-xxxx
Drew, Frederick A., xxx-xx-xxxx
Drezins, Herbert G., xxx-xx-xxxx
Dubuc, Allen A., xxx-xx-xxxx
Duckworth, Robert A., xxx-xx-xxxx
Duff, John S., xxx-xx-xxxx
Duffy, James J., xxx-xx-xxxx
Duffy, Robert E., xxx-xx-xxxx
Duhan, Daniel P., xxx-xx-xxxx
Dulin, Stanley L., xxx-xx-xxxx
Dunavan, Robert C., xxx-xx-xxxx
Dunn, Jack L., xxx-xx-xxxx
Durso, Anthony C., xxx-xx-xxxx

Duvall, Julius D., xxx-xx-xxxx.
Duvall, William E., III, xxx-xx-xxxx.
Dwyer, Leo X., Jr., xxx-xx-xxxx.
Eby, Daniel L., xxx-xx-xxxx.
Edwards, Daniel H., xxx-xx-xxxx.
Eggering, William H., xxx-xx-xxxx.
Ehrig, Gary J., xxx-xx-xxxx.
Eickemeyer, Karl F., xxx-xx-xxxx.
Eldridge, Ralph S., Jr., xxx-xx-xxxx.
Ellis, Jeffrey L., xxx-xx-xxxx.
Ellison, Michael S., xxx-xx-xxxx.
Elmore, Darrell G., xxx-xx-xxxx.
Ely, William J., Jr., xxx-xx-xxxx.
Emmons, Larry R., xxx-xx-xxxx.
Engelking, Stephen C., xxx-xx-xxxx.
Eno, Russell A., xxx-xx-xxxx.
Erickson, Philmon A., Jr., xxx-xx-xxxx.
Eschrig, Peter A., xxx-xx-xxxx.
Espree, Allen J., xxx-xx-xxxx.
Estabrook, George L., xxx-xx-xxxx.
Estep, John D., xxx-xx-xxxx.
Evans, Alfred M., Jr., xxx-xx-xxxx.
Evans, Richard A., xxx-xx-xxxx.
Evans, Ronald L., xxx-xx-xxxx.
Everett, James W., xxx-xx-xxxx.
Everson, John C., xxx-xx-xxxx.
Everson, Randolph L., xxx-xx-xxxx.
Ewing, David R., xxx-xx-xxxx.
Farmer, David E., Jr., xxx-xx-xxxx.
Farrell, Michael V., xxx-xx-xxxx.
Farris, Robert J., xxx-xx-xxxx.
Feige, Edmund F., xxx-xx-xxxx.
Feiszli, Robert W., xxx-xx-xxxx.
Felter, James E., xxx-xx-xxxx.
Ferguson, James S., xxx-xx-xxxx.
Ferguson, Luke B., xxx-xx-xxxx.
Fernandezconte, Ramon, xxx-xx-xxxx.
Ferris, Marshall A., xxx-xx-xxxx.
Fiest, Terrance J., xxx-xx-xxxx.
Fink, Jerry K., xxx-xx-xxxx.
Finklea, Alfred M., Jr., xxx-xx-xxxx.
Finnegan, Thomas M., xxx-xx-xxxx.
Fischer, George R., xxx-xx-xxxx.
Fish, Elbridge G., II, xxx-xx-xxxx.
Fisher, Ivory J., xxx-xx-xxxx.
Fisher, Richard C., xxx-xx-xxxx.
Fiske, Roger C., xxx-xx-xxxx.
Fitch, Logan D., xxx-xx-xxxx.
Fitzgerald, Arnold E., Jr., xxx-xx-xxxx.
Fitzgerald, Jerry E., xxx-xx-xxxx.
Flannigan, Jerry W., xxx-xx-xxxx.
Fleener, Larry D., xxx-xx-xxxx.
Fleming, Stephen B., xxx-xx-xxxx.
Fletcher, Jeffrey D., xxx-xx-xxxx.
Flick, Bette A., xxx-xx-xxxx.
Flora, Russell L., xxx-xx-xxxx.
Florence, Gary M., xxx-xx-xxxx.
Flores, Thomas V., Jr., xxx-xx-xxxx.
Floyd, Benzell, xxx-xx-xxxx.
Floyd, Robert L., III, xxx-xx-xxxx.
Flynn, William G., xxx-xx-xxxx.
Foelsch, Richard E., xxx-xx-xxxx.
Fonda, Garrett R., xxx-xx-xxxx.
Fontaine, Kent W., xxx-xx-xxxx.
Ford, Francis N., xxx-xx-xxxx.
Ford, Jerry D., xxx-xx-xxxx.
Ford, John A., Jr., xxx-xx-xxxx.
Forester, Jerry D., xxx-xx-xxxx.
Foster, Donald A., xxx-xx-xxxx.
Foster, Michael V., xxx-xx-xxxx.
Fouch, Roy E., Jr., xxx-xx-xxxx.
Fowler, Charles N., Jr., xxx-xx-xxxx.
Fowler, Zachary S., xxx-xx-xxxx.
Fox, Robert, xxx-xx-xxxx.
Francis, Brett A., xxx-xx-xxxx.
Frank, Robert A., xxx-xx-xxxx.
Frankiewicz, Stephen L., xxx-xx-xxxx.
Franks, Tommy R., xxx-xx-xxxx.
Frase, Richard J., xxx-xx-xxxx.
Frazier, Willie, Jr., xxx-xx-xxxx.
Freeman, Robert L., xxx-xx-xxxx.
Friedel, Richard B., xxx-xx-xxxx.
Frink, John A., xxx-xx-xxxx.
Fritz, Harold A., xxx-xx-xxxx.
Frizzo, Robert A., xxx-xx-xxxx.
Frost, Jerry D., xxx-xx-xxxx.
Fuller, Jeffrey D., xxx-xx-xxxx.
Fuller, Joe D., xxx-xx-xxxx.
Fuller, Marvin E., II, xxx-xx-xxxx.
Fulmer, John A., xxx-xx-xxxx.
Funkhouser, Preston L., III, xxx-xx-xxxx.
Fuqua, James W., xxx-xx-xxxx.
Furrow, Larry D., xxx-xx-xxxx.
Futch, Thomas M., xxx-xx-xxxx.
Gale, John C., xxx-xx-xxxx.
Gallo, Edward A., xxx-xx-xxxx.
Gallup, Archibald M., xxx-xx-xxxx.
Gangloff, John A., xxx-xx-xxxx.
Gardner, Barry J., xxx-xx-xxxx.
Gardner, Bruce R., xxx-xx-xxxx.
Garlitz, Richard L., xxx-xx-xxxx.
Garrison, James L., Jr., xxx-xx-xxxx.
Garrison, William F., xxx-xx-xxxx.
Gaudet, Robert F., xxx-xx-xxxx.
Gaynor, Jeffrey R., xxx-xx-xxxx.
Gehm, Laverne J., xxx-xx-xxxx.
Gehr, George W., xxx-xx-xxxx.
Geiger, George J., xxx-xx-xxxx.
Gendron, John T., xxx-xx-xxxx.
Gentilini, Raymond E., xxx-xx-xxxx.
Getty, Kenneth W., Jr., xxx-xx-xxxx.
Gibbons, Thomas U., xxx-xx-xxxx.
Gibbs, Allen D., xxx-xx-xxxx.
Gibbs, Garland H., xxx-xx-xxxx.
Gibson, Charles W., Jr., xxx-xx-xxxx.
Gidley, Norman A , III, xxx-xx-xxxx.
Gifford, William K., xxx-xx-xxxx.
Gilbert, Timothy P., xxx-xx-xxxx.
Gillespie, Ray W., xxx-xx-xxxx.
Gillison, William R., xxx-xx-xxxx.
Gillman, Jay E., xxx-xx-xxxx.
Gingras, Kenneth J., xxx-xx-xxxx.
Gizzi, Peter J., xxx-xx-xxxx.
Glasgow, Robert C., xxx-xx-xxxx.
Glass, Charles W., xxx-xx-xxxx.
Glisan, Steven M., xxx-xx-xxxx.
Golden, Robert J., xxx-xx-xxxx.
Golphenee, Orval J., xxx-xx-xxxx.
Gonzales, Henry N., Jr., xxx-xx-xxxx.
Goodell, Ronald R., xxx-xx-xxxx.
Goodnow, John E., xxx-xx-xxxx.
Gorski, Raymond J., Jr., xxx-xx-xxxx.
Gorton, Bruce A., xxx-xx-xxxx.
Gould. Leroy D., xxx-xx-xxxx.
Govekar, Paul L., Jr., xxx-xx-xxxx.
Gowan, Fred A., xxx-xx-xxxx.
Gragg, Larry L., xxx-xx-xxxx.
Graham, Frank S., xxx-xx-xxxx.
Graham, James R., xxx-xx-xxxx.
Gramiccioni, John P., xxx-xx-xxxx.
Gramze, Robert G., xxx-xx-xxxx.
Graney, Pierce T., Jr., xxx-xx-xxxx.
Grannis, Herbert L., III, xxx-xx-xxxx.
Grauel, Richard L., xxx-xx-xxxx.
Grauer, Franklin H., Jr., xxx-xx-xxxx.
Graumann, Richard W., xxx-xx-xxxx.
Gravelle, James F., xxx-xx-xxxx.
Graves, Joseph L., Jr., xxx-xx-xxxx.
Gravois, John M., xxx-xx-xxxx.
Gray, Phillip W., xxx-xx-xxxx.
Gray, William M., xxx-xx-xxxx.
Green, Alex C., II, xxx-xx-xxxx.
Green, Robert C., xxx-xx-xxxx.
Greene, David D., xxx-xx-xxxx.
Greenspane, Ira R., xxx-xx-xxxx.
Greenwalt, Robert J., Jr., xxx-xx-xxxx.
Griffith, Robert K., Jr., xxx-xx-xxxx.
Griffith, Stanley E., xxx-xx-xxxx.
Griggs, Dennis L., xxx-xx-xxxx.
Grimsbo, Robert G., xxx-xx-xxxx.
Gritz, John P., xxx-xx-xxxx.
Groome, Nelson S., III, xxx-xx-xxxx.
Grove, Stephen K., xxx-xx-xxxx.
Grubb, Gary N., xxx-xx-xxxx.
Grube, Richard A., xxx-xx-xxxx.
Grundvig, Peter A., xxx-xx-xxxx.
Guidry, Herbert, xxx-xx-xxxx.
Guilliams, Charles D., xxx-xx-xxxx.
Gulyas, Stephen M., xxx-xx-xxxx.
Gustin, Jerry J., xxx-xx-xxxx.
Guthrie, Corroll B., III, xxx-xx-xxxx.
Guthrie, Charles T., xxx-xx-xxxx.
Gutzwiller, Donald J., xxx-xx-xxxx.
Guy, James M., xxx-xx-xxxx.
Haeffner, Robert A., xxx-xx-xxxx.
Haggar, Michael J., xxx-xx-xxxx.
Haines, William L., xxx-xx-xxxx.
Hair, Walter S., xxx-xx-xxxx.
Hakes, David H., xxx-xx-xxxx.
Halbrook, Earl L., xxx-xx-xxxx.
Hale, David R. E., xxx-xx-xxxx.
Hale, Glynn W., xxx-xx-xxxx.
Haley, Richard L., xxx-xx-xxxx.
Hall, David L., xxx-xx-xxxx.
Hall, David P., xxx-xx-xxxx.
Hall, David T., xxx-xx-xxxx.
Hall, James R., xxx-xx-xxxx.
Hall, James W., xxx-xx-xxxx.
Hall, John E., xxx-xx-xxxx.
Hall, Michael E., xxx-xx-xxxx.
Hall, William K., xxx-xx-xxxx.
Halper, Stephen R., xxx-xx-xxxx.
Hamaker, Bryant B., xxx-xx-xxxx.
Hamilton, John R., xxx-xx-xxxx.
Hamilton, Mark R., xxx-xx-xxxx.
Hamm, Wesley L., xxx-xx-xxxx.
Hammann, John, xxx-xx-xxxx.
Hamre, Larry H., xxx-xx-xxxx.
Hamrick, Glynne R., xxx-xx-xxxx.
Hand, Terry D., xxx-xx-xxxx.
Hanes, Hal D., xxx-xx-xxxx.
Hansen, Howard K., Jr., xxx-xx-xxxx.
Hansen, William W., xxx-xx-xxxx.
Hardesty, Duane E., xxx-xx-xxxx.
Hardison, Robert S., Jr., xxx-xx-xxxx.
Hardy, Curtis W., xxx-xx-xxxx.
Hardy, John W., xxx-xx-xxxx.
Hare, James C., Jr., xxx-xx-xxxx.
Harless, Larry L., xxx-xx-xxxx.
Hamer, George A., xxx-xx-xxxx.
Harmon, Kenneth D., xxx-xx-xxxx.
Harms, Robert R., xxx-xx-xxxx.
Harelson, Joe F., xxx-xx-xxxx.
Harrington, Raymond J., xxx-xx-xxxx.
Harris, Bruce A., xxx-xx-xxxx.
Harris, Danny E., xxx-xx-xxxx.
Harris, Kenneth A., xxx-xx-xxxx.
Hart, John D., xxx-xx-xxxx.
Hartman, Frederick E., xxx-xx-xxxx.
Hartman, John D., xxx-xx-xxxx.
Harvey, Robert B., xxx-xx-xxxx.
Harvey, Taylor C., xxx-xx-xxxx.
Haskins, Lyle K., xxx-xx-xxxx.
Hataway, Jimmie J., xxx-xx-xxxx.
Hausman, William F. J., xxx-xx-xxxx.
Havenhill, Larry G., xxx-xx-xxxx.
Hawbaker, John W., xxx-xx-xxxx.
Hawk, Michael E., xxx-xx-xxxx.
Hawkins, John H., Jr., xxx-xx-xxxx.
Hay, John F., xxx-xx-xxxx.
Haycock, Willis C., xxx-xx-xxxx.
Hayden, Thomas A., xxx-xx-xxxx.
Hayes, Lynn H., xxx-xx-xxxx.
Haynes, Armand P., xxx-xx-xxxx.
Hector, Lionel, xxx-xx-xxxx.
Hedgpeth, Dale L., xxx-xx-xxxx.
Heebner, David K., xxx-xx-xxxx.
Hegglin, Terry L., xxx-xx-xxxx.
Heimann, Roger T., xxx-xx-xxxx.
Heinrich, Charles H., xxx-xx-xxxx.
Helberg, James A., xxx-xx-xxxx.
Held, William G., xxx-xx-xxxx.
Henderson, David L., II, xxx-xx-xxxx.
Henline, William B., xxx-xx-xxxx.
Henry, Raymond E., Jr., xxx-xx-xxxx.
Henry, William T., xxx-xx-xxxx.
Henwood, William T., xxx-xx-xxxx.
Herbaugh, Marvin O., Jr., xxx-xx-xxxx.
Herget, Craig N., xxx-xx-xxxx.
Hering, Gregory D., xxx-xx-xxxx.
Herman, Ralph E., xxx-xx-xxxx.
Hersh, Jerome G., xxx-xx-xxxx.
Hess, Robert W., xxx-xx-xxxx.
Hethcote, Stephen A., xxx-xx-xxxx.
Hewes, Ricky D., xxx-xx-xxxx.
Hiatt, Ralph J. W., xxx-xx-xxxx.
Hickok, Stephen W., II, xxx-xx-xxxx.
Hicks, David H., xxx-xx-xxxx.
Hicks, Thomas M. B., xxx-xx-xxxx.
Hieb, Roger D., xxx-xx-xxxx.
Higgins, Warren W., xxx-xx-xxxx.
Higgs, James A. V., xxx-xx-xxxx.
Hill, Dale R., xxx-xx-xxxx.
Hill, Herbert M., xxx-xx-xxxx.
Hillmer, Norval J., Jr., xxx-xx-xxxx.
Hilton, Whitney J., xxx-xx-xxxx.
Hines, Charles A. W., xxx-xx-xxxx.
Hines, John G., Jr., xxx-xx-xxxx.
Hines, William A., Jr., xxx-xx-xxxx.
Hinson, Robert L., Jr., xxx-xx-xxxx.
Hinton, Clarence C., xxx-xx-xxxx.
Hitchcock, John T., xxx-xx-xxxx.
Hitt, Johnnie B., xxx-xx-xxxx.
Hixson, Robert A., xxx-xx-xxxx.

