SENATE—*Wednesday, March 19, 1980*

(Legislative day of Thursday, January 3, 1980)

The Senate met at 12 o'clock meridian, on the expiration of the recess, and was called to order by Hon. WILLIAM PROXMIRE, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

Our Father God, help us to discern Thy way for us through these troubled times. Forgive us for lamenting our limitations and accenting our weaknesses when we ought to draw upon Thy power and proclaim the strength Thou dost impart.

May each of us pray—

"O Master, let me walk with Thee
In lowly paths of service free;
Tell me Thy secret; help me bear
The strain of toil, the fret of care.

"Teach me Thy patience; still with Thee
In closer, dearer company,
In work that keeps faith sweet and strong,
In trust that triumphs over wrong.

"In hope that sends a shining ray
Far down the future's broadening way;
In peace that only Thou canst give,
With Thee, O Master, let me live."
—WASHINGTON GLADDEN, 1879.

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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 19, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WILLIAM PROXMIRE, a Senator from the State of Wisconsin, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the consummation of the order which has been entered for the recognition of Mr. LUGAR, and the disposition of any of the time that the distinguished Republican leader has and that I have, the Chair declare a recess until 1:45 p.m., at which time there be a period for the transaction of routine morning business for not to exceed 15 minutes, and that Senators may speak therein up to 5 minutes each, at the close of which Mr. LONG be recognized to call up the conference report.

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

Mr. ROBERT C. BYRD. Mr. President, I now yield to the distinguished Senator from Wisconsin such time from my standing order as he wishes to use.

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). The Chair recognizes the Senator from Wisconsin (Mr. PROXMIRE).

Mr. PROXMIRE. Mr. President, I thank the distinguished majority leader.

INTERVIEW WITH BIOSCIENCE—THE GOLDEN FLEECE AWARD

Mr. PROXMIRE. Mr. President, the March 1980 edition of BioScience magazine, which is published by the American Institute of Biological Sciences, contains an interview with me conducted recently by Robin Marantz Henig of their staff. It contains a series of detailed questions concerning the Golden Fleece of the Month Awards and the purposes and methods behind them.

I want to commend the article to the scientific and academic community. The questions were stimulating and important and the answers clearly and accurately reflect my, and my staff's general point of view. I especially want to commend BioScience for publishing such a fair and accurate representation of my views and what I said.

Further, I hope social and physical scientists and those in the academic community generally will read it. It may assuage to some considerable degree their, I believe, unfounded fears of the Fleece of the Month and lead to a greater understanding of its purpose and intent.

I ask unanimous consent that the article be printed in the RECORD.

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

BASIC RESEARCH HAS A PLACE, SAYS THE MAN WITH THE GOLDEN FLEECE

Sen. William Proxmire (D-Wis.) is best known to most Americans for his monthly Golden Fleece Award, which he has been giving since 1975 to government projects that he considers to be a waste of taxpayers' money. A populist with a strong streak of fiscal conservatism, Proxmire has criticized 60 projects in the last 5 years, with nothing immune from the sting of his fleece. The senator's refrain when challenging federal expenditures ("What will this project do for the farmer in Iowa, or the elderly taxpayer in Milwaukee?") comes home to scientists each spring, when he conducts the Senate hearings reviewing the President's budget request for the National Science Foundation.

As chairman of the Senate appropriations subcommittee on independent agencies, Proxmire has developed a style of questioning that is probably more distressing to researchers than are his monthly awards, which many have learned to ignore. His grilling over the NSF budget request usually is a week-long affair, and the time spent in reviewing the hearing transcript and providing detailed information for the record has been known to occupy 10 to 15 high-level NSF executives for another full week—working just on questions relating to the Directorate for Biological, Behavioral, and Social Sciences, the division most carefully scrutinized. "How's that for a waste of the taxpayers' money?" wonders one NSF official.

With this rite of spring, William Proxmire has made few friends in the research establishment. The faculty senate of the University of Wisconsin censured him in 1975 for a press release he issued criticizing one professor's federally funded study of romantic love. The International Association of Professional Bureaucrats, a fanciful organization whose motto is "When in Doubt, Mumble," awarded him a 30-pound motorized metal bird, complete with real feathers and flapping wings, in honor of his "fleecified contributions to the status quo." With tongue in cheek, the group suggested to Proxmire that "perhaps we need to label all basic research 'esoteric,' and ship our scientists to other countries that still may have the ridiculous idea that expanding knowledge without immediate focus on application merits support."

More serious than these slings and arrows is an $8 million lawsuit now pending against Proxmire and his aide, Morton Schwartz. The suit, brought by Michigan research psychologist Ronald Hutchinson, charges that after Hutchinson received a Golden Fleece Award in 1975—which was announced on the Senate floor and subsequently described in a press release, newsletter, and television appearance by Proxmire—his professional reputation was damaged and he suffered a "loss of income and ability to earn income in the future." The U.S. Supreme Court ruled against Proxmire last summer, finding that his congressional immunity from libel charges was limited only to what he said on the Senate floor. The high court also ruled that Hutchinson, even though he receives federal research grants, is not a public figure in the context of libel law and may sue for defamation as a private citizen. The case has since been remanded to a lower court.

The week before President Carter submitted his 1981 budget request to Congress (a budget that included a 15.5% increase for NSF), Proxmire talked with *BioScience* about the proper role of the government in the funding of basic research. Accompanying him were three aides, whose comments in the following interview are identified by their initials: Howard Shuman (HS), Proxmire's administrative assistant; Morton Schwartz (MS), legislative assistant responsible for research into the Golden Fleece Award and for legislation concerning education; and Tom van der Voort (TV), staff director of the appropriations subcommittee on independent agencies, which oversees the budgets of NASA and NSF.

● This "bullet" symbol identifies statements or inserti ons which are not spoken by the Member on the floor.

Probably most biologists think of you only in terms of the Golden Fleece Award, and that's probably a negative image to them. Can we begin by discussing these awards, and how you make them?

PROXMIRE: Even the Golden Fleece Award should not carry a negative image for the readers of *BioScience*. We've made 60 negative Golden Fleece Awards, but we've also made some awards of merit. The criticisms have been almost entirely in the social science area, not in the natural science area. The awards of merit, on the other hand, we've made to the National Science Foundation for the study of genes, and many of the others were also in biology.

MS: Actually, all of the awards of merit were related [to biology]. One was on the whole question of the discovery of the clone and of DNA, which ties in with interferon and cancer research. NSF very early on supported the whole question of DNA—not only discovering it, which won people the Nobel Prize, but also synthesizing it, putting it together. Another biological [award] involved the first attempts to get nerve cells to regenerate. A third was tied to genetics . . . and the attempt made to change the genetics of certain plants so that legumes would directly be able to do nitrogen fixation. It's interesting that when we do give merit awards, so many of them are in the biological field. [*Note: Of the five awards of merit listed on a release from Proxmire's office called "A Sample of Golden Fleece Awards," one award was given to NSF, for its work in gene synthesis, nitrogen fixation, and nerve cell regeneration.*]

HS: Every time we criticize somebody who has done something we think is really foolish, we almost always get the answer—not from the scientific but from the academic community—that Columbus would never have discovered America without "serendipity." Obviously, there *is* a serendipity effect. It was important for Columbus to discover America, and for penicillin to be discovered from mold, and so on. But the argument is almost always used to support something that's almost indefensible, like counting the dogs, cats, and horses in Ventura County, California, or spending money to find out why people get angry on tennis courts, or to photograph throwing crepe paper out of an airplane. *Then* the argument comes up, "Ah, but there's a serendipity effect." There is a serendipity effect, but you just can't use that argument for really ridiculous, foolish, outrageous things.

For some Golden Fleece Awards, people have said that, although the title might sound silly and esoteric, the research itself is quite important.

PROXMIRE: We would never consider giving a Golden Fleece just because of the title. We go behind the title very painstakingly: We discuss it with the agency to find out the basis for it and their justification for it; in many cases we have gone to the people who've done the principal work and talked with them about it. There are all kinds of titles that sound funny and peculiar—the sex life of the fruit fly, for example—but they may be very good. Knowing about the sex life of the fruit fly is helpful, of course, in various ways—for biological pest control, for increasing the production of agricultural goods, maybe even for preventing disease of some kind. At any rate, we never would, and we never have, seized on a catchy title. Many times we've been accused of [giving] a Golden Fleece Award to some particular study that we hadn't even heard of, let alone cited as something we'd thought was wrong and given a Golden Fleece to.

A lot of that confusion might come from the fact that other people have adopted the theory behind the Golden Fleece Award—criticism of government spending for frivolous research and other items—and have taken it to the extreme. Certainly, reporters for the *National Enquirer* do that all the time.

HS: We refuse to talk to them. We go behind the titles to get even what the peer reviewers say about people. We've never made those public; we treat those confidentially. We get four peer reviews of somebody's study, and we have known many times when the peer review groups have said, "This is a bunch of junk."

This is the peer review group for the agency that later funds the project?

HS: Yes. We have had occasions when they have said—some of the peer reviewers, not all—"This is a bunch of junk." Because we know that at least one or two of the peer review people have said it's a bunch of junk, we feel confident to go ahead and give it a Fleece. Then people come back and say we're anti-intellectual: there's a serendipity effect; why are we anti-science and anti-academic. We have been in a position of not being able to use, and not even wanting to use, our strongest ammunition. We've even had situations where, in the release itself [announcing the Golden Fleece Award], we have said, "This is a very fine, marvelous researcher," because we want to keep it away from the personality.

PROXMIRE: The Golden Fleece Award hasn't been concentrated on the National Science Foundation. It hasn't been concentrated on scientific or social scientific research at all. The agency that has gotten more awards than any other has been the Defense Department. And we've given a number to the Agriculture Department that are not related to any kind of scientific research that interests your readers.

I guess NSF feels as though it's gotten its share, in any event.

PROXMIRE: Well, I have jurisdiction over the National Science Foundation, and, as I've pointed out, it's a place that has been growing very fast. We ought to have some oversight.

TV: The National Science Foundation, because it supports research that does not have to be goal-oriented, is more apt by its very nature to support research that one can question. They don't have to justify it on the basis of the fact that the product is going to be useful. All they have to do is justify it on the basis of the knowledge [it is expected to generate], that it fits into the framework of a larger body of knowledge and advances the whole process of learning and understanding the universe. For that reason, we press them hard to explain what the money is being used for. [When they say,] "Well, you can't understand this; laymen can't understand this," our answer is, "The laymen are the ones who are paying for it, and they'd better darn well be able to understand it. You'd better find a way to explain it to them in some fashion."

What do you think the proper justification is for the government's support of basic research? Is all money spent on science a waste of the taxpayer's money?

PROXMIRE: In constant dollars, federal obligations for basic research actually grew during the time that I've had jurisdiction, or some jurisdiction, over the appropriation budget in the Senate for that purpose. Between 1970 and 1979 [we had] an average compound rate in constant dollars, allowing fully for inflation, of 2.6% [growth in basic research support]. Between 1976 and 1979, in constant dollars again, [we had] an average compound rate of 8.1%. This is really a phenomenal growth in constant dollars. I don't know any other significant part of the federal government that has grown that rapidly above and beyond inflation. Six more years of the 8.1% growth rate would double the constant dollar level of federal obligation for basic research. In other words, in terms of real resources, we would put twice as much into it. Federal support for basic research is not declining; it's growing. Furthermore, in constant dollars, federal obligations for basic research are 12% above the level spent in 1967.

In your opinion, is that an appropriate way to be spending the government's money? Is that a growth that you're wholeheartedly supporting, or would you rather temper it somewhat?

PROXMIRE. I always try to criticize these things and challenge them, and it may be that at times we have gone faster than we should. But by and large I've supported my own budget, and been in support of this [growth].