Hodson, George K., xxx-xx-xxxx
Hoff, Randy E., xxx-xx-xxxx
Hogan, Joseph E., Jr., xxx-xx-xxxx
Hogg, Alexander, III, xxx-xx-xxxx
Hogsett, Alvin G., xxx-xx-xxxx
Holbrook, James R., xxx-xx-xxxx
Holder, Neville E. M., xxx-xx-xxxx
Hollingsworth, John J., xxx-xx-xxxx
Hollis, Robert F., xxx-xx-xxxx
Holp, John D., xxx-xx-xxxx
Holt, James R., xxx-xx-xxxx
Holt, Maxie G., xxx-xx-xxxx
Holverson, John E., xxx-xx-xxxx
Hong, Erik A., xxx-xx-xxxx
Hookness, Robert S., xxx-xx-xxxx
Hopkins, John S., xxx-xx-xxxx
Hopkins, Michael K., xxx-xx-xxxx
Horn, John E., II, xxx-xx-xxxx
House, Jonathan W., xxx-xx-xxxx
Houser, Charles T., xxx-xx-xxxx
Housely, George D., xxx-xx-xxxx
Howard, Robert H., xxx-xx-xxxx
Howard, Thomas W., III, xxx-xx-xxxx
Hubbard, James L., xxx-xx-xxxx
Huber, Eric W., xxx-xx-xxxx
Hudson, William J., xxx-xx-xxxx
Huff, Charles M., xxx-xx-xxxx
Huffman, Rodney B., xxx-xx-xxxx
Hughes, Emmett E., xxx-xx-xxxx
Hughes, James T., Jr., xxx-xx-xxxx
Humbaugh, William R., xxx-xx-xxxx
Hunley, Alphonso, xxx-xx-xxxx
Hunt, Robert D., xxx-xx-xxxx
Hunter, Milton, xxx-xx-xxxx
Hurst, Bobby R., xxx-xx-xxxx
Hurt, Robert D., III, xxx-xx-xxxx
Hutchinson, Craig R., xxx-xx-xxxx
Hutchinson, Jim S., xxx-xx-xxxx
Huyck, Jere I., xxx-xx-xxxx
Imhof, Richard H., xxx-xx-xxxx
Ingle, David L., xxx-xx-xxxx
Isley, Rex M., xxx-xx-xxxx
Ivan, Dennis, xxx-xx-xxxx
Iverson, David L., xxx-xx-xxxx
Izzo, Lawrence L., xxx-xx-xxxx
Jackson, Charles M., Jr., xxx-xx-xxxx
Jackson, Jimmy D., xxx-xx-xxxx
Jackson, John W., Jr., xxx-xx-xxxx
Jackson, Louis M., xxx-xx-xxxx
Jackson, Michael D., xxx-xx-xxxx
Jackson, Norman I., xxx-xx-xxxx
Jacobs, Karl H., xxx-xx-xxxx
Jacobsen, Craig C., xxx-xx-xxxx
Jacobus, Thomas P., xxx-xx-xxxx
Jamell, Donald G., xxx-xx-xxxx
James, John R., xxx-xx-xxxx
Jameson, Thomas L., xxx-xx-xxxx
Janecek, Paul W., xxx-xx-xxxx
Jansen, Alexander R., xxx-xx-xxxx
Jarvis, Michael J., xxx-xx-xxxx
Jeffery, David G., xxx-xx-xxxx
Jelinek, Frederick M., xxx-xx-xxxx
Jenkins, Everett R., xxx-xx-xxxx
Jeninson, Joe B., xxx-xx-xxxx
Jerney, James L., xxx-xx-xxxx
Jernigan, Patricia A., xxx-xx-xxxx
Jesson, Bruce E., xxx-xx-xxxx
Joe, Ronald M., xxx-xx-xxxx
Johnson, Bruce H., Jr., xxx-xx-xxxx
Johnson, Clyde T., xxx-xx-xxxx
Johnson, Dennis R., xxx-xx-xxxx
Johnson, Gerald K., xxx-xx-xxxx
Johnson, Gerald W., xxx-xx-xxxx
Johnson, James T. R., xxx-xx-xxxx
Johnson, John E., xxx-xx-xxxx
Johnson, John J., xxx-xx-xxxx
Johnson, Lory M., Jr., xxx-xx-xxxx
Johnson, Robert G., xxx-xx-xxxx
Johnson, Russel L., II, xxx-xx-xxxx
Johnson, Terry D., xxx-xx-xxxx
Johnson, Thomas E., xxx-xx-xxxx
Johnson, William R., xxx-xx-xxxx
Johnston, John R., Jr., xxx-xx-xxxx
Johnston, Keith H., xxx-xx-xxxx
Jones, George, Jr., xxx-xx-xxxx
Jones, Harry M., xxx-xx-xxxx
Jones, Jimmie, xxx-xx-xxxx
Jones, Robert E., xxx-xx-xxxx
Jones, William E., xxx-xx-xxxx
Jordan, Samuel, Jr., xxx-xx-xxxx
Josephson, George B., xxx-xx-xxxx
Joyner, Gary W., xxx-xx-xxxx
Joyner, James N., Jr., xxx-xx-xxxx
Junk, Robert J., Jr., xxx-xx-xxxx
Kadel, Melvin C., xxx-xx-xxxx
Kaiser, Dennis A., xxx-xx-xxxx
Kaiser, Frederick G., xxx-xx-xxxx
Kaleta, Albert F., xxx-xx-xxxx
Kanda, Richard, xxx-xx-xxxx
Kaplan, Marshall M., xxx-xx-xxxx
Karig, Martin R., xxx-xx-xxxx
Karr, James B., xxx-xx-xxxx
Kassim, Alexander M., xxx-xx-xxxx
Kauffman, Donald C., xxx-xx-xxxx
Kawakami, Clyde K., xxx-xx-xxxx
Keating, Kenneth C., xxx-xx-xxxx
Kedzierski, Edmund F., xxx-xx-xxxx
Keenan, Robert E., Jr., xxx-xx-xxxx
Kehoe, Michael P., xxx-xx-xxxx
Keith, Norman E., xxx-xx-xxxx
Kelleher, Daniel M., xxx-xx-xxxx
Kellenbenz, George H., xxx-xx-xxxx
Kellogg, Joseph K., Jr., xxx-xx-xxxx
Kelly, Frank W., xxx-xx-xxxx
Kelly, James M., xxx-xx-xxxx
Kelly, Michael L., xxx-xx-xxxx
Kelly, Needham N., Jr., xxx-xx-xxxx
Kelly, Thomas J., xxx-xx-xxxx
Keltner, Kenneth M., xxx-xx-xxxx
Kemmitt, William G., xxx-xx-xxxx
Kempf, Warren L., xxx-xx-xxxx
Kenney, Michael J., xxx-xx-xxxx
Keppel, John S., xxx-xx-xxxx
Kern, Donald S., xxx-xx-xxxx
Kern, Paul J., xxx-xx-xxxx
Kesler, Dickson E., xxx-xx-xxxx
Kessler, Eugene P., xxx-xx-xxxx
Kiernan, David R., xxx-xx-xxxx
Kilpatrick, Claude M., xxx-xx-xxxx
King, Boyd E., Jr., xxx-xx-xxxx
King, James C., xxx-xx-xxxx
King, James M., xxx-xx-xxxx
King, Roger S., xxx-xx-xxxx
King, Thomas W., Jr., xxx-xx-xxxx
Kiper, Richard L., Jr., xxx-xx-xxxx
Kirby, Robert B., xxx-xx-xxxx
Kirk, Joseph S., xxx-xx-xxxx
Kjolsrud, Michael, xxx-xx-xxxx
Kjonnerod, Leif E., xxx-xx-xxxx
Klaput, Edward N., xxx-xx-xxxx
Klaus, Edward G., xxx-xx-xxxx
Klein, Christopher T., xxx-xx-xxxx
Klein, Harry F., Jr., xxx-xx-xxxx
Klumph, Forest A., Jr., xxx-xx-xxxx
Knapp, Robert E., Jr., xxx-xx-xxxx
Knight, J. B., xxx-xx-xxxx
Knight, James M., xxx-xx-xxxx
Knotts, Ralph D., xxx-xx-xxxx
Koch, Michael E., xxx-xx-xxxx
Koerselman, Benjamin D., III, xxx-xx-xxxx
Kohl, Charles L., Jr., xxx-xx-xxxx
Kolesar, George F., xxx-xx-xxxx
Komar, Robert T., xxx-xx-xxxx
Kondik, William T., xxx-xx-xxxx
Konitzer, Thomas J., xxx-xx-xxxx
Kontrim, Bronis J., xxx-xx-xxxx
Koontz, Ronald D., xxx-xx-xxxx
Kore, Stephen G., xxx-xx-xxxx
Koshetar, Paul, Jr., xxx-xx-xxxx
Kotrlik, John J., xxx-xx-xxxx
Kotrous, Gary L., xxx-xx-xxxx
Kovac, George, Jr., xxx-xx-xxxx
Krafft, Gary R., xxx-xx-xxxx
Kraus, Kent E., xxx-xx-xxxx
Krause, Albert A., xxx-xx-xxxx
Kreger, Frank H., III, xxx-xx-xxxx
Kronitis, Ivars I., xxx-xx-xxxx
Kucera, Peter G., xxx-xx-xxxx
Kuckowicz, Kenneth F., xxx-xx-xxxx
Kuehn, Robert J., xxx-xx-xxxx
Kuhlman, Jimmy F., xxx-xx-xxxx
Kullman, Stanley G., Jr., xxx-xx-xxxx
Kunstel, Kenny J., xxx-xx-xxxx
Kurtyka, Steven T., xxx-xx-xxxx
Kush, Michael F., xxx-xx-xxxx
Kuspa, John P., xxx-xx-xxxx
Laabs, Gary L., xxx-xx-xxxx
Lacey, Joseph M., Jr., xxx-xx-xxxx
Lagrange, Gary L., xxx-xx-xxxx
Laguens, Delwin P., Jr., xxx-xx-xxxx
Lake, James A., xxx-xx-xxxx
Lambert, David E., xxx-xx-xxxx
Lampton, Michael R. G., xxx-xx-xxxx
Lancaster, John W. V., xxx-xx-xxxx
Lancaster, Michael S., xxx-xx-xxxx
Lancaster, Randall J., xxx-xx-xxxx
Lancaster, Steven F., xxx-xx-xxxx
Landis, Richard G., xxx-xx-xxxx
Lane, Thomas C., xxx-xx-xxxx
Langston, Carlos C., Jr., xxx-xx-xxxx
Lantz, William H., Jr., xxx-xx-xxxx
Lape, James R., xxx-xx-xxxx
Larose, Willard G., Jr., xxx-xx-xxxx
Lash, Walter J., II, xxx-xx-xxxx
Laska, Leo M., Jr., xxx-xx-xxxx
Latella, Donald D., xxx-xx-xxxx
Latta, Byron F., xxx-xx-xxxx
Latta, Jerry B., Jr., xxx-xx-xxxx
Lau, Hartmut H., xxx-xx-xxxx
Laudenslager, Charles W., xxx-xx-xxxx
Lawless, James J., xxx-xx-xxxx
Lawn, Edward J., Jr., xxx-xx-xxxx
Lawrence, William T., xxx-xx-xxxx
Lawson, Willie A., xxx-xx-xxxx
Lechner, William R., xxx-xx-xxxx
Lee, Stephen B., xxx-xx-xxxx
Legg, Michael K., xxx-xx-xxxx
Leipold, William D., xxx-xx-xxxx
Lenhardt, Alfonso E., xxx-xx-xxxx
Lennon, Leo A., xxx-xx-xxxx
Lenz, Robert J., xxx-xx-xxxx
Leonard, Gary L., xxx-xx-xxxx
Leonardi, Kenneth J., xxx-xx-xxxx
Leverett, J. D., xxx-xx-xxxx
Levitz, Jack M., xxx-xx-xxxx
Lewis, James E., xxx-xx-xxxx
Lewis, L. K., xxx-xx-xxxx
Lewis, Timothy W., xxx-xx-xxxx
Lieteau, James N., xxx-xx-xxxx
Lincoln, Larry H., xxx-xx-xxxx
Lindfors, Thomas E., xxx-xx-xxxx
Lindsey, Jerald G., xxx-xx-xxxx
Linhares, Patrick H., xxx-xx-xxxx
Lininger, Kenneth G., xxx-xx-xxxx
Linke, Howard T., xxx-xx-xxxx
Linn, Michael W., xxx-xx-xxxx
Linson, Robert G., xxx-xx-xxxx
Lippard, Robert L., xxx-xx-xxxx
Lippencott, Barry L., xxx-xx-xxxx
Lipscomb, Lewis M., Jr., xxx-xx-xxxx
Liss, Melvin O., xxx-xx-xxxx
Littig, Melvin J., xxx-xx-xxxx
Little, Michael E., xxx-xx-xxxx
Llewellyn, William C., Jr., xxx-xx-xxxx
Lockwood, Burton G., II, xxx-xx-xxxx
Loesekann, Michael, xxx-xx-xxxx
Lofgren, David J., xxx-xx-xxxx
Loftin, William D., xxx-xx-xxxx
Long, Dallas L., Jr., xxx-xx-xxxx
Long, Francis A., Jr., xxx-xx-xxxx
Longan, Patrick B., xxx-xx-xxxx
Loper, Harry B., xxx-xx-xxxx
Lopinto, Robert A., xxx-xx-xxxx
Lord, William Z., xxx-xx-xxxx
Loudermilk, Kenneth G., xxx-xx-xxxx
Love, Dicky A., xxx-xx-xxxx
Love, Robert J., II, xxx-xx-xxxx
Lovelace, George B., III, xxx-xx-xxxx
Lovell, Larry G., xxx-xx-xxxx
Lowery, Sammy L., xxx-xx-xxxx
Lowrey, Willis F., Jr., xxx-xx-xxxx
Lowry, Gerald D., Jr., xxx-xx-xxxx
Lucas, Michael A., xxx-xx-xxxx
Luedeke, James G., xxx-xx-xxxx
Luther, Peter J., xxx-xx-xxxx
Lutz, James E., xxx-xx-xxxx
Lynch, Michael E., xxx-xx-xxxx
Lyne, James P., xxx-xx-xxxx
Lytle, Robert L., xxx-xx-xxxx
Macdonald, William A., xxx-xx-xxxx
Macinnes, John D., xxx-xx-xxxx
Mackenzie, Stuart A., Jr., xxx-xx-xxxx
Mackey, George D., xxx-xx-xxxx
Mackey, John C., xxx-xx-xxxx
Mackey, Richard J., xxx-xx-xxxx
Maclachlan, James G., xxx-xx-xxxx
Magee, Burl D., xxx-xx-xxxx
Mahek, Barry W., xxx-xx-xxxx
Mahony, Duane M., xxx-xx-xxxx
Makowski, Eugene E., xxx-xx-xxxx
Malinovsky, William E., xxx-xx-xxxx
Malvesti, Richard J., xxx-xx-xxxx
Mancuso, Joseph J., xxx-xx-xxxx

Mangold, Robert B., xxx-xx-xxxx.
Manning, Jay P., xxx-xx-xxxx.
Marble, Louis E., xxx-xx-xxxx.
Mariana, Joseph P., Jr., xxx-xx-xxxx.
Markle, Ross E., xxx-xx-xxxx.
Marsh, Clayton E., xxx-xx-xxxx.
Marsh, Edward H., xxx-xx-xxxx.
Marsh, Julian T., xxx-xx-xxxx.
Marshall, Edwin R., Jr., xxx-xx-xxxx.
Marshall, Grady A., xxx-xx-xxxx.
Marshall, John N., xxx-xx-xxxx.
Marshall, John N., Jr., xxx-xx-xxxx.
Martin, Robert F., xxx-xx-xxxx.
Martin, Wilkes T., Jr., xxx-xx-xxxx.
Martina, Herman J., xxx-xx-xxxx.
Martinache, Robert N., xxx-xx-xxxx.
Mason, Danny L., xxx-xx-xxxx.
Mason, Louis G., xxx-xx-xxxx.
Massott, Ronald A., xxx-xx-xxxx.
Mather, Walter E., Jr., xxx-xx-xxxx.
Mathews, Mathew S., III, xxx-xx-xxxx.
Matthews, David J., III, xxx-xx-xxxx.
Mauldin, Jerry V., xxx-xx-xxxx.
Mauldin, Terry M., xxx-xx-xxxx.
Maultsby, Calvin N., xxx-xx-xxxx.
Maunsell, Charles M., xxx-xx-xxxx.
Maupin, Larry S., xxx-xx-xxxx.
Maxie, Keith A., xxx-xx-xxxx.
Maxwell, Otis C., xxx-xx-xxxx.
May, Stephen A., xxx-xx-xxxx.
May, Terry L., xxx-xx-xxxx.
Mayfield, Truman M., xxx-xx-xxxx.
Mays, Audie L., xxx-xx-xxxx.
McAdoo, Arvil W., xxx-xx-xxxx.
McAnally, James L., xxx-xx-xxxx.
McAninch, William G., xxx-xx-xxxx.
McCaffrey, Edward J., Jr., xxx-xx-xxxx.
McCarthy, Gerald J., xxx-xx-xxxx.
McClam, James W., xxx-xx-xxxx.
McCloy, Michael N., xxx-xx-xxxx.
McCool, Dennis L., xxx-xx-xxxx.
McCormick, Arley H., xxx-xx-xxxx.
McCoy, James M., xxx-xx-xxxx.
McDaniel, Bernard E., xxx-xx-xxxx.
McDaniel, James A., xxx-xx-xxxx.
McDermott, Anthony R., xxx-xx-xxxx.
McDonald, Allen K., xxx-xx-xxxx.
McDonald, Robert J., xxx-xx-xxxx.
McDonough, James F., xxx-xx-xxxx.
McEldowney, Robert S., xxx-xx-xxxx.
McElroy, William E., III, xxx-xx-xxxx.
McFarland, Henry J., Jr., xxx-xx-xxxx.
McGarrahan, John R., xxx-xx-xxxx.
McGee, George P., xxx-xx-xxxx.
McGill, Allan C., II, xxx-xx-xxxx.
McGovern, Patrick M., xxx-xx-xxxx.
McGregor, Stewart K., xxx-xx-xxxx.
McGrory, James C., Jr., xxx-xx-xxxx.
McGuire, Patrick H., xxx-xx-xxxx.
McIntyre, Kendall K., xxx-xx-xxxx.
McKenna, John M., xxx-xx-xxxx.
McKenzie, James B., Jr., xxx-xx-xxxx.
McLaughlin, Aaron C., xxx-xx-xxxx.
McLaughlin, Peter D., xxx-xx-xxxx.
McLaughlin, Raymond G., xxx-xx-xxxx.
McLaurin, John P., III, xxx-xx-xxxx.
McLean, Tony L., xxx-xx-xxxx.
McLellan, Malcolm R., Jr., xxx-xx-xxxx.
McMahan, William T., xxx-xx-xxxx.
McMahon, Michael, xxx-xx-xxxx.
McMains, James R., xxx-xx-xxxx.
McManus, Phillip J., Jr., xxx-xx-xxxx.
McWard, Robert G., xxx-xx-xxxx.
Meador, George R., xxx-xx-xxxx.
Mears, Gary R., xxx-xx-xxxx.
Mecredy, Robert F., III, xxx-xx-xxxx.
Meekin, Richard S., xxx-xx-xxxx.
Meier, Jimmy A., xxx-xx-xxxx.
Meigs, Montgomery C., xxx-xx-xxxx.
Mekkelsen, Norman B., Jr., xxx-xx-xxxx.
Meline, Arlen C., xxx-xx-xxxx.
Mellick, Jerry P., xxx-xx-xxxx.
Melton, Arthur R., xxx-xx-xxxx.
Menjivar, Milton R., xxx-xx-xxxx.
Mesisnger, Carl L., xxx-xx-xxxx.
MetCalf, Eugene E., xxx-xx-xxxx.
MetCalfe, Jerry F., xxx-xx-xxxx.
Metzger, Robert S., II, xxx-xx-xxxx.
Meybin, Robert J., III, xxx-xx-xxxx.
Meyer, Charles R., II, xxx-xx-xxxx.
Michaud, Robert R., xxx-xx-xxxx.
Michener, Robert F., xxx-xx-xxxx.
Middleton, George S., xxx-xx-xxxx.
Miesner, William H., Jr., xxx-xx-xxxx.
Mihelich, Daniel J., xxx-xx-xxxx.
Mikale, Dennis M., xxx-xx-xxxx.
Mikula, John E., xxx-xx-xxxx.
Millard, Arthur F., xxx-xx-xxxx.
Millard, Val D., xxx-xx-xxxx.
Miller, Donald D., xxx-xx-xxxx.
Miller, Gene L., xxx-xx-xxxx.
Miller, Howard E., xxx-xx-xxxx.
Miller, John R., xxx-xx-xxxx.
Miller, Mark W., xxx-xx-xxxx.
Miller, Michael W., xxx-xx-xxxx.
Miller, Timothy A., xxx-xx-xxxx.
Millett, Roman L., xxx-xx-xxxx.
Mills, Charles J., xxx-xx-xxxx.
Mills, Douglas H., xxx-xx-xxxx.
Mills, Thomas C., xxx-xx-xxxx.
Milroy, Patrick G., xxx-xx-xxxx.
Mingus, Leslie C., xxx-xx-xxxx.
Miszklevitz, Sheridan L., xxx-xx-xxxx.
Mitchell, Robert C., xxx-xx-xxxx.
Mitchell, William H., Jr., xxx-xx-xxxx.
Mitteer, Jack A., xxx-xx-xxxx.
Moberley, Ben E., xxx-xx-xxxx.
Moeller, Walter J. V., xxx-xx-xxxx.
Moler, Charles F., xxx-xx-xxxx.
Monette, Theodore A., Jr., xxx-xx-xxxx.
Monroe, Richard L., xxx-xx-xxxx.
Montgomery, Daniel L., xxx-xx-xxxx.
Montgomery, John L., xxx-xx-xxxx.
Montgomery, Richard L., xxx-xx-xxxx.
Montie, Michael E., xxx-xx-xxxx.
Moore, Edward G., Jr., xxx-xx-xxxx.
Moore, Edward V., xxx-xx-xxxx.
Moore, Robert G., xxx-xx-xxxx.
Moore, Walter B., Jr., xxx-xx-xxxx.
Moot, Raymond M., xxx-xx-xxxx.
Moreno, Anthony A., xxx-xx-xxxx.
Morgan, David T., Jr., xxx-xx-xxxx.
Morgan, Timothy X., xxx-xx-xxxx.
Morin, Robert A., Jr., xxx-xx-xxxx.
Morris, James B., xxx-xx-xxxx.
Morris, John W., xxx-xx-xxxx.
Morris, Melvin L., xxx-xx-xxxx.
Morris, Wayne H., xxx-xx-xxxx.
Morrow, Sidney H., xxx-xx-xxxx.
Morse, Teddy G., xxx-xx-xxxx.
Mosser, David R., xxx-xx-xxxx.
Mostella, Kenneth E., xxx-xx-xxxx.
Mountcastle, John W., xxx-xx-xxxx.
Mullans, John R., xxx-xx-xxxx.
Mullen, Edward J., Jr., xxx-xx-xxxx.
Mullins, Stephen A., xxx-xx-xxxx.
Mullis, Richard L., Jr., xxx-xx-xxxx.
Mulrine, Thomas V., xxx-xx-xxxx.
Murfee, Walter L., II, xxx-xx-xxxx.
Murff, Robert H., xxx-xx-xxxx.
Murphey, Samuel L. W., xxx-xx-xxxx.
Murphy, Chester A., III, xxx-xx-xxxx.
Murphy, Lawrence E., xxx-xx-xxxx.
Murphy, Patrick T., xxx-xx-xxxx.
Murphy, Richard L., xxx-xx-xxxx.
Murphy, William F., xxx-xx-xxxx.
Musiol, Joseph J., xxx-xx-xxxx.
Muston, Kurt A., xxx-xx-xxxx.
Mutzig, Andy L., xxx-xx-xxxx.
Myers, Richard E., xxx-xx-xxxx.
Myers, Richard S., xxx-xx-xxxx.
Nadrah, Kenneth S., xxx-xx-xxxx.
Nahas, Albert J., xxx-xx-xxxx.
Nakano, Walter T., xxx-xx-xxxx.
Narburgh, Charles W., xxx-xx-xxxx.
Neilson, Graham M., xxx-xx-xxxx.
Nell, Theodore W., xxx-xx-xxxx.
Nelson, Gary W., xxx-xx-xxxx.
Nelson, Henry C., xxx-xx-xxxx.
Nelson, Richard R., xxx-xx-xxxx.
Netherton, Theresa D. H., xxx-xx-xxxx.
Neuman, Michael J., xxx-xx-xxxx.
Neville, Eugene O., Jr., xxx-xx-xxxx.
Nevilles, Willie C., xxx-xx-xxxx.
Newman, George E., III, xxx-xx-xxxx.
Newman, Harry T., xxx-xx-xxxx.
Newton, Lud A., xxx-xx-xxxx.
Nicholson, Roy L., xxx-xx-xxxx.
Nida, Anthony V., xxx-xx-xxxx.
Nieland, John B., xxx-xx-xxxx.
Noland, Robert F., xxx-xx-xxxx.
Noles, James L., xxx-xx-xxxx.
Norris, John W., xxx-xx-xxxx.
Norris, Richard D., xxx-xx-xxxx.
Norton Augustus R., xxx-xx-xxxx.
Norton, Frank, Jr., xxx-xx-xxxx.
Nucci, Kernan M., xxx-xx-xxxx.
Nutt, Hershell R., xxx-xx-xxxx.
Nuzzi, Norman S., xxx-xx-xxxx.
Oakley, Robert E., Jr., xxx-xx-xxxx.
O'Beirne, James H., xxx-xx-xxxx.
O'Berlin, Randolph A., xxx-xx-xxxx.
O'Connor, James C., xxx-xx-xxxx.
O'Connor, Joseph W., xxx-xx-xxxx.
Odom, Charles R., xxx-xx-xxxx.
Oedewaldt, Gary A., xxx-xx-xxxx.
Oenning, Lester C., Jr., xxx-xx-xxxx.
Ogle, Paul A., Jr., xxx-xx-xxxx.
Ohl, William C., II, xxx-xx-xxxx.
Oldham, Gary R., xxx-xx-xxxx.
Oliva, Stephen A., xxx-xx-xxxx.
Olooney, James P., xxx-xx-xxxx.
Olsen, Wesley R., xxx-xx-xxxx.
Olson, Alan, D., xxx-xx-xxxx.
O'Neill, Edwin A., xxx-xx-xxxx.
Oney, Hobert L., Jr., xxx-xx-xxxx.
Orell, Patrick H., xxx-xx-xxxx.
Organek, John F., Jr., xxx-xx-xxxx.
Orr, Raymond J., xxx-xx-xxxx.
Orwin, James P., xxx-xx-xxxx.
Ory, Ronald R., xxx-xx-xxxx.
Osborne, James D., xxx-xx-xxxx.
O'Sullivan, Joseph M., xxx-xx-xxxx.
Ott, John J., xxx-xx-xxxx.
Ott, John J., Jr., xxx-xx-xxxx.
Owen, Joseph K., xxx-xx-xxxx.
Page, Stephenson W., xxx-xx-xxxx.
Palmer, Frederick E., xxx-xx-xxxx.
Pankow, Richard P., xxx-xx-xxxx.
Pape, Dean G., xxx-xx-xxxx.
Parham, Richard O., xxx-xx-xxxx.
Paris, Francis J., xxx-xx-xxxx.
Park, Percival D., xxx-xx-xxxx.
Parker, Buddy L., xxx-xx-xxxx.
Parker, Harry L., xxx-xx-xxxx.
Parker, Michael C., xxx-xx-xxxx.
Parker, Murray H., xxx-xx-xxxx.
Parks, Mayo B., Jr., xxx-xx-xxxx.
Parsons, James E., xxx-xx-xxxx.
Pasqualini, Walter L., xxx-xx-xxxx.
Pate, Charles W., xxx-xx-xxxx.
Patrick, Dennis M., xxx-xx-xxxx.
Patterson, Raland J., xxx-xx-xxxx.
Paulus, Jeffrey A., xxx-xx-xxxx.
Pavlou, Skevos G., xxx-xx-xxxx.
Paylor, John W., xxx-xx-xxxx.
Payne, Jimmy A., xxx-xx-xxxx.
Peacock, Kenneth W., xxx-xx-xxxx.
Pearce, David K., xxx-xx-xxxx.
Peaster, David M., xxx-xx-xxxx.
Peck, Daniel J., xxx-xx-xxxx.
Pedersen, Lloyd W., xxx-xx-xxxx.
Peduzzi, Lawrence P., xxx-xx-xxxx.
Peebles, David L., xxx-xx-xxxx.
Peitchinsky, Jesse T., xxx-xx-xxxx.
Peixotto, David E., xxx-xx-xxxx.
Pelkey, Christopher K., xxx-xx-xxxx.
Pelletier, Paul A., xxx-xx-xxxx.
Pennington, William R., xxx-xx-xxxx.
Penny, Palmer J., III, xxx-xx-xxxx.
Perales, Juan A., xxx-xx-xxxx.
Perkins, Joe C., xxx-xx-xxxx.
Perkins, Stephen K., xxx-xx-xxxx.
Perrault, Michael R., xxx-xx-xxxx.
Perry, Frank M., xxx-xx-xxxx.
Perry, Larry J., xxx-xx-xxxx.
Perry, Robin xxx-xx-xxxx.
Pesano, Teddy J. xxx-xx-xxxx.
Petersen, Lawrence C., xxx-xx-xxxx.
Petersen, Steven J., xxx-xx-xxxx.
Petersen, William J., xxx-xx-xxxx.
Petrosky, Daniel J., xxx-xx-xxxx.
Pflanz, Joseph O., Jr., xxx-xx-xxxx.
Phalan, Richard A., xxx-xx-xxxx.
Phillips, James D., III, xxx-xx-xxxx.
Phillips, Lanier B., xxx-xx-xxxx.
Pickar, Jerry F., xxx-xx-xxxx.
Pierce, John W., Jr., xxx-xx-xxxx.
Pigman, Dean A., xxx-xx-xxxx.
Pilcher, David W., xxx-xx-xxxx.
Pillsbury, Hobart B., xxx-xx-xxxx.
Pinckert, Frank G., xxx-xx-xxxx.