Do you think there's a necessary tradeoff, in terms of federal support of scientists on the one hand, and what scientists should be doing [for society] in return on the other hand? Is there a role that they should be playing, since we do underwrite their research, in expressing to the general public what it is they're finding?

PROXMIRE. Yes. That's part of what we try to do in the committee, when they come up and we challenge their requests. We try to do it with the Golden Fleece, too, for that matter. And [the scientists] enter into the debate. These are people who, by and large, are very intelligent. They're articulate; they know their subject; they know it well, so they should be able to defend it. When you're doing basic research, you can't defend it in terms of its immediate benefits, by its very definition. But you should be able to show that basic research over the years, in the long term, has been and can be expected to be useful and productive.

I think there should be a stronger showing on the part of scientists as to what's gone wrong in this country. We spend more on basic research in this country than all the other countries in the world combined. We spend a higher proportion of our gross national product on research and development than any other country, and yet other countries are gaining on us. In Japan and Germany, productivity has been consistently increasing, while ours has been declining, or the rate of increase has been declining in absolute terms. There are lots of explanations, economic and others. But certainly with the tremendous amount we're putting into research, and the fact that we have more engineers and scientists per capita than other countries, there should be [a better] explanation for it.

Some scientists would defend what they're doing in terms of science for its own sake: If we can expand our knowledge and satisfy our curiosity, that's good in and of itself. Does that make sense to you, or would you rather see a more practical output from all this investment?

PROXMIRE. If scientists are working with their own money or their own resources, [that's] marvelous. But if they're working with the public resources, and they indicate that they have no particular objective in mind except to satisfy their own curiosity, then unless that curiosity has a universality to it, it's hard to understand why they should be given public money. All of us are curious, and there are all kinds of things we can pursue. There's an infinite universe of things we don't know. Simply to say we're satisfying our curiosity seems to me [insufficient]. There has to be some direction, some framework, some notion of how this can re-

late to significant knowledge. I don't think it's enough for them to say they're just doing it because they want to know, if it's something that doesn't seem to be significant or pertinent.

HS. There are whole departments of faculty and students at some of our major universities—large departments, with 50 or 60 people—where every single person, and every single graduate student, is on a government grant. As a person who was once in academic life, I don't think we ever really thought that that would come about.

What is a better alternative to having federal grants in part support the other business of the university?

HS. I don't know what happened 30 years ago. The university where I first went had a marvelous chemistry faculty, with Nobel prizes and all the rest, but I don't think they got any federal money. They obviously got money through the state—it was a state university—and some from industry. So I'm not at all certain that the ratio should not be something different [from what it is now]—maybe a third, a third, and a third [split among federal, state, and industry money].

TV: If these basic research funds are being used to keep faculty in place, then we should just say these are faculty support grants, not basic research grants. If the only way universities can stay in business is to get massive amounts of federal aid under the cloak of basic research, [then it is a] myth to say that this is basic research.

PROXMIRE: I have a letter here from a consulting physicist who's a Ph. D., who says, "Enclosed is a copy of a page from the current number of *Physics Today*." It shows advertisements for faculty openings. . . . Here's what one of the ads says for the Department of Physics, University of Virginia: "Ability to generate grant support is a requirement." Department of Physics, University of Virginia, another ad: "A successful applicant will be expected to initiate an independent research program and generate grant support." This guy subtitles his letter, "The Order of the Itchy Palm."

Would it be appropriate for the federal government to provide faculty support grants, to say this is what we're really paying for, not the research? Is the government in fact simply paying to keep the universities alive?

PROXMIRE: I think the fundamental purpose of the university should be teaching. Research is fine and should be encouraged, and it can be worked into teaching. I feel very strongly that support for education should be locally centered. I believe in pluralism in education. When education is dominated by a central government, even a democratic government like ours, it's dangerous. People may scoff at that, but I think it's worth preserving the independence of our universities. The more federal money you have, the less degree of independence you have. The greater the diversity of sources of support—tuition, private donations, alumni, state and local government as well as the federal government, foundations, corporations—the greater the university's ability to continue to be independent.

I think the government has gone too far. You can measure to some extent the failure of the huge increase in federal funding of education at the elementary and secondary levels through the SAT scores and the level of functional illiteracy; both have deteriorated, particularly SAT scores. So it's not getting results where you have an objective basis of measurement. . . . We ought to be very aware of and sensitive to the fact that we can destroy the very desirable pluralism and independence that now exist in education.

You also oversee the peer review system, in terms of the way NSF operates. Is that system working well, in your opinion?

PROXMIRE: I've been critical of that, because there's a tendency for it to be ingrown and self-perpetuating. You tend to get the Ivy League and the West Coast overrepresented; you don't get the Midwest, the South, and other parts of the country on the peer panels. Older universities do a lot better than younger universities. There are a lot of very, very good institutions that have grown up in the last 10 or 15 years, since [there's been] an explosion of student population and a great increase in funding at all levels. Those have been pretty much neglected. That's one of the principal objections I have. In Wisconsin some of these new institutions, [because they are not top-heavy with many tenured, often unproductive, professors], have first-class [scientists] who can contribute greatly. They're excellent people; they're young and vigorous; and they are overlooked.

What do you think is the proper role of the federal government in support of basic research?

PROXMIRE: The federal government plays a definite role, and it's an important responsibility. After all, there's no question about the relationship between scientific achievement and the strength of our country. That should certainly apply to basic research. There's tremendous support in the Congress for basic research. This can be seen in the increased generosity of the federal government in the funding of basic research, at a time when we're trying to hold down spending. I, in general, agree with that.

However, I do have a view that we should hold down spending, which I'm sure is more vigorous than that of most of my colleagues in the Senate. I wouldn't make an exception for anything—not for defense spending, not for research spending. In all areas we have to be challenging; we have to be austere and careful. Although, as I say, the government has a role—an increasing role and a very expensive role—nonetheless we shouldn't be timid about insisting that [scientists] provide reasonable results and hold the funding to something that can be fully justified.

Can NSF expect some rough going with you this year?

PROXMIRE: It'll be the same as it has been in the past. We're going to look into it carefully and do our best to make sure that they can justify what they have in their budget. They have strong support on both sides of the aisle, Republican and Democratic, and in the administration.

We want to challenge them and make them justify [their budget request]. There's a tendency among people, when they hear the word "research," to stand up and salute; they'll go along with anything. I think that's not even good for research, to have that kind of blind acceptance. It's a good idea constantly to challenge [scientists]. It means that they're likely to reexamine what they're doing, think about it, and come through with a much better job—much more for the money that the federal government invests.

NEW WAYS OF SAVING MONEY

Mr. PROXMIRE. Mr. President, the administration and Congress are very determined this month to find ways of cutting budgets, saving money, and curbing inflation. These efforts can be difficult; but an article printed in the Washington Star on March 11, 1980, has pointed out the significant progress that can be made by adoption of some new procurement policies within only one Government agency, the U.S. Air Force.

Instead of giving a "Fleece of the Month" award in January 1980, I gave an "Award of Merit" to the U.S. Air Force and, in particular, to Gen. Alton D. Slay, commander of the Air Force Systems Command. General Slay is responsible for approving about $14 billion in annual contracts awarded for various Air Force weapon systems.

The Air Force and General Slay received my "Award of Merit" for starting a tough, no-nonsense program of reducing the number of sole source contracts and increasing the number of competitive and commercial type contracts. This program also called for establishing and maintaining baseline statistics for weapon systems so that the Air Force and Congress could better determine if these systems were meeting schedules, estimated costs, and specifications. This program, in addition, encouraged contractors to improve their productivity and provide warranties on their work.

When granting the "Award of Merit," I noted that General Slay's new procurement policies, personal memoranda to his subordinates, videotaped messages to corporate executives, and high-level visits to field operations were already bearing commendable results. The number of sole source awards for new contracts was drastically declining. Also, I expressed hope that the new policies would save millions of dollars annually, reduce gold-plating and other wasteful practices, encourage better contractor performance, and improve the quality of products.

The Washington Star article indicates that this optimism was well founded. In a report issued this month, General Slay cites examples of the benefits of the new procurement policies; and he concludes:

> We're currently doing a much better job of managing the taxpayer's money than before we started these initiatives.

General Slay acknowledges that a few procurement areas must continue to be reformed so that additional progress in saving money and improving weapon systems can be made. The important point about his initiatives, however, is that they do not require mind-boggling preparation or cause needless heated controversy about increases or decreases in Government funds. Rather, they basically involve the simple application of commonsense and good old-fashioned competition; and they make maximum use of existing funds.

I hope that General Slay's initiatives can be copied elsewhere in the Federal Government. To encourage this development, I ask unanimous consent that the Washington Star article and my press release about these initiatives be printed in the RECORD.

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

AIR FORCE'S COST-CUTTING YIELDS PROFITS

(By Thomas Love)

Last May, Gen. Alton D. Slay told Air Force contractors that he was adopting tough new policies aimed at improving productivity and reducing costs.

And in a report this month, the commander of the Air Force Systems Command at Andrews Air Force Base told the contractors that the plan worked.

The general said the command is getting more for its $14 billion-plus budget, and many contractors are also showing a better profit.

"We're currently doing a much better job of managing the taxpayers' money than before we started these initiatives," he said.

The major improvement in the command's procurement record in the past year has been an increase in competition among would-be suppliers, Slay said.

The largest stumbling block to even more efficient contracting policies is a series of "bureaucratic rules and red tape" restricting the use of multi-year contracts, the general complained.

"Dribbling our requirements out one year at a time as we do now makes long-range planning difficult—difficult for you and difficult for us—and it also costs the taxpayer some money," Slay wrote in his report.

"I am personally sponsoring a combined Defense Acquisition Regulation change and legislative package that's going to allow, if it gets through, systems acquisition through multi-year contracts," he said.

"I'm going to keep plugging away at this dragon until I either make a dent in his hide or he eats me up. And right now I won't guarantee which will happen," he continued.

The number of contracts based on competitive bidding has more than doubled from 15 percent of all new contract dollars in 1978 to 34 percent in 1979.

About half of the remaining sole-source contract dollars are subject to only limited control by the command, Slay said. The rest go to such areas as mandated minority awards, unsolicited proposals, educational institutions and directed procurements.

"I want to repeat something I've said many times," Slay told the contractors. "We're not trying to compete everything—just everything where we believe competition will yield a tangible benefit to the taxpayer."

Even with the increase in competitive bidding, a larger percentage of unsolicited (and non-competitive) proposals have been accepted. In 1978, 53 percent were approved. In 1970 the figure was up to 77 percent.

One remaining problem, the general said, is that often the Air Force doesn't have enough information on the equipment it has bought to request competitive contracts for modifications.

As a result, he said, he is demanding more information in original contracts.

In 1978, firm, fixed price contracts accounted for 15 percent of the new contract dollars spent, Slay said. In 1979, this was up to 48 percent.

On the other side of the coin during that period, cost reimbursement contracts dropped from 47 percent of the total to 20 percent.

Insisting that he's proven "that I'm really not a bomb-throwing anarchist," Slay told the contractors: "We do not specify firm fixed-price contracts for risky development efforts or for any other effort where cost visibility and program stability have not been established."

Only about 9 percent of research and development money is spent on firm fixed-price contracts, he said, while 80 percent is on a "cost plus" basis.

Since the command has begun to use more competitive bidding and more firm fixed-price contracts, contractor profits had gone up, he said, noting that the command's negotiated profit rate has gone from an average of 10.7 percent to 12.1 percent.