Pinkerton, Robert C., xxx-xx-xxxx
Pinnock, Martin W., xxx-xx-xxxx
Pirnie, Bruce H., xxx-xx-xxxx
Pittenger, William A., xxx-xx-xxxx
Player, Harvey L., xxx-xx-xxxx
Plimpton, Robert P., xxx-xx-xxxx
Poe, Charles E., Jr., xxx-xx-xxxx
Poirier, Louis F., III, xxx-xx-xxxx
Polles, John S., xxx-xx-xxxx
Pollock, David H., xxx-xx-xxxx
Ponikvar, Ronald M., xxx-xx-xxxx
Poole, George G., xxx-xx-xxxx
Porter, Danny S., xxx-xx-xxxx
Porter, Ray E., III, xxx-xx-xxxx
Posey, Charles R., xxx-xx-xxxx
Posta, Charles D., xxx-xx-xxxx
Potter, Luther L., Jr., xxx-xx-xxxx
Potts, Garry H., xxx-xx-xxxx
Poulos, Basil N., xxx-xx-xxxx
Powell, Raymond F., xxx-xx-xxxx
Prestidge, James C., Jr., xxx-xx-xxxx
Prettol, Donald C., xxx-xx-xxxx
Price, Luther W., xxx-xx-xxxx
Price, Raney M., xxx-xx-xxxx
Probsdorfer, James A., xxx-xx-xxxx
Proctor, Frank T., Jr., xxx-xx-xxxx
Prothro, Walter L., xxx-xx-xxxx
Pryor, Charles W., xxx-xx-xxxx
Puffer, Walter P., xxx-xx-xxxx
Pugh, Homer H., Jr., xxx-xx-xxxx
Pulliam, James B., xxx-xx-xxxx
Purcell, Thomas C., xxx-xx-xxxx
Pybus, Wimpy D., xxx-xx-xxxx
Querfeld, John W., xxx-xx-xxxx
Quick, Van B., Jr., xxx-xx-xxxx
Quigley, Howard A., xxx-xx-xxxx
Quinlan, James E., xxx-xx-xxxx
Quinn, Richard L., xxx-xx-xxxx
Raach, George T., xxx-xx-xxxx
Raat, Roy E., xxx-xx-xxxx
Raburn, Henry L., Jr., xxx-xx-xxxx
Raether, James G., xxx-xx-xxxx
Ragosta, Ralph J., Jr., xxx-xx-xxxx
Raines, Samuel C., xxx-xx-xxxx
Ramirez, Andres C., Jr., xxx-xx-xxxx
Ramirez, Carlos A., xxx-xx-xxxx
Ramos, Jesus, xxx-xx-xxxx
Ramseth, Robert J., xxx-xx-xxxx
Ramsey, Royce D., Jr., xxx-xx-xxxx
Randles, James D., xxx-xx-xxxx
Rank, James L., xxx-xx-xxxx
Rankin, Charles M., xxx-xx-xxxx
Rankin, Gordon L., xxx-xx-xxxx
Rapp, John M., xxx-xx-xxxx
Rather, Ralph E., Jr., xxx-xx-xxxx
Rauter, Thomas C., xxx-xx-xxxx
Ray, Lewis D., xxx-xx-xxxx
Raymond, James G., Jr., xxx-xx-xxxx
Raymond, Stephan C., xxx-xx-xxxx
Raymont, Richard J., xxx-xx-xxxx
Raznick, Alan E., xxx-xx-xxxx
Reddick, Thomas D., xxx-xx-xxxx
Redding, James K., xxx-xx-xxxx
Reed, Cliff W., xxx-xx-xxxx
Reed, Henly E., Jr., xxx-xx-xxxx
Reed, Henry J., xxx-xx-xxxx
Reed, Ronald B., xxx-xx-xxxx
Reed, Ronald E., xxx-xx-xxxx
Reichert, Herbert W., Jr., xxx-xx-xxxx
Reid, Terry A., xxx-xx-xxxx
Reilly, Peter E., xxx-xx-xxxx
Reinecke, Kris C., xxx-xx-xxxx
Renn, Gregory A., xxx-xx-xxxx
Renner, Jerome S., xxx-xx-xxxx
Replogle, William S., xxx-xx-xxxx
Reppert, John C., xxx-xx-xxxx
Rexford, Joel E., xxx-xx-xxxx
Reynolds, James P., xxx-xx-xxxx
Rice, Deward B., Jr., xxx-xx-xxxx
Rice, Gregory A., xxx-xx-xxxx
Rice, Kenneth A., xxx-xx-xxxx
Richard, Newton M., III, xxx-xx-xxxx
Richards, Bruce W., Sr., xxx-xx-xxxx
Richards, William A., xxx-xx-xxxx
Richey, David L., xxx-xx-xxxx
Richey, Philip E., xxx-xx-xxxx
Ricker, Joe G., xxx-xx-xxxx
Rickman, Alfred C., xxx-xx-xxxx
Ricks, Billy J., xxx-xx-xxxx
Riederer, William G., xxx-xx-xxxx
Ring, Dennis A., xxx-xx-xxxx
Riolo, Augustine G., Jr., xxx-xx-xxxx
Riou, Ann M., xxx-xx-xxxx
Ripley, Ralph R., xxx-xx-xxxx
Riser, James R., xxx-xx-xxxx
Risseeuw, Dean P., xxx-xx-xxxx
Rivest, Joseph R., xxx-xx-xxxx
Roberts, James J., xxx-xx-xxxx
Roberts, Jan R., xxx-xx-xxxx
Roberts, Theodore L., II, xxx-xx-xxxx
Roberts, William J., xxx-xx-xxxx
Roberston, Robin M., xxx-xx-xxxx
Robinson Cecil, Jr., xxx-xx-xxxx
Robinson, Edwin R., Jr., xxx-xx-xxxx
Robles, Josue, Jr., xxx-xx-xxxx
Rodgers, Robert D., xxx-xx-xxxx
Rodriguez, George A., xxx-xx-xxxx
Roe, Raymond T., xxx-xx-xxxx
Roerig, Richard L., xxx-xx-xxxx
Rogers, Bruce F., xxx-xx-xxxx
Roggenkamp, Paul H., xxx-xx-xxxx
Rohaly, Andrew S., xxx-xx-xxxx
Roles, Lewis L., xxx-xx-xxxx
Rollison, Rembert G., xxx-xx-xxxx
Rolston, David A., xxx-xx-xxxx
Rominsky, Stephen A., xxx-xx-xxxx
Ronningen, Jerome O., xxx-xx-xxxx
Roop, Troy, Jr., xxx-xx-xxxx
Roos, John G., xxx-xx-xxxx
Roper, Robert C., xxx-xx-xxxx
Ross, Gary J., xxx-xx-xxxx
Ross, Robert G., Jr., xxx-xx-xxxx
Rother, Glenn G., xxx-xx-xxxx
Rothmann, Harry E., Jr., xxx-xx-xxxx
Rothwell, Wayne A., xxx-xx-xxxx
Roulston, Grayson D., xxx-xx-xxxx
Roush, John W., xxx-xx-xxxx
Rowe, Michael B., xxx-xx-xxxx
Rubino, Vincent E., xxx-xx-xxxx
Rue, William K., xxx-xx-xxxx
Runy, John, xxx-xx-xxxx
Rush, James A., xxx-xx-xxxx
Rusin, Johnny D., xxx-xx-xxxx
Russell, Carolyn E., xxx-xx-xxxx
Russell, David H., xxx-xx-xxxx
Russell, James R., xxx-xx-xxxx
Russell, Jay S., xxx-xx-xxxx
Russell, Timonthy B., xxx-xx-xxxx
Russell, William T., Jr., xxx-xx-xxxx
Ruth, Lorry R., Jr., xxx-xx-xxxx
Rutledge, Jerald C., xxx-xx-xxxx
Ryan, Michael E., xxx-xx-xxxx
Sabine, Henry A., III, xxx-xx-xxxx
Saine, James H., xxx-xx-xxxx
Sakach Paul A., xxx-xx-xxxx
Sakas, Karl D., xxx-xx-xxxx
Sale, Lafayette L., III, xxx-xx-xxxx
Salter, Ned W., xxx-xx-xxxx
Salvadorini, David P., xxx-xx-xxxx
Sanford, Winston M., xxx-xx-xxxx
Sankey, Charles D., xxx-xx-xxxx
Sargeant, James R., xxx-xx-xxxx
Sasso, Claude R., xxx-xx-xxxx
Saul, Joseph H., xxx-xx-xxxx
Saunders, Craig L., xxx-xx-xxxx
Saunders, Richard, xxx-xx-xxxx
Savage, Calvin K., xxx-xx-xxxx
Savage, Jerry L., xxx-xx-xxxx
Scandrett, William, Jr., xxx-xx-xxxx
Scates, Joseph F., xxx-xx-xxxx
Schachleiter, John W., xxx-xx-xxxx
Schaible, Raymond A., xxx-xx-xxxx
Scheidemantel, Andrew F., xxx-xx-xxxx
Scherer, Robert J., xxx-xx-xxxx
Schiemann, Heinz A., xxx-xx-xxxx
Schillereff, John L., xxx-xx-xxxx
Schlatter, Joseph A., Jr., xxx-xx-xxxx
Schoenborn, Robert M., Jr., xxx-xx-xxxx
Schrock, Philip J., xxx-xx-xxxx
Schroeder, Owen R., Jr., xxx-xx-xxxx
Schroeder, Philip V., xxx-xx-xxxx
Schubert, Russell B., Jr., xxx-xx-xxxx
Schulz, Rainer, xxx-xx-xxxx
Schuman, Richard R., xxx-xx-xxxx
Schwander, Jeffery L., xxx-xx-xxxx
Schwartz, Samuel R., xxx-xx-xxxx
Schwartz, Thomas A., xxx-xx-xxxx
Schweinfurth, William F., Jr., xxx-xx-xxxx
Scipioni, Louis, Jr., xxx-xx-xxxx
Scott, Leonard P., Jr., xxx-xx-xxxx
Scott, Reginald C., xxx-xx-xxxx
Scotti, Frank P., xxx-xx-xxxx
Scrivener, Thomas S., xxx-xx-xxxx
Scrogin, Thomas W., xxx-xx-xxxx
Scully, Edward J., III, xxx-xx-xxxx
Seale, Leopold K., xxx-xx-xxxx
Sears, George B., Jr., xxx-xx-xxxx
Seaton, James A., xxx-xx-xxxx
Sefrin, Paul R., xxx-xx-xxxx
Seibel, James H., xxx-xx-xxxx
Seibold, Paul M., xxx-xx-xxxx
Seigrist, Charles D., xxx-xx-xxxx
Seiler, Curtis W., xxx-xx-xxxx
Seligram, Arnold L., xxx-xx-xxxx
Seltzer, Robert N., xxx-xx-xxxx
Semon, Barry H., xxx-xx-xxxx
Semon, Richard, xxx-xx-xxxx
Sengel, Edward W., III, xxx-xx-xxxx
Serio, Joseph, xxx-xx-xxxx
Severn, Theodore R., xxx-xx-xxxx
Severson, John E., xxx-xx-xxxx
Shadley, Robert D., xxx-xx-xxxx
Sharp, Harry L., xxx-xx-xxxx
Sharp, Thomas S., xxx-xx-xxxx
Sharp, William R., xxx-xx-xxxx
Sheil, Timothy J., xxx-xx-xxxx
Shelton, Walter J., xxx-xx-xxxx
Shipley, James E., xxx-xx-xxxx
Shirilla, George, xxx-xx-xxxx
Shirley, James E., xxx-xx-xxxx
Shuler, Richard D., xxx-xx-xxxx
Shumate, Rufus H., Jr., xxx-xx-xxxx
Sidebottom, William J., xxx-xx-xxxx
Sides, Richard G., xxx-xx-xxxx
Sienkiewicz, Richard J., xxx-xx-xxxx
Siket, James R., xxx-xx-xxxx
Silcox, Craig V., xxx-xx-xxxx
Silvas, George, Jr., xxx-xx-xxxx
Silver, Irvin E., xxx-xx-xxxx
Simpkins, Jimmie C., xxx-xx-xxxx
Simpson, James M., xxx-xx-xxxx
Sims, John E., xxx-xx-xxxx
Singer, Joseph B., xxx-xx-xxxx
Sink, Dana T., III, xxx-xx-xxxx
Skiles, James K., xxx-xx-xxxx
Skinner, Robert G., xxx-xx-xxxx
Slayton, Barney F., xxx-xx-xxxx
Sloan, John E., xxx-xx-xxxx
Sloniker, Michael E., xxx-xx-xxxx
Smaagaard, Arthur G., xxx-xx-xxxx
Small, Robert J., xxx-xx-xxxx
Smith, Alan C., xxx-xx-xxxx
Smith, Bryon W., xxx-xx-xxxx
Smith, Calvin E., xxx-xx-xxxx
Smith, Charles I., xxx-xx-xxxx
Smith, Donald F., xxx-xx-xxxx
Smith, Edwin P., xxx-xx-xxxx
Smith, Francis L., Jr., xxx-xx-xxxx
Smith, Henry C., III, xxx-xx-xxxx
Smith, James B., xxx-xx-xxxx
Smith, James L., xxx-xx-xxxx
Smith, James L., xxx-xx-xxxx
Smith, Lee G., xxx-xx-xxxx
Smith, Lowell J., xxx-xx-xxxx
Smith, Mason E., xxx-xx-xxxx
Smith, Nelson F., Jr., xxx-xx-xxxx
Smith, Paul E., xxx-xx-xxxx
Smith, Riley J., xxx-xx-xxxx
Smith, Rodney L., xxx-xx-xxxx
Smith, William C., xxx-xx-xxxx
Smith, William E., xxx-xx-xxxx
Smith, Zannie O., xxx-xx-xxxx
Snodgrass, James G., xxx-xx-xxxx
Solomon, Billy K., xxx-xx-xxxx
Solomon, James L., xxx-xx-xxxx
Sopko, Rance D., xxx-xx-xxxx
Sowa, Alexander P., Jr., xxx-xx-xxxx
Spain, Timothy P., xxx-xx-xxxx
Spaulding, Donald J., xxx-xx-xxxx
Spielbauer, Joseph P., xxx-xx-xxxx
Spillane, Joseph A., xxx-xx-xxxx
Spinello, Michael T., xxx-xx-xxxx
Spradling, David K., II, xxx-xx-xxxx
Spring, Sherwood C., xxx-xx-xxxx
Sprouse, Timothy D., xxx-xx-xxxx
Stacey, Clifford W., xxx-xx-xxxx
Stafford, Fenley D., Jr., xxx-xx-xxxx
Stancil, Charles M., xxx-xx-xxxx
Standifer, Leroy, xxx-xx-xxxx
Stankovich, Peter, xxx-xx-xxxx
Stankus, Frank T., xxx-xx-xxxx
Stanley, Gary P., xxx-xx-xxxx
Stanley, Stanislaw T., xxx-xx-xxxx

Starbird, Courtney B., xxx-xx-xxxx
Starr, Douglas H., xxx-xx-xxxx
Starr, John B., Jr., xxx-xx-xxxx
Stearns, Lester C., Jr., xxx-xx-xxxx
Steele, James, J., xxx-xx-xxxx
Steele William M., xxx-xx-xxxx
Steen, Kenneth B., xxx-xx-xxxx
Stefanowicz, Raymond S., III, xxx-xx-xxxx
Stemberger, Victor J., xxx-xx-xxxx
Steve, Joseph A., Jr., xxx-xx-xxxx
Stevens, James E., Jr., xxx-xx-xxxx
Stewart, Charles L., xxx-xx-xxxx
Stewart, James R., xxx-xx-xxxx
Stewart, John N., xxx-xx-xxxx
Stinson, Joe A., xxx-xx-xxxx
Stirling, William W., xxx-xx-xxxx
Stiver, Donald L., xxx-xx-xxxx
St Laurent, Norman B., xxx-xx-xxxx
Stock, Michael L., xxx-xx-xxxx
Stone, Riley M., Jr., xxx-xx-xxxx
Stone, Virgil W., xxx-xx-xxxx
Strabel, Edward W., xxx-xx-xxxx
Strange, John J., xxx-xx-xxxx
Street, Preas L., xxx-xx-xxxx
Streeter, Raymond C., xxx-xx-xxxx
Strickland, Bryant S., Jr., xxx-xx-xxxx
Strye, James W., xxx-xx-xxxx
Stuff, Charles P., xxx-xx-xxxx
Stuler, Charles R., Jr., xxx-xx-xxxx
Stump, Frank G., III, xxx-xx-xxxx
Stutts, Marvin E., xxx-xx-xxxx
Suits, Charles R., xxx-xx-xxxx
Sullivan, Edward A., xxx-xx-xxxx
Sullivan, John P., xxx-xx-xxxx
Summers, Peter P., xxx-xx-xxxx
Susko, Gerald D., xxx-xx-xxxx
Sutten, Charles G., Jr., xxx-xx-xxxx
Swan, Robert C., xxx-xx-xxxx
Swanson, Charles H., xxx-xx-xxxx
Swier, Richard M., xxx-xx-xxxx
Swift, George J., Jr., xxx-xx-xxxx
Swinehart, Lewis S., III, xxx-xx-xxxx
Syverud, Roger L., xxx-xx-xxxx
Szlachetka, Marion E., xxx-xx-xxxx
Szuszka, Kenneth J., xxx-xx-xxxx
Taber, Thomas M., xxx-xx-xxxx
Tackett, John A., xxx-xx-xxxx
Takahashi, Daniel T., xxx-xx-xxxx
Talbert, David A., xxx-xx-xxxx
Talbott, David L., xxx-xx-xxxx
Tanaka, Rodney S., xxx-xx-xxxx
Tankersley, Milton T., xxx-xx-xxxx
Tankovich, James A., xxx-xx-xxxx
Tarantola, Michael R., xxx-xx-xxxx
Tarpley, Richard W., xxx-xx-xxxx
Tasillo, Thomas J., xxx-xx-xxxx
Tavano, Michael J., xxx-xx-xxxx
Taylor, David W., xxx-xx-xxxx
Taylor, Emmett L., xxx-xx-xxxx
Taylor, Robert H., xxx-xx-xxxx
Taylor, Thomas W., xxx-xx-xxxx
Teel, Eric R., xxx-xx-xxxx
Teixeira, Edward T., xxx-xx-xxxx
Terrell, Happel D., xxx-xx-xxxx
Terry, Joseph G., Jr., xxx-xx-xxxx
Terry, Ronald W., xxx-xx-xxxx
Tetreault, Gerry E., xxx-xx-xxxx
Thacher, Stephen L., xxx-xx-xxxx
Thacker, Wallace P., xxx-xx-xxxx
Thibeault, William R. J., xxx-xx-xxxx
Thiltgen, John W., xxx-xx-xxxx
Thomas, Bernard P., xxx-xx-xxxx
Thomas, Charles S., xxx-xx-xxxx
Thomas, Harry W., III, xxx-xx-xxxx
Thomas, James H., Jr., xxx-xx-xxxx
Thomas, Michael E., xxx-xx-xxxx
Thomas, Robert H., Jr., xxx-xx-xxxx
Thome, Robert C., xxx-xx-xxxx
Thompson, James H., Jr., xxx-xx-xxxx
Thompson, John T., xxx-xx-xxxx
Thompson, Lee, xxx-xx-xxxx
Thompson, Marvin D., xxx-xx-xxxx
Thornal, Benjamin C., xxx-xx-xxxx
Thornton, Charles R., xxx-xx-xxxx
Threadgill, Gerald G., xxx-xx-xxxx
Tibbetts, Walter P., xxx-xx-xxxx
Tisdale, Tyron E., Jr., xxx-xx-xxxx
Toch, Maximilian, xxx-xx-xxxx
Toneatto, Giuliano M., xxx-xx-xxxx
Topacio, David J., xxx-xx-xxxx
Tormey, Robert D., xxx-xx-xxxx
Trawick, John L., xxx-xx-xxxx
Traxler, James H., xxx-xx-xxxx
Treneman, Bayard A., xxx-xx-xxxx
Treolo, Paul, Jr., xxx-xx-xxxx
Trimmer, Floyd L., xxx-xx-xxxx
Tromey, Thomas N., xxx-xx-xxxx
Trotter, Jesse J., Jr., xxx-xx-xxxx
Truesdale, Albert J., xxx-xx-xxxx
Trusko, Peter A., xxx-xx-xxxx
Tsutsumi, Susumu, xxx-xx-xxxx
Tullis, Elizabeth G., xxx-xx-xxxx
Turgeon, Roy W., Jr., xxx-xx-xxxx
Turk, Felix F., xxx-xx-xxxx
Turmenne, Paul E., xxx-xx-xxxx
Turnage, Larry, xxx-xx-xxxx
Turner, Leonard J., xxx-xx-xxxx
Turrell, Robert C., xxx-xx-xxxx
Tutt, James T., xxx-xx-xxxx
Tye, David L., xxx-xx-xxxx
Tyner, James C., Jr., xxx-xx-xxxx
Uliano, Gary L., xxx-xx-xxxx
Ulin, Robert R., xxx-xx-xxxx
Vakalis, George J., xxx-xx-xxxx
Vallecillo, Carlos A., xxx-xx-xxxx
Van Allan, Richard, xxx-xx-xxxx
Van Doren, Garold, II, xxx-xx-xxxx
Van Epps, James R., xxx-xx-xxxx
Vance, James O., xxx-xx-xxxx
Vanderpool, Jack R., xxx-xx-xxxx
Varosy, Paul S., xxx-xx-xxxx
Vaughn, Donald F., xxx-xx-xxxx
Viney, George S., xxx-xx-xxxx
Visconti, Joseph, Jr., xxx-xx-xxxx
Voegeli, Albert H., Jr., xxx-xx-xxxx
Voightritter, Donald K., xxx-xx-xxxx
Voightritter, Ronald K., xxx-xx-xxxx
Voris, Stephen M., xxx-xx-xxxx
Vukelich, Vincent M., xxx-xx-xxxx
Wages, Eugene W., xxx-xx-xxxx
Waite, Charles D., xxx-xx-xxxx
Walden, Charles C., xxx-xx-xxxx
Waldran, Cook M., Jr., xxx-xx-xxxx
Waldrop, Gerry L., xxx-xx-xxxx
Walker, Wallace E., xxx-xx-xxxx
Wallace, Emitt, xxx-xx-xxxx
Wallace, Jerry L., xxx-xx-xxxx
Wallace, William J., xxx-xx-xxxx
Walsh, Francis R., xxx-xx-xxxx
Walsh, William P., xxx-xx-xxxx
Walterhouse, Douglas D., xxx-xx-xxxx
Walton, Benny B., xxx-xx-xxxx
Waltz, Roger W., xxx-xx-xxxx
Walz, Robert D., xxx-xx-xxxx
Waraksa, Thomas J., xxx-xx-xxxx
Ward, Clifford R., xxx-xx-xxxx
Ware, John R., II, xxx-xx-xxxx
Warner, Michael L., xxx-xx-xxxx
Warren, Brian C., xxx-xx-xxxx
Washington, Lemarse, xxx-xx-xxxx
Waterman, Richard E., xxx-xx-xxxx
Watkins, Stuart H., xxx-xx-xxxx
Watson, Harvey D., III, xxx-xx-xxxx
Weathers, Stanley J., xxx-xx-xxxx
Weaver, Robert V., Jr., xxx-xx-xxxx
Webb, Myrt W., Jr., xxx-xx-xxxx
Webber, Stephen B., xxx-xx-xxxx
Webster, Jimmy N., xxx-xx-xxxx
Wedding, Benny E., xxx-xx-xxxx
Weeks, Howard R., xxx-xx-xxxx
Weems, Neil M., xxx-xx-xxxx
Weinfield, Roselle, xxx-xx-xxxx
Weir, Garry K., xxx-xx-xxxx
Weir, Walter G., xxx-xx-xxxx
Weker, Joseph C., III, xxx-xx-xxxx
Welch, Dennis E., xxx-xx-xxxx
Welch, Thomas A., Jr., xxx-xx-xxxx
Weller, James M., xxx-xx-xxxx
Wells, Daniel R., xxx-xx-xxxx
Wells, David R., Jr., xxx-xx-xxxx
Wells, Peter D., xxx-xx-xxxx
Wells, William J., xxx-xx-xxxx
Wendling, Henry H., xxx-xx-xxxx
Wentink, Michael J., xxx-xx-xxxx
Wentzel, Sealon R., Jr., xxx-xx-xxxx
Wertschnig, John J., xxx-xx-xxxx
West, Charles E., xxx-xx-xxxx
Whaley, David A., xxx-xx-xxxx
Wheaton, Roger S., xxx-xx-xxxx
Whiddon, Lester V., Jr., xxx-xx-xxxx
Whitaker, William E., xxx-xx-xxxx
White, Abel, xxx-xx-xxxx
White, Aubrey, xxx-xx-xxxx
White, Dennis M., xxx-xx-xxxx
White, Donel D., xxx-xx-xxxx
White, Emett R. V., xxx-xx-xxxx
White, Harold G., xxx-xx-xxxx
White, Thomas E., Jr., xxx-xx-xxxx
Whitehead, John B., xxx-xx-xxxx
Whitenton, Richard L., xxx-xx-xxxx
Whitfield, David, xxx-xx-xxxx
Whitney, Robert C., Jr., xxx-xx-xxxx
Whitsett, Robert M., xxx-xx-xxxx
Whitsett, Thomas N., xxx-xx-xxxx
Whittle, Charles E., xxx-xx-xxxx
Wieczorek, Robert L., xxx-xx-xxxx
Wiehe, Edward L., xxx-xx-xxxx
Wilkinson, Donald R., Jr., xxx-xx-xxxx
Williams, Arnold B., Jr., xxx-xx-xxxx
Williams, Clinton L., xxx-xx-xxxx
Williams, Forrest D., xxx-xx-xxxx
Williams, Gary D., xxx-xx-xxxx
Williams, Hugh N., xxx-xx-xxxx
Williams, John S., xxx-xx-xxxx
Williams, Richard A., xxx-xx-xxxx
Williamson, David D., xxx-xx-xxxx
Willis, William W., Jr., xxx-xx-xxxx
Willoughby, Lonny R., xxx-xx-xxxx
Wilson, Haldon D., Jr., xxx-xx-xxxx
Wilson, Johnnie E., xxx-xx-xxxx
Wimberley, Ronald J., xxx-xx-xxxx
Windeler, Jack A., xxx-xx-xxxx
Windle, Joseph C., xxx-xx-xxxx
Winkel, Raymond J., Jr., xxx-xx-xxxx
Wirtz, David W., xxx-xx-xxxx
Wise, Lawrence F., Jr., xxx-xx-xxxx
Wishik, Jeffrey L., xxx-xx-xxxx
Witherspoon, Larry D., xxx-xx-xxxx
Witt, Kay B., xxx-xx-xxxx
Witte, James E., xxx-xx-xxxx
Wojcik, James A., xxx-xx-xxxx
Wojczynski, James S., xxx-xx-xxxx
Wokutch, Charles A., xxx-xx-xxxx
Wolf, Jack G., xxx-xx-xxxx
Wolfe, Walter M., Jr., xxx-xx-xxxx
Wolfinger, William D., xxx-xx-xxxx
Wood, Charles W., xxx-xx-xxxx
Wood, Gail W., xxx-xx-xxxx
Wood, Jack B., xxx-xx-xxxx
Wood, Mary L., xxx-xx-xxxx
Wood, Richard E., xxx-xx-xxxx
Woolever, Ronald J., xxx-xx-xxxx
Worff, Herbert H., Jr., xxx-xx-xxxx
Wray, Christopher P., xxx-xx-xxxx
Wright, Gerald W., xxx-xx-xxxx
Wright, Michael L., xxx-xx-xxxx
Wrightson, Samuel H., xxx-xx-xxxx
Wynkoop, Ricky V., xxx-xx-xxxx
Yalicki, Edward J., Jr., xxx-xx-xxxx
Yamamoto, Richard Y., xxx-xx-xxxx
Yamaura, Lawrence, xxx-xx-xxxx
Yap, Michael W. L., xxx-xx-xxxx
Yeargan, Robert G., xxx-xx-xxxx
York, John F., xxx-xx-xxxx
Young, John R., Jr., xxx-xx-xxxx
Young, Keith L., xxx-xx-xxxx
Young, Randy J., xxx-xx-xxxx
Young, Stephen H., xxx-xx-xxxx
Young, Stephen T., xxx-xx-xxxx
Young, Thomas F., xxx-xx-xxxx
Young, Thurlow D., xxx-xx-xxxx
Yount, Alan H., xxx-xx-xxxx
Yudesis, Benjamin M., xxx-xx-xxxx
Zahrndt, Dennis L., xxx-xx-xxxx
Zak, Michael I., xxx-xx-xxxx
Zanini, Daniel R., xxx-xx-xxxx
Zapata, Jenaro A., xxx-xx-xxxx
Zedar, Frank R., xxx-xx-xxxx
Zemp, Robert W. M., xxx-xx-xxxx
Zerance, Michael S., xxx-xx-xxxx
Zielinski, Ronald J., xxx-xx-xxxx
Ziemke, Jack A., xxx-xx-xxxx
Zupancic, David P., xxx-xx-xxxx