PRESS RELEASE

Sen. William Proxmire (D-Wis.) Thursday announced that "Instead of a Fleece of the Month award for January, I am giving an 'Award of Merit' to the United States Air Force and in particular General Alton D. Slay, Commander of USAF Systems Command. The Air Force and General Slay receive my commendation for initiating a tough, no nonsense program of reducing sole source contracts and replacing them with good old fashioned American competition which could save millions annually. In addition it will reduce goldplating and other unnecessary wasteful practices."

Proxmire is a member of the Defense Appropriations Subcommittee and is Chairman of the Subcommittee on Priorities and Economy in Government of the Joint Economic Committee. He has given 60 Golden Fleece awards since March 1975 and eight merit awards.

"Since the Air Force has borne the brunt of several of my 'Fleece awards,' most notably the study of whether or not male officers should carry umbrellas, it is only fitting that they receive praise and public appreciation where it is merited.

"General Slay is responsible for approving $14 billion in annual contracts awarded by the Air Force for various weapon systems. In order to improve contracting practices he has insisted on a number of reforms which will benefit our national security and the pocketbooks of our taxpayers. Here is what his program calls for:

Insistence of competitive contracting rather than sole source.

Using more commercial type contracting procedures. The techniques used commercially often are more successful in holding down costs than the normal government contracting devices.

Establishing and holding to baseline statistics of each weapon system so that the Air Force and Congress can assess if the program is on time, at cost and up to specifications.

Encouragement of productivity enhancement.

Asking that contractors provide warranties on their work.

"The General pays more than lip service to these concepts. For example, when the expected results in obtaining more competitive contracting did not materialize in early 1979, he fired off a hot message to his commanders (attached) and sent a high ranking general into the field to insist on improvements.

"He got results. After the pointed message and high level visits, the percentage of sole source contracts declined and competitive awards went up. Throughout the Defense Department the percentage of competitive contract awards is a pathetic 27 percent. The Air Force Systems Command is averaging about 45 percent on new awards—far above the average. Both figures, however, are much lower than they should be. Sole source awards should always be the little used exception rather than the rule.

"While it is statistically impossible to place a dollar savings to the taxpayer on this shift to competition from sole source contracting, it is generally agreed that there is a 10–20 percent differential in favor of competition. Thus a significant shift to competition could result in savings in the tens of millions on a $14 billion annual contract total. Competition also usually increases management attention, provides better terms and makes it easier to establish warranty programs.

"At a time when the Congress is insisting on a mindless five percentage real growth increase in defense spending rather than looking at specific programs and funding by military priorities, the Air Force commitment to program efficiency and contract frugality is most welcome.

"General Slay has also sought to educate the defense contracting community as to their responsibility in participating in and living by the new standards he has issued. In a personal videotaped message to corporate executives, General Slay argued that weapons costs were higher than necessary; that there has been too much goldplating; that defense contractors sometimes promise more than they can deliver. He told his audience that 'we're going to become a very, very demanding customer.'

"At the same time he asked for the cooperation and assistance of defense contractors in increasing competition, improving productivity, proposing less expensive weapons; adhering to baseline costs; using standardized equipment for cost savings; finding ways to guarantee product performance and observing high standards when in a sole source procurement position. He noted 'We'll remember, and the public will note, the degree to which you've cooperated and acted responsibly when operating as a sole source supplier.'

"In lieu of a 'Fleece award' this month I give a tip of the hat to the Air Force and General Slay's command for service in the public interest."

A photocopy of one of General Slay's messages to the field commanders is attached as it appeared on page 59 of the October issue of Armed Forces Journal. The comment preceding the message also comes from Armed Forces Journal.

STRONG LETTER FOLLOWS?

The TWX which follows has got to be a classic, sent by Air Force Systems Commander General Alton Slay on May 24th to the Commander of Air Force Systems Command, Lt. Gen. Larry Skantze. AFJ asked General Slay's public affairs office for copies of similar TWXs he sent on the same subject to the commanders of AFSC's Electronics System Division (which we're told was even more strongly worded) and of the Space and Missile Systems Organization. None of the TWXs could be located, until General Slay took them out of his personal safe. He has, however, declined to make them available on the basis that they are "personal" messages exempt from release under the Freedom of Information Act. AFJ is considering taking the issue to court to "test" General Slay's interesting theory. In the meantime, we thought Journal readers should be able to read for themselves what a senior Air Force commander sounds like when he's really mad.

COMPETITION

I have just reviewed policy letter 22 implementation statistics for the first two

quarters of FY 79. The bottom line is that I am high disappointed. While the statistics overall are somewhat of a mixed bag, the area of greatest shortfall and concern is sole source versus competitive awards. Both numbers and dollar value. During the first half of FY 79; sole source actions are up and the competitive dollars are down as compared to FY 79. That wasn't the idea behind policy letter 22; the reverse was supposed to happen. I am forced to conclude, since I know that you personally support my acquisition policies, that you don't have control of the first half of FY 79 must be reversed significantly and immediately. This will require your personal detailed attention direction. And above all, monitoring of your contracts people and your program directors managers.

Gen. Stansberry will visit your activity in the near future and go over the statistics with you. I have asked him to review in detail the sole source actions you have taken this year and to go over with you all contracts you propose to award for the remainder of the year. I want to see progress now and I am relying on you to make this progress happen; if I don't see improving trends very soon, I will give you quotas. I don't want to do this since it might precipitate some unwise actions; but quotas are the norm dealing with mandatory "goals". If you want to avoid this, you'll get your people "with the program" in fact as well as in rhetoric. Please be confident that I do intend to make significant progress toward competition one way or the other by the end of this fiscal year.

THE GENOCIDE CONVENTION, WORDS MUST FOLLOW ACTIONS

Mr. PROXMIRE. Mr. President, for 13 years I have called for ratification of the Genocide Convention. Almost every day that the Senate has been in session I have been calling for the Senate to act on this measure.

For 31 years our failure to act has puzzled our allies, heartened our enemies, and perplexed our Presidents. Every President from Harry Truman to date, including President Carter, of course, and President Nixon and President Ford, have all asked for the ratification of the Genocide Convention. Yet we have refused to do so, although it has been ratified by virtually every other major country in the world, and although, of course, it expresses the affirmation of life and the opposition to planned, premeditated destruction of human beings, as Hitler did to the Jews in World War II.

Mr. President, I think the time has come for us to act.

Senate inaction on this very basic treaty embarrasses our diplomats and compromises our moral leadership. Let me cite an example.

During the recent United Nations Human Rights Commission debate on the international covenants on human rights, the Soviet bloc openly criticized our inaction. Indirectly, the United Kingdom also voiced its concern that we have not ratified these covenants.

U.S. representative Jerry Shestack responded to these criticisms that:

> Principle without adherence to formality is more meaningful than adherence to formality without fidelity to principle. Unfortunately, there are too many who follow a policy of formal ratification but abandonment in practice. In the case of the United States, we do show fidelity to the principles of the covenants even if for now we are lacking in the formalities.

But adherence alone, no matter how thorough or scrupulous, is simply not enough. Formal commitment matters. We should not allow our detractors to criticize us on matters of form when they cannot do so on the basis of substance.

Inaction denies us a moral voice and provides our enemies a club to use against us, a club they wield with great relish. Why should our diplomats apologize for an exemplary human rights record? They apologize simply because we have not given formal ratification to the principles that govern our actions. I tell you, Mr. President, there is no reason why we should not ratify those principles.

We can stifle this criticism of our lack of formal commitment by ratifying the Genocide Convention. In calling for ratification I do not ask the Senate to compromise constitutional or moral ideals. The American Bar Association has reversed its earlier opposition to the convention and voted overwhelmingly to support it. Every President since Harry Truman has called for Senate consent to ratification. Our own Foreign Relations Committee has reported the convention favorably four separate times. What more evidence do we need? We have all we need. We must act.

In his closing statement Shestack assured the Human Rights Commission that until the United States ratifies the covenants "our actions will be as if we had ratified them." Actions do speak louder than words, but when our critics choose to ignore them, they are simply not enough.

The leap from formal ratification to actual adherence can be tremendous. Ironically, all I ask is that the Senate take the much smaller step from actual adherence to formal ratification. We are acting already; let us add words to our action. Nothing stands in our way. Eighty-three nations have taken this step already. Why do we not? I strongly urge my colleagues to ratify the Genocide Convention now.

Mr. President, I thank my good friend, the majority leader.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. FORD). The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I have no other requests for time on my side. I yield my remaining time to the distinguished Republican leader for his use.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I thank the majority leader for his kindness in yielding the balance of his time under the standing order.

We have a special order this morning on behalf of the distinguished Senator from Indiana. But, in addition to that, I have a request this morning from the Senator from California for time.

So it is most helpful to me to have that time so we can accommodate a full 15-minute request for the Senator from California.

I would like to reserve 2 minutes of my time under the combined times of the majority and minority leaders. I yield the balance of that time now to the distinguished Senator from California.

RECOGNITION OF SENATOR HAYAKAWA

The PRESIDING OFFICER. The Senator from California is recognized for 10 minutes.

S. 2437—THE AMERICAN SOVEREIGNTY PROTECTION ACT

Mr. HAYAKAWA. Mr. President, today marks the 137th day of captivity for the hostages in the American Embassy in Tehran, and their release appears no closer than it was on November 4, 1979. While it may be difficult to visualize that state of captivity, I think it is fitting that we try to do so.

Although we have actually been able to learn very little about what a day in the life of a hostage is really like, we know that it is geared toward psychological disintegration of captives. One hostage wrote months ago:

> We are being kept in semidarkened rooms; our hands are tied day and night; bright lights are kept burning all night and because of the constant noise it is almost impossible to sleep.

Another said:

> Free us from this terrible situation.

During the first few weeks of their captivity, as many as a million Iranians demonstrated outside our Embassy. We can only imagine the terror those roaring crowds must have stirred in the people inside. We saw these demonstrations on our televisions night after night. We watched the Iranians burn our flag and effigies of our President from the comfort of our homes. The television camera became vitally important to the demonstrators. They somehow thought their frenzy would arouse sympathy for their cause, and the staging of their guerrilla theater became more and more orchestrated.

I finally wrote the presidents of all three television networks asking that they stop covering these demonstrations. I felt that without television cameras the demonstrations would stop. The responses I received ranged from polite to sarcastic—but in essence they all said the demonstrations were news, and the American people should not be deprived from seeing the news. So night after night, we continued to watch our own degradation, until the Iranians finally figured out that their cause was not being helped by the viewing and they kicked the newsmen out for a time.

Now the demonstrations are only sporadic, but inside the Embassy gates even the quiet must be ominous. Time must pass very slowly for the captives, and each day their feelings of helplessness and hopelessness must be growing.

Recent films of the hostages were closely scrutinized by American doctors who said their listlessness and depression were obvious. The psychological damage grows with each passing day.

If and when the hostages are finally released, they will never be the same people they were when this all began. They will be Marines, and diplomats and clerks and technicians but they and their families will carry the burden of their captivity in the years to come. And the time will come when we must account to them for our failure to come to their rescue, and for the very fact that they were taken captive in the first place.

I can picture a night in the future when the President of the United States invites them to a welcome home dinner at the White House. President Carter will tell them that we did everything possible to secure their release—day after day, week after week, month after month. He will talk of the long nights he spent in the White House Situation Room trying to devise a plan with his top advisers. The President can talk about how he became a self-appointed captive in the White House—for their sake—even refusing to participate in campaign events for his own reelection. He can tell them he refused to light up the national Christmas tree. And he can talk of the outpouring of concern of the American people—how we tied yellow ribbons to trees all over the city of Washington—how we rang the church bells—how we remembered them in our prayers. He will most assuredly describe our diplomatic initiatives to secure their release—the months of skillful negotiations with the nonresponsive Iranians—and how, in desperation, we finally dumped the whole mess in the lap of the United Nations, only to see them fail. But we never gave up hope.