CHAPLAIN CORPS

To be major

Ferguson, Dwayne L., xxx-xx-xxxx
Goellen, Richard M., xxx-xx-xxxx
Gudz, George W., xxx-xx-xxxx

Hansen, Albert M., xxx-xx-xxxx
Hollowell, Marvin E., Jr., xxx-xx-xxxx
Lee, Bobby E., xxx-xx-xxxx
Mallard, Charles E., xxx-xx-xxxx
Masteller, James D., xxx-xx-xxxx
Taddy, Jerome J., xxx-xx-xxxx
Wake, Henry E., xxx-xx-xxxx
Young Jimmy L., xxx-xx-xxxx

ARMY MEDICAL SPECIALIST CORPS

To be major

Chee, Francis K., xxx-xx-xxxx
Cooke, Annetta J., xxx-xx-xxxx
Guinn, Elena W., xxx-xx-xxxx
Hassett, Robert B., III, xxx-xx-xxxx
Hughes, Everett A., xxx-xx-xxxx
James, Kenneth D., xxx-xx-xxxx
McCandless, Sally A., xxx-xx-xxxx
Riggan, Judith S., xxx-xx-xxxx
Schlecker, Barbara A., xxx-xx-xxxx
Stevens, Douglas L., xxx-xx-xxxx
Wheeler, Thomas H., xxx-xx-xxxx