As they sit around dinner tables in the historic elegance of the White House, the former hostages are certain to feel a profound gratitude for the efforts of their President and their country to secure their release. Then they will go home and they will begin to realize that they are not the same—that they will never be the same. They will begin to ask questions—questions that this Government will have to answer. How could this country—this strong, proud Nation—allow a handful of radicals to take us, and hold us, they will ask. And assuming the release of the hostages will only come at the pleasure of Khomeini and his boys, the hostages will ask why we were not able to secure their release any earlier. And what will we answer?

We can tell them, of course, that we are the good guys—that it is our sacred duty to set a good example for the rest of the world. We do everything by the book, and in the long run, it all works out. After all, we can tell them. "You were finally released—after only 200 or 300 or 500 days; and no one was actually hurt—much."

If and when the release of the hostages ever does take place—that is, if Khomeini decides it is no longer in their interest to keep them—will they be able to accept our explanations? And just as importantly, how will the rest of the world view our actions during these long days of captivity?

One of the television networks does a program every evening called "America Held Hostage." There is a chilling truth to that title. For what is being held in Iran goes beyond the 53 people. This hostage situation has a very deep significance for the future of our country—for your future and mine. Our vulnerability has been exposed as we stand helpless in the face of a raggle-taggle band of terrorists led by a semi-insane so-called "holy man." We have sent a clear message to the rest of the world—a frightening message indeed—that we are a nation full of fear; not a nation to be feared; that we can be brought to our knees easily and without a shot being fired.

While we appeal to the World Court and the United Nations, while we tie yellow ribbons and ring church bells, 53 people rot in their prison—a prison that we paid for and built—a prison that used to fly the American flag.

But we are the good guys—the guys in the white hats. While our own people are being held in our own Embassy, we fulfill our obligations with determination. If you drive by the Iranian Embassy in Washington, you will see more police than around the White House. They are protecting the people inside—the Iranian diplomats—as is our duty under international law. Never mind that they represent those who have violated the same international law. We have even allowed Iranian nationals to demonstrate for Khomeini's cause in the streets of our own cities—to burn flags and shout insults. Our freedoms guaranteed them this right—the same right as any American citizen, and those laws must be abided by.

And when we do issue some halfhearted orders, the Iranians casually ignore them. We told the Iranians to cut down their Embassy staff here to a skeleton force. Of the 226 Iranian diplomats who should have left the country under that order, fewer than 25 percent have done so. The rest are still here—somewhere. And when we told all Iranian students to register with immigration officials, only 700 of the estimated 10,000 in this country did so. The rest are still here—somewhere. From November 14 to March 9 another 11,079 Iranian entered the United States, including 2,306 students; 467 on business visas; 5,641 with visitor's visas; 1,789 permanent resident aliens and 876 others.

I say these actions are not those of compassion, but of idiocy.

What, then, are we to do—what are we to do to bring about the release of our people and to show the world that we are a power to reckon with? The President seems to have completely run out of ideas. Perhaps he should ask the Russians what they would do, but of course it would be impossible to imagine any group foolish enough to tackle the Soviets. They know they would find themselves destroyed in short order. We certainly do not want to follow the lead of Soviet brutality. If faced with similar circumstances, the Russians would certainly put first the matter of their own image, their own power, without concern for the people being held. Our first concern should be for the hostages and their safety. Our second concern should be for our future. If we do not take firm action, we are certain to be held hostage again, and again.

We must ask ourselves this question: How can we influence these terrorists to let our people go? We must find an answer, and find it quickly. We must gain some bargaining power in order to free those 53 people and in order to deter those who have learned the lesson of Iran.

Our Founding Fathers have given us a tool that should be explored—it was written in the law in 1798 and it need only be invoked.

Under title 50 of the United States Code, in the section dealing with War and National Defense, there is a chapter entitled "Alien Enemies." That section reads:

> Whenever there is a declared war between the United States or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies.

The law says that such "enemy aliens" may be detained and eventually deported. This law spells out very clearly that aliens, and not naturalized U.S. citizens, may be subject to its provisions.

In order to invoke the enemy alien provisions of the law in the case of Iran, we must clarify U.S. territory to include our Embassies abroad. The legislation I am proposing does exactly that. It would spell out that the phrase now in the law "any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States by a foreign nation or government" includes:

First, the seizure or holding by a foreign nation or government of, or the aiding or abetting by a foreign nation or government of any individual or group in seizing or holding, the premises of a diplomatic mission of the United States; or

Second, the seizing or holding under paragraph (1) of such premises which also involves the taking of any diplomatic agent of the United States as a hostage.

If this kind of legislation is enacted, the President would have a number of options at his disposal. He may, for instance, detain Iranian diplomats as well as an unspecified number of Iranian citizens residing in this country, in order to expel them eventually against the release of the hostages. As an initial move, he could simply decide to restrict the

movement of Iranian citizens and/or require their regular reporting to police stations. Needless to say, a mass detainment, although permitted by law, would not be one of the suggested measures.

I fully realize this is a strong measure. But what other options have been put forth; what other proposals have been made would provide us with bargaining chips? We are dealing here with people who do not recognize diplomatic initiatives, world opinion, international law, or yellow ribbons. We are dealing with terrorists—and we are allowing them to terrorize us without retaliation. I do not agree with proposals that call for bombing of Iranian oilfields or other military actions. I believe such actions would endanger the lives of the very people we want to free. But neither can I believe that the kind of inaction we are now engaged in will lead to a quick resolution of this matter.

There is, of course, no guarantee that this proposal, if enacted, will bring our people home. But I believe the time has come for us to stick our necks out—to take some chances—to do something. If we find such a proposal repugnant, if we are beset by guilt at the thought of this kind of action, will we be able to offer that explanation to the families and the loved ones of those who are being held in Iran. I believe we should face them with guilt and shame if we do less. I have said repeatedly that I will gladly put this proposal aside if a better one is offered. If anyone has a better idea on how to get our hostages released, I shall be glad to withdraw mine. But we have no time to waste. Americans are undergoing psychological disintegration—and no hope for their release is in sight. We must act now.

Meanwhile, Mr. President, I wish to introduce for early consideration a bill to amend section 2057 of the revised statutes to define further the circumstances under which certain aliens within the United States may be treated as alien enemies. The title of the act will be the American Sovereignty Protection Act.

I thank the Chair.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. HAYAKAWA. Mr. President, I ask unanimous consent to have printed in the RECORD a document from the American Law Division of the Congressional Research of the Library of Congress, entitled "Proposal to Amend Alien Enemy Act to Effectively Define Warlike Acts," dated March 17, 1980. It gives a full analysis of the Alien Enemies Act and the consequences of the proposed amendments.

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

CONGRESSIONAL RESEARCH SERVICE,
March 17, 1980.

To Honorable S. I. Hayakawa.
From American Law Division.
Subject Proposal to Amend Alien Enemy Act to Effectively Define War-Like Acts.

Reference is made to your inquiry of March 14, 1980 requesting information on the above matter. Specifically, you ask for an opinion regarding a proposed draft of legislation that would amend the Alien Enemy Act, 50 U.S.C.A. §§ 21–24, to define as a predatory act against the United States the seizure of a diplomatic mission of the United States or the seizure of such premises together with the taking of any diplomatic agent of the United States as a hostage.

The Alien Enemy Act which your proposal would amend has "remained the law of the land, virtually unchanged since 1798." *Ludecke* v. *Watkins*, 335 U.S. 160, 162 (1948). The Act delegates to the President extraordinary power, in the event of war or invasion or predatory incursion against the United States by a foreign nation or government, to restrain or deport unnaturalized aliens fourteen years or older who are subjects of such hostile nation and government. The President is required to proclaim the event that requires the invocation of this grant of power (i.e., declared war or invasion or predatory intrusion, attempted or threatened, against the territory of the United States) and, thereafter, he or his delegate may issue regulations "which are found necessary in the premises and for the public safety." 50 U.S.C.A. § 21. In the words of one Court, "unreviewable power in the President to restrain, and to provide for the removal of aliens in time of war is the essence of the Act. *Citizens Protective League* v. *Clark*. 155 F.2d 290, 294 (D.C. Cir. 1946).

The Act applies both in cases of war de jure and war de facto. The authority given by it [the Act] to the President is not limited to situations where war is declared but includes situations where "any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government. . . . There is not the slightest indication in the statute that the exercise of power is limited to times of active hostilities or that dangers from foreign nationals of an enemy were regarded as terminated until peace was declared." *United States* v. *Watkins*, 163 F.2d 140, 142 (2d Cir. 1947).

As indicated, your draft legislation proposes to define "any invasion or predatory incursion, etc.," to include (presumable among other things) two alternative, specific activities: first, seizure by a foreign nation or government of the premises of a diplomatic mission of the United States or complicity by such nation or government with an individual or group in such an undertaking; second, seizure of such premises together with the taking of any diplomatic agent of the United States as a hostage.

The balance of the Act which would be unaffected by your proposal relates to the time available to an alien subject to deportation to settle his or her affairs, court jurisdiction, and the duties of federal marshals. 50 U.S.C.A. §§ 22, 23, 24.

An alien who is subject to restraint or deportation under the Act may, so long as he or she is not charged with actual hostility or crime against the public safety, be accorded the full time allowed by treaty between the United States and foreign nation or government, to recover, dispose and remove his or her goods and effects and depart. In the absence of treaty stipulation, the President may fix such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality. 50 U.S.C.A. § 22.

Federal courts having criminal jurisdiction are empowered to apprehend an alien subject to a presidential proclamation issued under the authority of the Act. The courts after hearing an examination may order the removal of an alien or his or her detention or take any other such action to secure the alien conformably to the proclamation or regulations issued to implement the Act. 50 U.S.C.A. § 23. The authority of federal courts having criminal jurisdiction to order removal of alien enemies under this section is alternative to the power given the President by section 21 to provide for removal of such aliens and does not limit the jurisdiction to order such removal to the courts. *United States ex rel. Schlueter* v. *Watkins*, 67 F. Supp. 534 (D.C. N.Y. 1946).

The federal marshal of the district in which an alien is apprehended may execute a removal order. In effecting such removal, the marshal "shall have the warrant of the President, or of the courts, judge, or justices ordering the removal, 50 U.S.C.A. § 24. The marshals of the several districts, in enforcing the regulations established by the President in relation to alien enemies, could act without the aid of judicial authority. *Lockington* v. *Smith*, C.C.A. Pa. 1817, Fed. Cas. No. 8, 448. See also *United States ex rel. Schlueter* v. *Watkins, supra.*

The Alien Enemy Act is an exercise of power conferred upon the Federal Government and a grant of power by the Congress to the President. The first constitutional controversy to beset the new republic centered upon the powers of the new Federal Government over aliens. As the following excerpt from *Citizens Protective League* v. *Clark, supra,* at 293 shows, while the Alien and Sedition Acts were the subject of widespread debate, no one challenged the basic validity of the Alien Enemy Act. In 1979, the 95th Congress passed three acts in rapid succession, "An Act concerning Aliens", approved June 25, 1979, "An Act respecting Alien Enemies", approved July 6, 1798 [8] and "An Act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States' ", approved July 14, 1798.[9] The first and last were the Alien and Sedition Acts, vigorously attacked in Congress and by the Virginia and Kentucky Resolutions as unconstitutional. But the members of Congress who vigorously fought the Alien Act saw no objection to the Alien Enemy Act.[10] In fact, Albert Gallatin, who led that opposition, was emphatic in distinguishing between the two bills and in affirming the constitutional power of Congress over alien enemies as part of the power to declare war.[11] James Madison was the author of the Virginia Resolutions, and in his report to the Virginia House of Delegates the ensuing year after the deluge of controversy, he carefully and with some tartness asserted a distinction between alien members of a hostile nation and alien members of a friendly nation, disavowed any relation of the Resolutions to alien enemies, and declared, "With respect to alien enemies, no doubt has been intimated as to the federal authority over them; the Constitution having expressly delegated to Congress the power to declare war against any nation, and of course to treat it and all its members as enemies." [12] Thomas Jefferson wrote the Kentucky Resolutions, and he was meticulous in identifying the Act under attack as the Alien Act "which assumes power over alien friends".[13] It is certain that in the white light which beat about the subject in 1798, if there had been the slightest question in the minds of the authors of the Constitution or their contemporaries concerning the constitutionality of the Alien Enemy Act, it would have appeared. None did.

"The act concerning alien enemies, which confers on the president very great discretionary powers respecting their persons," Marshal, C.J., in *Brown* v. *United States*, 8 Cronch (U.S.) 110, 126, 3 L ed 504, 510, "appears to me to be as unlimited as the legislature could make it." Washington, J., in *Lockington* v. *Smith*, Pet CC 466 at p. 470, F Cas No 8448, Quoted in *Ludecke* v. *Watkins, supra*, at 164.

The courts, in an unbroken line of cases from *Fries* case, CCD Pa. 1799, at 826, 830

Footnotes at end of article.

et seq., 9 F Cas No 5, 126, to 1955, *supra*, have asserted or assumed the validity of the Act and based numerous decision upon the assumption. The judicial view has been without dissent.

At common law "alien enemies have no rights, no privileges, unless by the kings special favour, during time of war." 1 Blackstone 372, 373. With respect to the power of the Federal Government in this regard, one court has observed as follows:

If the power to remove alien enemies from its territory in time of war were not included in the powers granted the Federal Government by the Constitution, amendment to add that power would have to be made. Under no concept of government could a nation be held powerless to rid itself of enemies within its borders in time of war, whether the individuals concerned be actually hostile or merely potentially so because of their allegiance.

Unreviewable power in the President to restrain, and to provide for the removal of, alien enemies in time of war is the essence of the Act. The comment of the authorities we have mentioned has been directed to that feature. Chief Justice Marshall said, "The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself." [18] However jealously we may guard the civil rights of all residents within our borders, neither those considerations nor the "dictates of humanity and national hospitality" [19] can be permitted to impinge upon the overriding necessities of the power to wage war successfully.[20] The President not only has the power, under the broad grants by the Congress, but has the solemn responsibility to make certain that the conduct of war is not only unimpeded but suffers from no threat of impediment. "Where, as they did here, the conditions call for the exercise of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of war-making, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs." [21] As a practical matter, it is inconceivable that before an alien enemy could be removed from the territory of this country in time of war, the President should be compelled to spread upon the public record in a judicial proceeding the method by which the Government may detect enemy activity within our borders and the sources of the information upon which it apprehends individual enemies. No constitutional principle is violated by the lodgment in the President of the power to remove alien enemies without resort or recourse to the courts.

The one question, whether the individual involved is or is not an alien enemy, is admitted by the Attorney General to be open to judicial determination. Except those who assert the wrongful revocation of their American citizenship, all appellants admit that they are German nationals and thus alien enemies, and so their cases do not involve that determination. For purposes of these actions, the other appellants are also alien enemies, because, as we have pointed out, the revocation of their naturalization is not open in these proceedings.

The time allowed for consideration of your request does not allow us to examine any and all problems raised by it. Also, in the absence of implementing regulations, any analysis perforce is limited to the Act, as amended by your proposal, on its face.

As noted, the Act has been uniformly sustained by the courts as a valid exercise of the war powers of the Federal Government. In waging war, the Federal Government is not limited to congressionally declared wars. Congress can authorize all manner of hostilities less than full fledged declared wars. *Bus* v. *Tingy*, 4 Dall. (U.S.) 37, 1800. Your proposal would define two activities that would constitute effective acts of war that would permit detention or deportation of unnaturalized persons who owe allegiance to the foreign nation or government that engages in the denounced behavior. While such process may raise questions with respect to its implications on the peaceful objects of the United Nations Charter and other international legal documents, each nation in the past has reserved to itself the judgment regarding what acts constitute acts of war. This power inheres in sovereignty which the United States obtained at the time of separation from England, not confined by the Constitution. See *United States* v. *Curtiss-Wright Export Corp.*, 299 M.S. 304 (1936). As stated above, "under no concept of government could a nation be held powerless to rid itself of enemies within its borders in time of war, whether the individuals concerned be actually hostile or merely potentially so because of their allegiance." *Citizens Protective League* v. *Clark, supra*, at 294. Congress' war power is bolstered by its power over immigration which affords the Federal Government to take steps forbidden to the states.

If your proposed bill raises a problem it would be in the area of procedural due process and the unreviewable power of the President to restrain or deport. Regulations issued in the past to implement the act have generally authorized a Board hearing and review. Court review has been limited to questions of interpretation and constitutionality. *Ludecke* v. *Watkins, supra*, at 163–164. In that case the Court, in part, split over the amount or review. Although the majority held that there was no review of the Attorney General findings, the law in this regard has developed to some extent along the lines of dissenting Justices Douglas, Murphy and Rutledge; that is, that for purposes of review on habeas corpus, the deportation of an alien enemy is no different than any other deportation proceedings, and is subject to the same due process requirements of reasonable notice and fair hearing, absence of which calls for judicial relief. See Senate Document No. 96–26 for recent due process cases.

The Alien Enemy Act applies, as noted, in case of war or any invasion or predatory incursion against the territory of the United States. Strictly speaking, diplomatic premises are not territory of the United States. See Whitesion, 7 Digest of International Law 355, 356, 379.

FOOTNOTES

[8] Stat. 577, 50 U.S.C.A. § 21 et seq.

[9] 1 Stat. 596.

[10] 8 Annals of Cong. 2035 (5th Cong., 1798).

[11] Id. at 1980.

[12] Madison's Report, 4 Elliot's Deb. 546, 554 (1800).

[13] Kentucky Resolutions of 1798 and 1799, 4 Elliot's Deb. 540, 541.

[18] Brown v. United States, supra. Note 16, 8 Cranch at page 123, 3 L. Ed. 504.

[19] Alien Enemy Act, as passed in 1798, 1 Stat. 577.

[20] Kiyoshi Hirabayashi v. United States, 1943, 320 U.S. 81, 93, 63 S.Ct. 1375, 1382, 87 L.Ed. 1774.

[21] Id.

RECOGNITION OF SENATOR LUGAR

The PRESIDING OFFICER. Under the previous order, the Senator from Indiana (Mr. LUGAR) is recognized for not to exceed 15 minutes.

THE HOSTAGES

Mr. LUGAR. Mr. President, as a member of the Foreign Relations Committee, I have respected the request of President Carter for public support of his efforts to free the American hostages in Iran. I have offered my best advice to him through conversation with the Secretary of State or his associates as they appeared in closed session before the Foreign Relations Committee or smaller groups.

As the hostages endure their 137th day in captivity, I am now determined to make certain that we will have open discussion of the President's policies. Not only has the President failed to obtain the release of the hostages and played out the string of potential favorable responses, but his basic misunderstanding of the situation in Iran may lead to humiliating actions by the United States which will not free the hostages but will lead to additional foreign policy and national security defeats.

This is an appropriate time for those of us who bear even a small portion of continuing responsibility for the foreign policy of this country to speak out constructively.

The hostages have not been released because those holding authority in Iran have found it advantageous to hold them longer. The hostages have been extraordinarily useful to the Ayatollah Khomeini and to his closest associates. From November 1979 onward, as the ayatollah faced a national referendum legitimatizing his clerical regime, and through a succession of political developments in which the ayatollah has called for street action and militant popular support, the hostages have been the major glue-factor which held the revolutionary coalition together.

It is conceivable that so-called secular politicians in Iran such as newly elected President Bani-Sadr would prefer to have the hostage problem behind them. Even more importantly, President Bani-Sadr would like to halt the internal problem of militants who successfully defy civil authority and provide a strong emotional basis for the ayatollah's clerical regime through an unending stream of hatred directed at the United States.

But President Carter should not have been surprised that President Bani-Sadr could not obtain even an entry to the U.S. Embassy compound for the traveling United Nations Commission. The ayatollah and his followers are still in the process of consolidating their authority through parliamentary elections and the hostages would appear to them, on balance, to be helpful in many ways during weeks to come.

Furthermore, there are few apparent downside risks for Iran's spiritual or secular regimes. The United States maintains steady advice to Iran to watch the Soviet menace, including potential physical invasion or substantial internal subversion which could dismember and repartition the country. The United States pronounces the importance of retaining Iran's territorial integrity even while Iran, apparently much less wor-

ried than we are, attempts to humiliate this country every day. Undaunted, we continue to point out how hopeful we are that post-hostage Iran can become friendly, and perhaps more aware of how much we could do to insure that Iran continues to exist in a hostile arena. Iranians have been unimpressed with any presumed U.S. strength.

Furthermore, we have tried diligently not to antagonize Iran through tightening of economic pressures. Even during these past few days, the President has emphasized the poverty of our position by admitting that the only circumstances which could lead to freedom for the hostages are good fortune in unexpected results of Iran's parliamentary elections. For some time, the President has simply been hoping for good luck and this country has hoped for good luck along with him. Now we must try to construct circumstances that make good fortune much more probable and that repair a portion of the damage to our national credibility.

I will state today on the floor of the Senate what I have stated privately in closed session to Secretary Vance and his associates in the early days of the crisis.

It is my view that, through its actions, the Government of Iran, in effect, declared war on the United States of America. The Government of Iran has not only endorsed the kidnaping of American diplomats, the seizure and occupation of the American Embassy, and the defiance of centuries of diplomatic law and current diplomatic censure, but has, in fact, used this aggression abundantly for further internal political consolidation.

The United States has, in effect, been in a condition of war with Iran for 137 days. We must act on the basis of reality and not wishful thinking. With the possible exception of the freeze on Iranian Government financial assets in American banks, the Carter administration has given the Iranian Government, through delay, policy zigzags, and ineffective followthrough, substantial reasons to persist in the policy of holding our hostages.

Despite Presidential and public anger over hostile Iranian student demonstrations in this country, fewer than 35 militant students have been deported, with the vast majority showing general indifference to any threats of registration or deportation. The President's orders that all but 35 Iranian diplomats must leave has led to the departure of only 50 of 225. One hundred and twenty cannot be located, thus demonstrating the incredible lack of either urgency or attention which our Government pays to even halfhearted measures to free our hostages.

It is difficult to determine the status of any of our economic sanction efforts. Recently released figures indicate that more Iranian oil came into this country in January 1980 than in January 1979, despite President Carter's declaration on November 12 that we would not import Iranian oil. The President made no effort to give immediate force to his proclamation thus permitting oil en route and transshipments to continue.

After elaborate explanation of humanitarian reasons why the Shah was admitted to a New York hospital to begin with, a Presidential aide was employed to spirit the Shah through Texas to Panama. The President's humanitarian concerns seem to have diminished as the Shah faces additional surgery, presently.

The President and the Secretary of State proclaimed from the beginning that we would obtain freedom for the hostages before approving any international tribunal of inquiry visiting Iran to study the Shah's regime and United States ties. Instead, we endorsed a United Nations panel which proceeded to hear Iranian witnesses with the hostages still imprisoned. The President complains that he was double-crossed, but even now holds out hope that the United Nations panel might return for another attempt, this time merely to visit the hostages as contrasted to taking them from terrorist captivity.

No recitation of the damage our nation has suffered can proceed without the average American becoming angry and finding the President's actions to have been not only inadequate but incredible in sloppiness of forethought and execution.