MEDICAL CORPS

To be major

Anderson, Paul J., Jr., xxx-xx-xxxx
Bernier, Barre S., xxx-xx-xxxx
Brantner, Jim N., xxx-xx-xxxx
Brown, Frederick B., xxx-xx-xxxx
Casey, Elmer M., Jr., xxx-xx-xxxx
Casull, Brian H., xxx-xx-xxxx
Clark, Jeffrey R., xxx-xx-xxxx
Clements, Thomas I., xxx-xx-xxxx
Clemons, Donald E., xxx-xx-xxxx
Deas, Bernard W., Jr., xxx-xx-xxxx
Foody, William J., xxx-xx-xxxx
Goodhue, William W., Jr., xxx-xx-xxxx
Griffin, Robert F., xxx-xx-xxxx
Hadorn, John R., xxx-xx-xxxx
Hawkes, Thomas A., Jr., xxx-xx-xxxx
Hayes, Brian E., xxx-xx-xxxx
Herman, Claude P., xxx-xx-xxxx
Hubert, George P., xxx-xx-xxxx
Hutchinson, Milford B., xxx-xx-xxxx
Jackson, Joseph P., Jr., xxx-xx-xxxx
Lupton, George P., xxx-xx-xxxx
Markey, Keith L., xxx-xx-xxxx
Moon, Michael R., xxx-xx-xxxx
Moore, Reginald G., Jr., xxx-xx-xxxx
Norton, Michael, xxx-xx-xxxx
Parr, Thomas J., xxx-xx-xxxx
Pryor, James E., xxx-xx-xxxx
Savory, Carlton G., xxx-xx-xxxx
Seyfer, Alan E., xxx-xx-xxxx
Taylor, Harvey G., Jr., xxx-xx-xxxx
Walters, Michael J., xxx-xx-xxxx
Williams, Robert K., xxx-xx-xxxx
Wolcott, Barry W., xxx-xx-xxxx
Yeager, Charles F., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be major

Allen, Richard G., xxx-xx-xxxx
Arellano, Benito M., xxx-xx-xxxx
Austin, Henry M., III, xxx-xx-xxxx
Averbuch, Michael E., xxx-xx-xxxx
Bearce, Gerald R., xxx-xx-xxxx
Bishop, Ronald M., xxx-xx-xxxx
Bolyard, Marshall K., xxx-xx-xxxx
Bories, Robert F., Jr., xxx-xx-xxxx
Bosworth, Anthony B., xxx-xx-xxxx
Brooke, Paul P., Jr., xxx-xx-xxxx
Brown, Roger L., xxx-xx-xxxx
Cavis, Charles A., xxx-xx-xxxx
Champion, Charles H., Jr., xxx-xx-xxxx
Collins, Michael H., xxx-xx-xxxx
Costanzo, Joseph J., Jr., xxx-xx-xxxx
Davis, Brian K., xxx-xx-xxxx
Davis, Francisco S., xxx-xx-xxxx
Dievendorf, Lynn A., xxx-xx-xxxx
Edge, Rodney A., xxx-xx-xxxx
Edgette, Peter J., xxx-xx-xxxx
Enloe, Edmond J., Jr., xxx-xx-xxxx
Evans, Otis D., xxx-xx-xxxx
Fulbright, Larry R., xxx-xx-xxxx
Goldman, Gilbert L., xxx-xx-xxxx
Gooding, Thomas L., xxx-xx-xxxx
Hardman, James R., xxx-xx-xxxx
Harrison, Bruce A., xxx-xx-xxxx
Hash, Frank R., Jr., xxx-xx-xxxx
Hendricks, Larry D., xxx-xx-xxxx
Hernandez, Charles P., xxx-xx-xxxx
Hilt, Martin J., xxx-xx-xxxx
Hinkel, Robert E., xxx-xx-xxxx
Holland, Frank B., xxx-xx-xxxx
Howell, James L., xxx-xx-xxxx
Ingraham, Larry H., xxx-xx-xxxx
Jackson, Walter F., xxx-xx-xxxx
Johnson, Dennis H., xxx-xx-xxxx
Johnson, Larry G., xxx-xx-xxxx
Johnson, Nicki L., xxx-xx-xxxx
Jones, Fleming H., xxx-xx-xxxx
Jones, Larry L., xxx-xx-xxxx
Klugman, Peter J., xxx-xx-xxxx
Laible, Benjamin E., Jr., xxx-xx-xxxx
Langeliers, Leonard L., Jr., xxx-xx-xxxx
Makarevich, Robert, xxx-xx-xxxx
Martin, James A., Jr., xxx-xx-xxxx
Matheson, William A., xxx-xx-xxxx
McMasters, Bernard E., Jr., xxx-xx-xxxx
Mertel, Paul T., Jr., xxx-xx-xxxx
Meyer, Dennis E., xxx-xx-xxxx
Meyer, Michael P., xxx-xx-xxxx
Michels, George N., xxx-xx-xxxx
Mitten, Alan K., xxx-xx-xxxx
Moro, Kenneth S., xxx-xx-xxxx
Morton, Ward D., III, xxx-xx-xxxx
Munnell, Thomas C., xxx-xx-xxxx
Murphy, Robert F., xxx-xx-xxxx
Nalepa, Thomas F., xxx-xx-xxxx
Neptune, Calvin, III, xxx-xx-xxxx
Pender, Robert W., xxx-xx-xxxx
Perry, Ray H., xxx-xx-xxxx
Peterson, Lawrence T., xxx-xx-xxxx
Philbrick, Jon D., xxx-xx-xxxx
Pitts, Larry C., xxx-xx-xxxx
Pitts, Walter G., xxx-xx-xxxx
Pleasant, Richard H., xxx-xx-xxxx
Polk, Anthony J., xxx-xx-xxxx
Pollok, James L., xxx-xx-xxxx
Reichard, Douglas W., xxx-xx-xxxx
Roberts, Donald R., xxx-xx-xxxx
Saugstad, Edward S., xxx-xx-xxxx
Sawallesh, Robert F., xxx-xx-xxxx
Schmuck, Dale A., xxx-xx-xxxx
Sherman, Vincent R., xxx-xx-xxxx
Smith, Jack R., Jr., xxx-xx-xxxx
Sodetz, Frank J. Jr., xxx-xx-xxxx
Stockand, David B., xxx-xx-xxxx
Sullivan, Michael F., xxx-xx-xxxx
Tansor, James R., xxx-xx-xxxx
Tedeschi, Emeric R., xxx-xx-xxxx
Thomas, William G., xxx-xx-xxxx
Thompson, Gerald E., xxx-xx-xxxx
Torba, Gerald M., xxx-xx-xxxx
Tyler, James M., xxx-xx-xxxx
Vavra, Robert W., Jr., xxx-xx-xxxx
Vinson, William W., xxx-xx-xxxx
Voss, Daniel R., xxx-xx-xxxx
Warren, Stephen F., xxx-xx-xxxx
Weed, Roger I., xxx-xx-xxxx
Wiener, Michael L., xxx-xx-xxxx
Wigger, James R., Jr., xxx-xx-xxxx
Wilkinson, Rowland N., xxx-xx-xxxx
Willis, Herman F., Jr., xxx-xx-xxxx
Woodward, Ronald L., xxx-xx-xxxx
Wright, Cephas C., xxx-xx-xxxx
Wright, William A., xxx-xx-xxxx
Young, Hansford L., xxx-xx-xxxx

DENTAL CORPS

To be major

Aaron, Gerald R., xxx-xx-xxxx
Adams, Abram E., Jr., xxx-xx-xxxx
Antonini, Charles J., xxx-xx-xxxx
Badger, Gary R., xxx-xx-xxxx
Baumgartner, John C., xxx-xx-xxxx
Bechtold, William A., xxx-xx-xxxx
Becka, David C., xxx-xx-xxxx
Bersano, Raymond B., xxx-xx-xxxx
Bettes, Stephen F., xxx-xx-xxxx
Beuttenmuller, Erhard A., xxx-xx-xxxx
Blaney, Thomas D., xxx-xx-xxxx
Buhler, John E., Jr., xxx-xx-xxxx
Caninocummings, Manuel, xxx-xx-xxxx
Chamberlin, John H., II., xxx-xx-xxxx
Corbin, William R., xxx-xx-xxxx
Denucci, Donald J., xxx-xx-xxxx
Dismukes, Julian M., III, xxx-xx-xxxx
Dixon, James D., xxx-xx-xxxx
Duckworth, James H., xxx-xx-xxxx
Dunn, Larry M., xxx-xx-xxxx
Earley, Jack D., xxx-xx-xxxx
English, Jeryl D., xxx-xx-xxxx
Freccia, William F., xxx-xx-xxxx
Goerig, Albert C., xxx-xx-xxxx
Gracey, Leslie L., xxx-xx-xxxx
Hanson, Donald P., xxx-xx-xxxx
Hardy, Leslie B., Jr., xxx-xx-xxxx
Harris, Jordan H., xxx-xx-xxxx
Haught, Stephen R., xxx-xx-xxxx
Hoffman, Leonard A., xxx-xx-xxxx
Hopkins, Richard W., xxx-xx-xxxx
Jones, Griffith B., xxx-xx-xxxx
Keller, David L., xxx-xx-xxxx
King, John E., xxx-xx-xxxx
Koudelka, Brent M., xxx-xx-xxxx
Lascher, Michael F., xxx-xx-xxxx
Maurer, Michael B., xxx-xx-xxxx
Meade, Francis J., xxx-xx-xxxx
Meyers, Charles E., xxx-xx-xxxx
Mooney, Darrel L., xxx-xx-xxxx
Newton, William G., xxx-xx-xxxx
O'Neal, Robert B., xxx-xx-xxxx
Petersen, Robert G., xxx-xx-xxxx
Priddy, William L., xxx-xx-xxxx
Ranz, Allan N., xxx-xx-xxxx
Rivera-Hidalgo, Francisco, xxx-xx-xxxx
Rollow, John A., IV, xxx-xx-xxxx
Ruggles, James E., xxx-xx-xxxx
Scheidt, Michael J., xxx-xx-xxxx
Sevier, Noble H., II, xxx-xx-xxxx
Sheppard, Paul R., xxx-xx-xxxx
Smith, Ben E., xxx-xx-xxxx
Vaught, Richard D., xxx-xx-xxxx
Vermilyea, Stanley G., xxx-xx-xxxx
Vire, Donald E., xxx-xx-xxxx
Wakefield, Charles W., xxx-xx-xxxx
Webb, Joseph G., Jr., xxx-xx-xxxx
Woolsey, Gerald D., xxx-xx-xxxx
Yamamoto, James R., xxx-xx-xxxx

ARMY NURSE CORPS

To be major

Adams, Gearl V., xxx-xx-xxxx
Baker, Susan I., xxx-xx-xxxx
Basta, Patricia J., xxx-xx-xxxx
Bombard, Charles F., xxx-xx-xxxx
Bowlyow, Ronald G., xxx-xx-xxxx
Brown, Barbara D., xxx-xx-xxxx
Brown, Dorothy N., xxx-xx-xxxx
Coletti, Anthony E., xxx-xx-xxxx
Cook, Thomas E., xxx-xx-xxxx
Cyganiewicz, Susan G., xxx-xx-xxxx
Dayton, Lorraine M., xxx-xx-xxxx
Deisering, Leon F., xxx-xx-xxxx
Dingbaum, Herbert H., xxx-xx-xxxx
Dollander, Lowell T., xxx-xx-xxxx
Drummond, William F., xxx-xx-xxxx
Eberlin, Lawrence J., xxx-xx-xxxx
Firman, Terrence G., xxx-xx-xxxx
Giffin, Kenneth S., xxx-xx-xxxx
Godfrey, Edith M., xxx-xx-xxxx
Goethals, Gerald B., xxx-xx-xxxx
Gordon, Kenneth A., xxx-xx-xxxx
Guilbeault, Jeanne E., xxx-xx-xxxx
Gumbert, Georgiana L. B., xxx-xx-xxxx
Gunnell, Kenneth M., Jr., xxx-xx-xxxx
Hamper, Sandra L., xxx-xx-xxxx
Haugen, Mary K., xxx-xx-xxxx
Houser, Oscar S., Jr., xxx-xx-xxxx
Jacques, Stanley H., xxx-xx-xxxx
Keeton, Thomas E., Sr., xxx-xx-xxxx
Keyser, Collette P., xxx-xx-xxxx
Laperna, Maria A., xxx-xx-xxxx
Lavery, Barbara S., xxx-xx-xxxx
Lawyer, Robert A., xxx-xx-xxxx
Likens, Wilbur D., xxx-xx-xxxx
Lord, Ellen V., xxx-xx-xxxx
Lowe, Marilyn M., xxx-xx-xxxx
Markarian, Clement J., xxx-xx-xxxx
McGwin, Sharon M., xxx-xx-xxxx
Miller, Thomas E., xxx-xx-xxxx
Mort, Mary A., xxx-xx-xxxx
Murtonen, Ruth E., xxx-xx-xxxx
Oatway, David M., xxx-xx-xxxx
Pescatore, Edward A., xxx-xx-xxxx
Philiben, Anne N., xxx-xx-xxxx
Poduszczak, Edward S., xxx-xx-xxxx
Rankin, Andrew W., xxx-xx-xxxx
Ross, Sandra V., xxx-xx-xxxx

Schultz, Elsie M., xxx-xx-xxxx.
Seipert, Lloyd R., xxx-xx-xxxx.
Shirley, Lois G., xxx-xx-xxxx.
Smith, Mary E., xxx-xx-xxxx.
Sollenberger, Karen S., xxx-xx-xxxx.
Southby, Janet R., xxx-xx-xxxx.
Squires, Grace E., xxx-xx-xxxx.
Tassinari, Anthony D., xxx-xx-xxxx.
Temo, James M., xxx-xx-xxxx.
Thompson, Charles R., xxx-xx-xxxx.
Touron, Francis L., xxx-xx-xxxx.
Tranel, David A., xxx-xx-xxxx.
Travis, Jacklyn G., xxx-xx-xxxx.
Truscott, Alma J., xxx-xx-xxxx.
Watters, Thomas S., xxx-xx-xxxx.
White, John T., xxx-xx-xxxx.
Wimett, Joan J., xxx-xx-xxxx.
Wondra, George E., xxx-xx-xxxx.
Zarnik, Paulette L., xxx-xx-xxxx.
Ziacik, John E., Jr., xxx-xx-xxxx.

VETERINARY CORPS

To be major

Barrows, Paul L., xxx-xx-xxxx.
Elmore, James D., xxx-xx-xxxx.
Helm, Frederick L., xxx-xx-xxxx.
Hofmann, John R., Jr., xxx-xx-xxxx.
Johnson, Clifford I., xxx-xx-xxxx.
Liebenberg, Stanley P., Jr., xxx-xx-xxxx.
Salamone, Bernard P., xxx-xx-xxxx.
Smith, Thomas M., xxx-xx-xxxx.
Wall, Henry G., Jr., xxx-xx-xxxx.

DENTAL CORPS

To be lieutenant colonel

Walker, Kahn K., xxx-xx-xxxx.

ARMY PROMOTION LIST

To be captain

Allen, Jay D., xxx-xx-xxxx.
Anderson, John C., xxx-xx-xxxx.
Arn, Stephen P., xxx-xx-xxxx.
Bell, William F., xxx-xx-xxxx.
Delane, James L., xxx-xx-xxxx.
Exum, Titus H., xxx-xx-xxxx.
Fanning, Reed B., xxx-xx-xxxx.
Graham, John K., xxx-xx-xxxx.
Hackerson, Michael W., xxx-xx-xxxx.
Halloran, William E., xxx-xx-xxxx.
Hare, Gene R., xxx-xx-xxxx.
Magrino, Gary J., xxx-xx-xxxx.
Newell, Lawrence E., xxx-xx-xxxx.
Novosad, Jerry J., Jr., xxx-xx-xxxx.
Olson, Larry J., xxx-xx-xxxx.
Pavlick, Charles R., xxx-xx-xxxx.
Rose, Charles A., xxx-xx-xxxx.
Stevens, Roger L., xxx-xx-xxxx.
Tucker, Willam A., Jr., xxx-xx-xxxx.
Warren, John S., xxx-xx-xxxx.
White, William A., xxx-xx-xxxx.
Whyte, Alexander III, xxx-xx-xxxx.
Young, Randell W., xxx-xx-xxxx.

The following-named officers for promotion in the Army of the United State, under the provisions of title 10, United States Code, sections 3442 and 3447:

DENTAL CORPS

To be colonel

Bellizzi, Ralph, xxx-xx-xxxx.
Broering, Leo F., xxx-xx-xxxx.
Brown, Alan R., xxx-xx-xxxx.
Lohse, Walter G., xxx-xx-xxxx.
Mattia, Michael N., xxx-xx-xxxx.
Moss, James L., xxx-xx-xxxx.
Robbins, Frederick E., xxx-xx-xxxx.
Schultz, Rudane E., xxx-xx-xxxx.
Woodyard, Stephen G., xxx-xx-xxxx.

MEDICAL CORPS

To be colonel

Addams, Billie M., xxx-xx-xxxx.
Alabanza, Florentin, xxx-xx-xxxx.
Alving, Carl R., xxx-xx-xxxx.
Andersen, Charles A., xxx-xx-xxxx.
Antopol, Michael R., xxx-xx-xxxx.
Balson, Paul M., xxx-xx-xxxx.
Black, Joel W., xxx-xx-xxxx.
Boccuti, Anthony R., xxx-xx-xxxx.
Bode, Donald D., xxx-xx-xxxx.
Brown, Joel D., xxx-xx-xxxx.
Bustos, Usvaldo, xxx-xx-xxxx.
Cavanaugh, Daniel G., xxx-xx-xxxx.
Ching, Wilson V. S., xxx-xx-xxxx.
Cloud, Robert S., xxx-xx-xxxx.
Coldewey, Johann F., xxx-xx-xxxx.
Coppin, Thomas D., xxx-xx-xxxx.
Cuartas, Francisco, xxx-xx-xxxx.
Daily, Charles D., xxx-xx-xxxx.
Davis, Harry E., xxx-xx-xxxx.
Dimond, Richard C., xxx-xx-xxxx.
Dowdy, James R., xxx-xx-xxxx.
Driver, Doyle, Jr., xxx-xx-xxxx.
Ellis, Charles M., xxx-xx-xxxx.
Fabrigar, Carmelo S., xxx-xx-xxxx.
Finney, Jackie L., xxx-xx-xxxx.
Fleurant, Lucien B., xxx-xx-xxxx.
Gagon, Terry E., xxx-xx-xxxx.
Giordano, Frank L., xxx-xx-xxxx.
Grobe, Macy J., xxx-xx-xxxx.
Hodder, Richard A., xxx-xx-xxxx.
Jackson, Stephen M., xxx-xx-xxxx.
Jarotzky, Vladimir, xxx-xx-xxxx.
Jeffer, Edward K., xxx-xx-xxxx.
Jones, Charles C., xxx-xx-xxxx.
Keeler, David A., xxx-xx-xxxx.
Kennell, Charles B., xxx-xx-xxxx.
Kingry, Roy L., Jr., xxx-xx-xxxx.
Klein, Thomas A., xxx-xx-xxxx.
Leftik, Martin I., xxx-xx-xxxx.
Lewis, Ronel L., xxx-xx-xxxx.
Lopiccolo, Philip F., xxx-xx-xxxx.
McCarty, Garland E., xxx-xx-xxxx.
McManus, William F., xxx-xx-xxxx.
Morrison, Robert E., xxx-xx-xxxx.
Mylander, Kenneth W., xxx-xx-xxxx.
Nash, Daniel A., xxx-xx-xxxx.
Nevarez, Leonard J., xxx-xx-xxxx.
Nortontarpez, Jay, xxx-xx-xxxx.
Pardi, Livio F., xxx-xx-xxxx.
Peck, Carl C., xxx-xx-xxxx.
Penney, Larry L., xxx-xx-xxxx.
Pierson, Dean L., xxx-xx-xxxx.
Provost, John M., xxx-xx-xxxx.
Raine, Dudley A., xxx-xx-xxxx.
Sampson, George L., xxx-xx-xxxx.
Sanders, Joe M., xxx-xx-xxxx.
Sattgast, John E., xxx-xx-xxxx.
Schultheis, William, xxx-xx-xxxx.
Schwab, James A., xxx-xx-xxxx.
Scott, Robert M., xxx-xx-xxxx.
Segal, Herbert E., xxx-xx-xxxx.
Semenoff, Daniel J., xxx-xx-xxxx.
Shuger, Richard D., xxx-xx-xxxx.
Silsby, Harry D., xxx-xx-xxxx.
Sim, Joel C., xxx-xx-xxxx.
Sisler, Gary L., xxx-xx-xxxx.
Staiano, Ralph A., xxx-xx-xxxx.
Steudel, Wolfgang T., xxx-xx-xxxx.
Stokes, James W., xxx-xx-xxxx.
Stutz, Friedrich H., xxx-xx-xxxx.
Swanson, Dennis R., xxx-xx-xxxx.
Torgerson, Leslie A., xxx-xx-xxxx.
Tramont, Edmund C., xxx-xx-xxxx.
Uribe, Jorge I., xxx-xx-xxxx.
Williams, Reginald, xxx-xx-xxxx.
Williams, Ronald G., xxx-xx-xxxx.
Wolcott, Barry W., xxx-xx-xxxx.
Wray, Harvey L., xxx-xx-xxxx.

ARMY MEDICAL SPECIALIST CORPS

To be colonel

Yeakel, Mary H., xxx-xx-xxxx.

MEDICAL SERVICE CORPS

To be colonel

Flarery, Colbert L., xxx-xx-xxxx.

ARMY PROMOTION LIST

To be lieutenant colonel

Gonzales, Antonio G., xxx-xx-xxxx.
Saxton, Ronald E., xxx-xx-xxxx.

MEDICAL CORPS

To be lieutenant colonel

Ortiz, Victor N., xxx-xx-xxxx.
Ulrych, Milos, xxx-xx-xxxx.

The following-named officers for promotion in the Regular Army of the United States, under the provisions of title 10, United States Code, section 3305:

ARMY PROMOTION LIST

To be colonel

Bonner, Benjamin J., III, xxx-xx-xxxx.
Condry, Wilile J., xxx-xx-xxxx.
Fargason, LeRoy H., Jr., xxx-xx-xxxx.
Holland, Harold B., xxx-xx-xxxx.
Judge, Richard F., xxx-xx-xxxx.
Karr, Don E., xxx-xx-xxxx.
Simkus, Anthony P., xxx-xx-xxxx.
Sposito, Paul, xxx-xx-xxxx.

The following-named officers for promotion in the Regular Army, under the provisions of title 10, United States Code, sections 3284 and 3298:

ARMY PROMOTION LIST

To be first lieutenant

Brunson, Robert O., xxx-xx-xxxx.
Foster, Gerald K., xxx-xx-xxxx.
Frederick, Richard, xxx-xx-xxxx.
Roberts, Thomas E., xxx-xx-xxxx.
Saint Clair, Joseph, xxx-xx-xxxx.

IN THE NAVY

The following-named Naval Reserve Officers Training Corps candidates to be appointed permanent ensign in the line or staff corps in the U.S. Navy, subject to qualification therefor as provided by law:

Adams, Raymond J.
Boettge, Philip D.
Dickerson, Curtis R.
Garcia, Arturo R.
Hugman, Kevin H.
McMiller, Apryl D.
Moeller, Ronald R.
Morris, William R.
Tope, Terry A.
Vogt, John J.
Baulch, Mark A.
Cruz, Paul A. G.
Eiland, Gary L.
Hanley, Michael S.
Knighton, Edward L., II
Mlekush, Matthew L.
Moody, David W.
Rush, Thomas H.
Villarreal, Jose I.
Wilson, Clarence E.
Sewell, Sidney R.
Poliak, Claude R.

Richard P. Baldwin, Navy Enlisted Scientific Education Program candidate, to be appointed a permanent ensign in the line of the U.S. Navy, subject to qualification therefor as provided by law.

The following-named Naval Reserve officers to be appointed permanent commander in the Medical Corps in the U.S. Navy, subject to qualification therefor as provided by law:

Courington, Frederick W.
Telesh, George G.

The following-named Naval Reserve officers to be appointed permanent lieutenant commander in the Medical Corps of the U.S. Navy, subject to qualification therefor as provided by law:

Berdecio, Eduardo T.
Brooks, Viola P.
Poliak, Claude R.
Schneider, Thomas R.
Thillett, Ives C.
Bishop, William H.
Hyder, Ghouse S.
Ramos, Remigio M.
Sewell, Sidney R.

Sandra L. Saffle, Navy enlisted candidate, to be appointed a permanent chief warrant officer, W–2 in the U.S. Navy, subject to qualification thereof as provided by law.

The following-named Naval Reserve officers to be appointed temporary commander in the Medical Corps of the U.S. Navy, subject to qualification therefor as provided by law:

Berdecio, Eduardo T.
Sewell, Sidney R.
Poliak, Claude R.

The following-named ex-Naval Reserve officers to be appointed permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Boland, James P.
Welch, Donald S.

The following-named civilian college graduates to be appointed permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Atkins, William M.
Wilson, Frank G.
Weber, Arthur O.

Lawrence J. Guidry, ex-U.S. Navy officer, to be appointed a permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Gene A. Llewellyn, ex-Reserve officer to be appointed a permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

The following-named civilian college graduates to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Askren, Harold A.
Stein, Natalio

Thomas A. King, Sr., ex-Reserve officer, to be appointed a permanent commander and a temporary captain for special duty (Merchant Marine, Deck) in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

Sheldon Brotman, ex-U.S. Navy officer, to be appointed a temporary commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

CORPORATION FOR PUBLIC BROADCASTING

The following-named persons to be Members of the Board of Directors of the Corporation for Public Broadcasting for terms expiring March 26, 1986:

Reuben W. Askanase, of Texas, vice Donald E. Santarelli, term expired.

Diana Lady Dougan, of Utah (reappointment).

Lillie E. Herndon, of South Carolina (reappointment).

Howard A. White, of New York (reappointment).

WITHDRAWAL

Executive nomination withdrawn from the Senate August 1, 1980:

David Bronheim, of Connecticut, to be a Member of the Board of Directors of the Inter-American Foundation for the remainder of the term expiring September 20, 1982, vice Carolyn R. Payton, resigned, which was sent to the Senate on March 20, 1980.