But all of this bungling is supposed to be excused by the Presidential reminder that criticism of the President, to say nothing about criticism of terrorism in the governmental structure of Iran, might lead to harm for our hostages. In fact, I have concluded that if our President is not stimulated to adopt a strong and bold course, and the government of Iran is not stimulated to recalculate the relative advantages and disadvantages of kidnaping diplomatic personnel and committing aggression against the sovereignty of the United States of America, the hostages may never be freed. Worse still, thousands of Americans may lose their lives as other nations miscalculate the resolve of this country and commit aggression against the United States, whether or not we are prepared to recognize such aggressive actions as official or unofficial acts of war.

Our anger will not substitute for reasoned action.

I call upon the President to request and for the Congress to grant authority to intern all Iranian diplomats remaining in the United States. The President must identify which diplomats have defied his previous order and precisely where they are to reestablish a minimum of his own credibility.

I call upon the President to make certain that all trade with Iran including food exports, oil purchases, spare parts, economic expertise, and all the rest be suspended totally and immediately.

It is obvious that any economic pressure that the President intended and that the United Nations might have countenanced, has been minimal and so haphazardly administered as to encourage Iran to forget the whole business.

I call upon the President to enter into immediate consultation with our allies about preparations for an effective naval blockade of Iran and plans for effective mining of Iranian harbors with mines that could be retrieved after release of the hostages. Our allies must know the seriousness of our intent and prepare with us for potential oil shortages which will follow successful strangulation of Iran's foreign trade.

Likewise, we must discuss the very real possibility that Iran, itself, may disintegrate as a nation state and prepare for that aftermath. We are past the point of setting deadlines. We must now prepare to do those things which Iran and the world will understand. For the moment, our allies find it just as comfortable to continue with business as usual in Iran as do the Iranians, because they have watched 137 days of America in captivity with sympathy, but with certainty that we really do not have the courage and constancy to do very much about it.

The President, Congress, our countrymen must say in one strong voice to Iran and to our allies, "You have misjudged us. We intend to act in ways which need not jeopardize a single human life, but we are going to recover our hostages and we are going to respond to aggression against our country and against civilized diplomacy around the world with appropriate action. We may have stumbled through lack of foresight and leadership for 137 days, but we have caught our second wind and we are going to act like the United States of America in appropriate ways that every free man and woman in this world will find understandable and admirable."

I call upon the President to establish a special Treasury Trust Fund in which all of the Iranian Government's seized financial assets will be placed. These funds, estimated at $4 to $6 billion, would be used to finance additional military preparations required to free the hostages, to settle American claims against the Iranian Government, and to reimburse the hostages and their families in part, for the past, present, and future suffering inflicted upon these Americans by the Government of Iran in violation of every international code of decency.

Finally, I call upon the President to terminate and the Congress to affirm such termination of all hearings, studies, or inquiries into alleged despotism in Iran in recent years or for past centuries. The issue is an aggressive act by Iran against our Embassy and our citizens. A study of hundreds of executions and repression by the Ayatollah is just as irrelevant as discussion of the Shah's regime. Furthermore, our willingness to participate in such procedures jeopardizes our relationships with many countries who may note how rapidly the United States forgets alliances and wonders, with some justification, if we understand the dangers which this Nation faces in protecting interests which are vital to our national survival.

Iran has taken upon itself the status of an enemy of our Nation. We did not ask Iran to commit aggression. There is no basis for friendship with Iran until our hostages have been returned safely. Failure to return our hostages safely may result in a Government of Iran so weakened by internal strife and external pressures that the current regime and

nation state may undergo substantial change. Only Iran can decide its course, but we must make certain that there is no miscalculation of ours.

I call upon the President to prepare in the coming weeks for all contingencies of military action which may be required to free the hostages and to ask Congress for appropriate declarations of support in planning policy and funding.

Our country demands new leadership to end the long night of Iranian captivity. That leadership must come now, from you, Mr. Carter, because you are our President and we deserve a better effort.

Mr. President, I yield the floor.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee has 2 minutes.

Mr. BAKER. Mr. President, I thank the Chair.

I wish to take this opportunity to commend the Senator from Indiana for a courageous statement that represents an important point of view.

I believe that in a very real way the statement of the Senator from Indiana signals a change not only in his attitude but in the attitude of a majority of the people of this country.

Throughout these 137 days I have consistently declined to second-guess the President, to give public advice on how he should manage this crisis, but I think the time has come now when people must feel free to speak out on this subject, and I commend the Senator from Indiana for doing so.

I think it is clear from his statement that he wishes still to acknowledge the President as the chief officer of our foreign policy and to urge the President to undertake new initiatives to break the stalemate. I think that is appropriate, laudable, desirable, and fully consistent with the position taken by him and by most Republicans to date. But it is different now. This is a different time, a different circumstance.

I said once before in connection with another crisis—and I am speaking now of the disclosure that there were Russian combat troops in Cuba—that the only thing the President could not do in that situation was nothing at all, and I would repeat those words today in respect to Iran.

I will not at this time make specific recommendations to the President, but I do wish to say that I believe the statements and recommendations made by the Senator from Indiana are appropriate and timely and should be taken account of by the administration at this time.

THE IRANIAN CRISIS: THE PRESIDENT URGED AGAIN TO TAKE ACTION

● Mr. DOLE. Mr. President, the Senate has just heard, and hopefully the Nation and even the terrorists in Iran will soon have learned about, the tough and eloquent speech by the Senator from Indiana. It is a speech that sets a firm, yet reasoned, approach for U.S. policy in dealing with the criminal and fanatical forces now controlling the government in Tehran. It is a speech we have waited too long to hear from the administration. Yet it has a simple and direct purpose: The release of our diplomats now held hostage in our own Embassy for 136 days.

The Senator from Kansas has addressed on this floor the dilemma the country faces over the Iran crisis many times since November 4, when the hostages were first taken. The dilemma has been a gang of terrorists who have never been given any incentive by the actions of either their own government or that of the United States to give up their hostages, hostages who have become the terrorists' greatest source of domestic power. The Senator from Indiana has put together in a neat, cohesive package a plan of action that many of us have spoken about and looked for in vain from a President beset by indecision and election-year crises.

SQUEEZE IRAN DRY

On several occasions I have urged the President to impose the economic sanctions we started in motion, urging him to use our sole effective weapon against Iran and to squeeze them as no nation has ever been squeezed before. We must enlist the active cooperation of our allies in this endeavor, and must not shirk the decision to use our fleet in a comprehensive naval blockade. The President has had ample opportunity, and certainly justification for the action we have suggested over and over again.

LOST OPPORTUNITIES

Last November, a little more than a week after the hostages were taken, the Senator from Kansas introduced a resolution urging the President to enlist the support of other nations, particularly our European allies, calling on them to close their Embassies, withdraw their diplomatic personnel, and to suspend diplomatic relations with Iran. At the same time a unified world embargo on Iranian oil, coordinated by the United States, was to be imposed. In December, this Senator urged in another Senate resolution that special compensation for the hostages be considered by the President. In January and then again earlier this month, we called for a total economic embargo except for medicines, backed if necessary by a naval blockade.

The point the Senator from Kansas is making is that, from the very beginning, many of us have believed the President's policy of delay and caution was not providing the impetus needed to achieve the release of the hostages. Even while we backed the President and provided a united front to Ayatollah Khomeini and his militants, many of the very real options we had to take action were spoken about, and suggested to the President. But no action was taken, and although the hostages are still alive, they have suffered greatly—and U.S. policy has been severely damaged.

SENATOR LUGAR'S FIVE STEP PLAN

Now the Senator from Indiana, a member of the Foreign Relations Committee and privy to all the most sensitive information pertaining to Iran, has offered the Nation a five point plan for a firm and nonmilitary approach toward ending the crisis. There is no question that our past inaction has failed its objective. It seems to me that commonsense would dictate that we try this method. Neither the United States nor our hostages could hardly be worse off. Iran and her people have, in effect, declared war on the United States, and we ought to begin to recognize it. When you are in a state of war, you do not just wait to see what will happen next.

The Senator from Kansas urges the Senate's consideration of the steps advocated by the Senator from Indiana, and most strongly recommends the adoption of this policy by the administration.●

RECESS UNTIL 1:45 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate now stands in recess until the hour of 1:45 p.m.

Thereupon, at 12:40 p.m., the Senate recessed until 1:45 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. BAUCUS).

Mr. BAKER. 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.

THE BALANCED BUDGET

Mr. ROBERT C. BYRD. The days following the announcement of the President's and the Federal Reserve's new economic initiatives have been filled with a variety of reactions.

Some quarters have criticized the President's program of budget balancing, credit restrictions, and energy conservation as too little, too late.

Others have denounced the initiatives as too restrictive, and predict that they will induce a recession. We are talking about the credit restrictions, energy conservation proposals, and so on.

As one who has been very active in the formulation of the balanced budget strategy, I am reassured by the diversity of the criticism. The fact that some argue that we have cut the budget too much, and others argue that we did not cut deeply enough indicates to me that we are probably on the right course.

I believe we must balance the budget. As I have said on many occasions, it is an important symbol—it demonstrates that we are not adrift and that someone is at the helm of our economic ship. In cooperation with Democratic chairmen and the Republican leadership, I will continue to work to assure that we do balance the budget.

No one can deny that a large element in our current inflation is due to energy prices, interest rates, and, to a lesser extent, wage pressures. But clearly the ephemeral element of inflationary expectations is currently playing a major role in fueling the price rise. Unless we disabuse ourselves of the assumption that prices are always going to go up, then, of course, they will continue to skyrocket.

The wails of pain and horror over particular budget cuts have just begun. The simple fact is, no one wants to have this program cut. In normal times, I certainly do not want to see mine cut.

But these are not normal times. These are times which demand statemanship. These are times which require coordination and cooperation, not carping and nitpicking. Every Senator and Congressman—every group of constituents is going to lose something as a result of fiscal belt tightening. However, unless we each sacrifice a little, we will all lose a great deal more.

For millenia, man has struggled to devise economic systems which maximize production of goods and services. In some of those systems, the basic ingredient is directive—people are told what to produce, where to produce it, and so forth.

In our economic system, on the other hand, the basic ingredient is confidence. Our system depends on a belief that savings today, and investment in the future, will pay off.

But we cannot expect the people of this country to develop a sense of confidence—a positive view of the future—unless their political leaders exude confidence themselves about what must be done.

This is not to suggest that we should abandon a healthy political dialog or simply accept the President's package chapter and verse. And, by the way, I think the President ought to get his package up here. I do not think there should be further delay. We went through this exercise for seven solid long days. I can understand why it takes a little while to put 25,000 or 30,000 line items together. But not all of those line items are going to be changed, and I think the administration ought to get its package out, made public and before Congress as soon as possible so that the work can begin. The Budget Committees—the House Budget Committee has begun its work, the Senate Budget Committee will begin its work next week—should not have to proceed without the President's proposals. I urge the administration to get its proposed revised budget up to Congress as soon as possible.

Mr. President, unfortunately, those who get the most attention are those who are busy loosening the rails—trying to insure that efforts to slow inflation through a combination of budget balancing and credit restraint will come untracked.

It is easy to criticize. Anybody can do that. I can do that without a moment's aforethought.

But I say that it is time for the naysayers and the critics and the cynics to get off the sidelines and put their hands to the oars and start helping to row the boat upstream. It is going to take everybody's efforts. And this means we are all going to have to sacrifice some.

I cannot have it all my way, but the American people are entitled to a dedicated effort on the part of their leaders to bring inflation under control and the starting point has to be a balanced budget. That is not all, by any means.

But there are those who say it will not work. Well, it cannot work in 24 hours. It cannot work in 48 hours. It is going to take weeks for this budgetary process, appropriations process, to run its course. But unless we work together, it is not going to work. And it ought to be given an opportunity to work. The cynics ought to quit nitpicking and trying to destroy it and tear it apart before it has a chance to work.

I say if we all quit nitpicking and criticizing and finding fault with the effort and join in, perhaps those who would be critics can improve it. There is room for improvement in this package. It is not the alpha and the omega, nor is it expected to be a perfect package.

But I say, let the critics give it a chance to work, join in and assist in balancing the budget.

I, for one, am committed to seeing that this train has a chance to get to the next depot. I am committed to helping get the balanced budget train out of the station. The American people are watching our efforts with a healthy skepticism. But we need to get about the business of making it work, Mr. President.

And for those who hope to be a part of the solution, it is time to get on board, not stand along the sidelines and find fault and criticize and say: "Oh, it won't work. It's not enough. It's too much." I say let them quit criticizing and start exuding confidence.

I always start with the assumption that we are going to succeed when we try to do something. I never start on the assumption that we are going to fail. But, apparently, that is the way some people approach matters in this country. They start with the assumption that everything is going to fail. And it will—unless we all put our shoulders to the wheel together.

SENATOR MUSKIE'S COMMENTS ON THE BALANCED BUDGET

Mr. ROBERT C. BYRD. Mr. President, I would like to bring to the Senate's attention the remarks of the distinguished Senator from Maine, Mr. MUSKIE, which he recently gave before the National Association of Counties. Mr. MUSKIE has once again forthrightly explained the painful realities the Congress must soon face in the efforts to balance the Federal budget.

His analysis is concise and hard hitting. He talks of the obvious truth that the budget will not be balanced by cutting one program or on the philosophy that "you can cut any program but mine." He discusses the use of "mirrors" and "magic" and how they will be no excuse for real cuts in real programs. He points to prioritizing and the "art of compromise" as the vehicles for sharing the resources and carrying the weight of fiscal restraint. If not, we face the real possibility that our efforts will be in vain.

As usual, Mr. MUSKIE's comments are enlightening. As chairman of the Senate Budget Committee and as an active participant in the recent conferences with the administration on balancing the 1981 budget, he continues to make an outstanding contribution on matters relating to the Federal budget and the national economy.

I urge my colleagues in the Senate to take note of Mr. MUSKIE's remarks. I believe they may be helpful in formulating their thinking on the budget issues ahead and in preparing themselves for the difficult task of saying "No."

I ask unanimous consent that the comments of Mr. MUSKIE be printed in the RECORD.

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

REMARKS OF SENATOR EDMUND S. MUSKIE

A few weeks ago, a newspaper cartoon featured a poll-taker interviewing a housewife at her doorstep.

"No," the lady says, "I'm not mad at Congress. If I had six hundred billion dollars to spend, I'd be irresponsible too."

Unfortunately for the public standing of Congress as an institution, not all Americans are so forgiving; nor should they be. The image of an irresponsible Congress is not without foundation.

While the cameras roll in the press galleries, Senators and Congressmen are eager volunteers in the war against inflation. But when the battles are fought on the floor, the desertion rate is high.

Just last week, 43 Senators joined in sponsoring a resolution to limit Federal spending to 21 percent of the gross national product. Its implementation would entail a budget cut of something between 30 and 35 billion dollars in fiscal 1981.

That made for a nice little news conference. But no one suggested where the 35 billion cut would be made.

Just one month ago, 34 of those same 43 Senators voted to break the budget for veterans programs. Twenty-six of them did the same for disability insurance. None of them held a news conference to draw attention to that.

The man in the street doesn't hold news conferences; but he does vote. He looks at the cost of living. He looks at the Federal deficit. He looks with disfavor on those who are responsible for it.

But he also looks at his own private slice of the pie; and he expects his representatives to see that it keeps on coming.

Ironically enough, public demands for Federal largesse are a prominent reason why public demands for a balanced budget have not yet been met.

The same paradox goes far in explaining why some politicians talk in frugal generalities and vote for specific excesses.

The term, "special interest group" summons up an image of self-serving operators plundering the public purse. We all belong to associations, unions, chambers of commerce, and organizations of county officials, but none of us would be caught dead associating with special interest groups. They are someone else.

But we all know who they are. They gather each spring in Washington—where the weather is usually good and the climate for spending is even better. This year, though, a chill is in the air.

The word "crisis" has perhaps been overworked in recent months. But the crisis of confidence in the future of our economy is very real and very sobering. And there is very little sunshine in the report I will deliver to you today.

Inflation accelerated to an 18-percent annual rate in January, according to the consumer price index. The more volatile producer price index rose at a staggering annual rate of 21 percent.

In some parts of the country, the price of home heating oil has broken the dollar per gallon mark; and the price indicators on gasoline pumps are being changed from gallons to liters.

On top of it all, unemployment rose to 6.2

percent in January, with 7 million Americans out of work. The situation is likely to worsen.

A long time ago, someone observed that "nothing so wonderfully concentrates the mind as the prospect of hanging." For federal policy-makers, the current economic crisis has provoked some serious concentration.

Dramatically radical policies which were unthinkable even a year ago are suddenly serious options.

The Federal Reserve once nibbled at inflation with fractional increases in the discount rate. Recently, for the second time in two months, the rate went up a full point to 13 percent. The prime lending rate is up to 16 and three quarters percent.

The energy crisis has rendered respectable a number of ideas which were once confined to the fringe. Rationing or a gas tax increase are no longer inconceivable.

And despite the fact that those 43 sponsors of a GNP spending limit have not produced a $30 billion cut list, the next budget mark-up will not be limited to delicate trimming.

It would be useful to speak here to the formula spending limits and constitutional amendments which are now so widely supported. There are some very important reasons why those initiatives deserve very careful attention.

But whether or not a formula is imposed—whether or not the states force us into a constitutional convention—whether restraints are imposed by law or imposed by political and economic realities—one thing is certain. Unprecedented restraints must indeed be imposed.

In the course of their debate in Des Moines last month, the Republican candidates for president were asked a very good question. We are facing a heady combination of demands for tax cuts, for huge increases in military spending, and for a balanced federal budget. How can those demands be accommodated in one federal plan?

John Anderson's reply was characteristically straightforward—"with mirrors."

Magicians' tricks won't balance the budget. The best efforts of legislators may also fail. But be assured that we will exert a mighty effort. And the only hope for success lies in imposing real sacrifices across the board.

Last year's rhetoric called for giving up luxuries. But that won't get the job done now. There isn't enough fat to cut, even if we could find it all. And one person's "fat" is another's "vital interest."

The budget can't be balanced on the back of a single program. Various interests cannot go on demanding frugality at anyone else's expense.

Every program will be scrutinized—some more intensely than others. Foreign aid, trade adjustment assistance, full indexing of federal pensions and social security to the consumer price index—these are all vulnerable programs. Each of them is important. None of them are casually dispensable. But all of them may suffer.

We know why programs should not be cut. But we may also need to know how best to cut them. And if the affected groups and associations cannot escape the knife, they can best serve their interests by showing us how to minimize the pain.

My support for federal aid to state and local government is well known to you. I am familiar with the arguments supporting the programs you hold dear. I developed more than one of these arguments in Congress. I was the founder of some of the programs and a central figure in the development of others.

But the field of battle this spring will demand a new strategy. Do not dilute your resources. Do not impair your credibility. Do not insist that every line item is vital to the welfare of every local community. Fall back to the defense of those which really are.

A few days ago, NACO joined with allied groups in sending a letter to Congressional conferees. The subject was H.R. 3434, a bill concerning social and child services. That letter argued for the highest-cost options right down the line.

"We unanimously oppose placing a ceiling on AFDC Federal foster care funding."

"We unanimously oppose retaining the AFDC amendments added to the bill in the Senate."

"We strongly support the increase in the title XX ceiling to $3.1 billion for FY 1980 as passed by the House."

"We support the Senate provision converting title IV-B to an advance funding basis."

"Passage of the adoption assistance program is extremely important and should include the House provisions assuring that the program is permanent and implemented nationwide."

Now, it comes as no surprise that NACO and like-minded groups should make such recommendations. Certainly, programs designed to help needy children are unequaled as worthy recipients of support.

But in that letter to the conferees, there is no ranking of some provisions as more important than others. There is no willingness to accept any sacrifice in the face of fiscal restraint. There is no hint of compromise in a message sent to a group of legislators whose mission is one of compromise.

Compromise is indeed the key word. Any Member of Congress could balance the budget if left to his or her devices. Given a level of revenues, none of us would be too hard pressed to cut in one place and expand in another without breaking into the red.

But Congress consists of 535 people with 535 assessments of priorities.

In the setting of that reality, the art of compromise is essential to success. Too often, we have compromised upward. If one group objects to generous farm subsidies, their resentments are assuaged by more help for the cities. If another group is scandalized by the cost of the space shuttle program, another billion for education goes far in tempering their outrage.

When those sorts of solutions resolve a conference deadlock, everyone leaves the chamber happy. The deficit reflects the price. It's a price we can no longer afford.

With no enthusiasm for the role of bearing bad tidings, I must tell you as a friend that loal government will not be immune from a share of the burden; nor should it be. The price of fiscal discipline must be widely shared.

You and I are well aware of how much the federal system has changed since it was mapped out in Philadelphia in 1787. From the construction of the county courthouse to the wages of the people who mow the lawn, costs once borne solely by you have been shared and sometimes even completely absorbed by the Federal Government.

As a consequence, local levels of Government have been insulated to a greater or lesser degree from the real costs of the services they provide to their constituents.

Some of this aid is no luxury. In some localities, it makes the difference between solvency and bankruptcy. But the sad reality is that this year's budget cuts will not be confined to frills. That is why we need your guidance as to where we can look for savings that can minimize the pain.

The list of federal programs supporting local needs—AFDC, UMTA, LEAA, CETA, and others, has grown longer and longer over the years.

None of them will escape strict scrutiny in the course of this year's budget review. I cannot promise that any of them will be spared from surgery. I ask for your help in dealing with those who insist on using a meat ax instead of a scalpel. We simply must decide where to achieve the most savings with the least pain.

Let me focus on a few of the more important programs and on the vulnerabilities to which they are exposed.

The urban development action grant program has just recently been broadened to deal with "pockets of poverty" in otherwise healthy cities.

But UDAG's recent expansion may prove to be short lived. At a time of budgetary stringency, many members of Congress will be wondering why Federal funds are needed to supplement anti-poverty efforts in communities with good financial health.

The Congressional budget office estimates that elimination of this UDAG expansion could save $500 million in Federal funds over the next five years.

Is that the sort of savings that makes sense in the present environment? If not, why not? Where else can we look for savings if we don't look there?

Another item which will come under review is the community development block grant program.

I know that this is a popular item. Few strings are attached. Its formula-based grants to cities have helped rehabilitate public facilities, provide important social services, and support planning and management.

But every city in America receives a share of these funds, regardless of need, regardless of local resources. Many millions could be saved by targeting funds toward cities that really need them while cutting back in others.

It is argued with some force that grant programs like this one should be based on formulas more closely oriented toward the needs of the recipients. Too many grant formulas are based on the need to obtain 51 votes on the Senate floor.

Is that the kind of savings that makes sense in the present environment? If not, why not? Where else can we look for savings if we don't look here?

Of course, general revenue sharing is the main event. This year, the program is up for reauthorization—a fact which has not escaped your notice.

Let me say at the outset that the program is one of the best of its kind. It deserves continued support.

Grant consolidation is a favorite means for reducing federal outlays and maximizing efficiency. And revenue sharing is the ultimate grant consolidation. It is flexible. It is bound up in very little red tape.

Like the other 534 Members of Congress, I am convinced that the best and most deserving programs should be spared from major reductions. But my definitions of "best" and "deserving" are not universally shared. Revenue sharing is not universally admired.

The likelihood is that the revenue sharing program will be renewed in 1980. But not without compromise—and perhaps not intact in its various parts.

Two main points will be raised. First, the states receive a full one third of all revenue sharing funds; and the States, in general, are in sound fiscal condition. They are running an aggregate surplus. Many are cutting taxes.

In 1978, the states ran a combined surplus of $29 billion. One year later, the budget adopted by Congress contained a deficit of almost exactly that amount. It also contained more than eighty billion dollars in state and local government grants.

Some of the same state legislators who balance their books with the help of federal dollars are leading the charge for a new constitutional amendment—one which would compel the Federal government to balance its budget.

During its 1975-76 session, the Pennsylvania legislature passed a resolution calling for enactment of the constitutional amendment. That was resolution 236. Resolution 235 demanded a renewal of general revenue sharing.

It is not surprising that revenue sharing for the States is not uniformly popular in Congress.

In short, the State is vulnerable. Is that the kind of savings that makes sense in the present environment? If not, why not? Where else can we look for savings if we don't look here?

The second vulnerability in the revenue sharing program is its very basis of funding. Allocations bear little relation to real needs.

A few years ago, the suburban community of Redding, Connecticut, faced a perplexing dilemma. Should their revenue sharing funds be devoted to a new dog pound, to tennis courts, or to a bridle path?

There are many Senators and Congressmen who would like to spare such communities these painful decisions.

Instead of spreading scarce resources over 39,000 units of Government, it is said, funds should be targeted to those most in need. Communities with poorly paved roads should not be treated in the same manner as communities with poorly paved tennis courts.

Is that the kind of savings that makes sense in the present environment? If not, why not? Where else can we look for savings if we don't look here?

I ask these questions not because I am eager to trim these and other programs, but because others are eager to dismantle them.

I ask these questions not because I relish the prospect of cutting back on programs I helped bring into being, but because fiscal realities may leave us with no choice.

I hope very sincerely that you will consider where savings can best be made even as you work to preserve adequate funding. If you don't make those tough choices, others will make them for you. If you don't give us guidance as to which of the programs are more important than others the essentials may suffer along with the extras.

In the end, of course, no level of Government, Federal, State or local, can ignore the implications of runaway inflation. For its part, the Federal Government must exercise the budget restraint which minimizes public sector demand on the economy.

State and local government share that burden and that responsibility.

In the Spanish American War, history says the enemy fleet was destroyed in Manila Bay because it was too weak to fight and too slow to run away.

We must be strong enough to fight inflation by absorbing some of its pain. None of us is fast enough to run away.

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

Mr. BUMPERS. Mr. President, I compliment the majority leader on his comments about balancing the budget. I, too, have heard several people say that it is too little, too late.

If I really believed that it was too late, I would just resign my seat in the Senate and go home.

Mr. ROBERT C. BYRD. Right.

Mr. BUMPERS. If it is too late, the American people have nothing to anticipate but the ultimate collapse. If we take that attitude, there is no point in trying to balance the budget.

In all my public statements, I have pointed out that a balanced budget is not a panacea for inflation. On the contrary, it is not going to do very much for inflation. However, Mr. President, it is a nonnegotiable demand in the country. The Congress has the duty to produce a balanced budget because nothing else we do is going to be credible or acceptable until we balance the budget. We might as well get down to it and get it done in a businesslike way.

THE PLIGHT OF THE AMERICAN AUTOMOBILE INDUSTRY

Mr. BUMPERS. Mr. President, I rise to discuss an article in the current issue of Business Week regarding the plight of the American automobile industry.

I want to remind my colleagues that in 1975, which was my first year in the Congress, we passed the Energy Policy and Conservation Act, the first major "energy crisis" legislation enacted after the oil embargo of 1973–74. In that bill, we provided that the American automobile industry would have to achieve a fleet average of 18 miles per gallon on all the cars they produced by 1978. That means that you could produce one car that got 9 miles per gallon and another car that got 27 miles per gallon, but the fleet average would have to be 18 miles per gallon in 1978.

The bill also provided that by 1979 the average would have to be 19 miles per gallon; in 1980, 20 miles per gallon; in 1981, 22 miles per gallon; and in 1985 we would have to achieve a national fleet average of 27.5 miles per gallon.

I want everybody to know that the automobile industry screamed like a banshee when we passed that bill. They were unalterably opposed to it.

In 1977, the U.S. Senate, in the National Energy Policy Act, established minimum fuel economy standards. It strengthened the fleet average concept to provide that in 1980 Detroit could not make any car that did not get 20 miles per gallon. In 1981 they could not make any car that did not get 21 miles per gallon.

When we went to conference, the House of Representatives, did not like that concept. We could not get the House to accept the minimum standards in the conference report, and the amendment was deleted.

The tragedy is that Congress, which has a low credibility with a lot of people, in this particular instance just happened to be right and the automobile industry was wrong. Now the domestic automobile industry in this country and the American people are paying a very high price for our shortsightedness.

This article in Business Week points out what has happened. In 1979, in this country, imports represented 22 percent of all the cars sold in this country. This is a dramatic increase from 1978.

In the first 2 months of this year, imports represented 27 percent of all the cars sold in this country. Why is that? Well, there are a couple of reasons.

Volkswagen, Datsun, Toyota, and many other imports are good automobiles. But that is not the major reason. There is not a patriotic American who would not rather buy an automobile that was made in this country, given a choice between two equals.

The main reason the American people are buying imports is because they are fuel efficient. In 1973, when the embargo first hit and we got a clear signal of things to come, people began to get apprehensive about the availability and cost of gasoline, and imports began to increase. Detroit said, "Well, the American people do not like those little cars. They just don't want to drive those little cars." They continued to say that and the Japanese and the Germans continued to unload them on the east and west coasts as fast as they could get the ships here. The American people were buying them up as fast as they could get them unloaded.

Industry observers estimate that General Motors makes $1,000 on a big car and only $200 to $300 on a small car. So it is not hard to understand why they were pushing the big cars. It is not hard to understand why they, like any prudent businessman, would try to capitalize on equipment they had purchased to maximize the profit on it.

Has that ultimately served their best interests? Has it served the working people's best interests? Has it served the best interests of the United States? The answer to all three questions is an unqualified no.

Automobile production, compared to last year at the same time, is down dramatically from what it ought to be, and 200,000 people have lost their jobs in that industry.

We have heard the old saying that a recession is when your neighbor loses his job and a depression is when you lose yours. In this case, 200,000 people believe there is a depression in this country despite 18 percent inflation because they have lost their jobs.

How about the dealers? Did you ever talk to a dealer who told you that General Motors or another automobile manufacturer made him take a certain number of eight-cylinder big automobiles whether he wanted them or not?

What is the result this year? Dealers have their lots loaded with big eight-cylinder automobiles. They are trying to give people $500 apiece to buy them. Chrysler is trying to give rebates to sell those big automobiles so they can get enough money to build the little ones.

What else will result? The trade deficit because of imported automobiles this year will be almost $18 billion. The automobiles we are going to be importing into this country this year ought to be produced in Detroit.

Detroit should be concerned about all of this, but Business Week says in 1980, 6½ years after the embargo, and while imports are consuming 27 to 28 percent of the purchases in this country, 60 percent of all the cars produced in this country will be 8-cylinder automobiles.

Eighteen percent of them will be 6-cylinder cars and 22 percent will be 4-cylinder cars. At the same time, almost every car that comes off the dock on the west coast and east coast is a fuel-efficient 4-cylinder automobile.

In 1985, it is estimated that only 41 percent will be 4-cylinder, front-wheel-drive cars.

It is an incredible statistic. Business Week says Detroit guessed wrong.

I do not understand that. I do not

know of a single thoughtful person in the United States who did not know in 1973 that we were going to be confronted with one of the most serious economic problems this country ever faced because of energy prices and the availability of oil.

They say Detroit guessed wrong. Well, the Senate did not. I predicted just as the last drop of oil comes out of the spigot Detroit will say, "Well, we finally got our cars all 4-cylinder and they are averaging 27 miles per gallon." By that time Volkswagen will have a car on the market that will get 65 miles per gallon.

I would not be saying these things because I want to tangle with the automobile industry. But these are the facts. I know a lot of automobile dealers in my State who are facing a crisis. They are being ordered to take automobiles and they are having to put them on their lots at 18 percent interest. That makes certain that they cannot possibly make a profit. The country suffers; the dealers suffer; and the American people suffer. Now they say, "Let us cut imports."

Normally, I would be sympathetic. I think we ought to import fewer automobiles. If the American automobile industry had kept with the American people, I would vote for it. But right now if it were not for the imports we could not possibly reduce our fuel consumption.

Do you know, Mr. President, that in 1973 when the embargo hit, the national fleet average of all cars in the United States was 13.5 miles per gallon? That was down 2 miles per gallon from a fleet average of 15.4 miles per gallon in 1936.

Now, 6½ years after the most ominous signal or warning this country ever had, we are up to 15½, a 2-mile-per-gallon fuel-efficiency improvement. Italy has a national fleet average of 30 miles per gallon. Germany, England, and Japan have fleet averages of 28 to 32 miles per gallon. Mr. President, if we had been serious in 1973—and you did not have to be broken out with brilliance to see what was coming—we would have a 33-mile-per-gallon average in this country right now. We would not care about OPEC. We would not have an energy problem in this country. But we do. A lot of the blame can be laid right at the feet of the U.S. Congress, but, even more than that, it can be laid right at the feet of the American automobile industry.

Mr. President, I ask unanimous consent that the article from the Business Week magazine be printed in the RECORD.

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

U.S. AUTOS LOSING A BIG SEGMENT OF THE MARKET—FOREVER?

Through the first 10 days of March this year, automobile sales have been surprisingly strong, but only because imports are racking up record sales. Few car buyers want Detroit's big models—the kind Detroit still predominantly makes—and despite rebates of $500 or more, sales of U.S.-made cars are slipping badly. Through the first days of March they were running at an abysmal annual rate of 7.7 million units, down 14% from a year ago. And in February, imports grabbed a record 27% share of the market.

Incredible as it now seems, just a year ago the U.S. auto industry was scrambling to meet a surging demand for big cars. While imported-car dealers were drowning in record inventories of unsold small cars, General Motors Corp. was toying with the idea of converting a compact-car plant to build full-size Oldsmobiles. Chrysler Corp. worried that the botched introduction of its slimmed-down New Yorker would leave it behind in the new big-car battle. Ford Motor Co. rationed V-8 engines because it could barely keep ahead of demand. How, Detroit executives fretted, would they sell the millions of smaller cars on which they had spent billions in new tooling? Recalls Ford President Philip Caldwell: "We all faced the specter of forcing the American people to buy something they hadn't indicated they wanted to buy in large quantities."

That fear has disappeared, of course. Now, a much more ominous specter is haunting Detroit. The sudden death of big cars—on which the industry earned the bulk of its profits—will seriously hamper its ability to finance the shift to small cars, a change that must now come much faster than Detroit had planned. And if it is unable to supply enough of the small cars Americans want today, the U.S. industry could permanently and perhaps disastrously lose a huge share of its home market to overseas producers. No one is seriously suggesting that Detroit will go the way of U.S. radio manufacturers—yet—but for the next several years, the U.S. automobile industry will be virtually impotent in the face of an onslaught of foreign cars. "We've accelerated our programs (for small cars) down the road," says GM President Elliott M. Estes, "but we can't do anything about the short term."

Estes is not exaggerating. It will take U.S. auto makers until 1985, at least, just to expand their four-cylinder-engine capacity to 40 percent of output. Nearly all imports are now powered by fours. With waiting lists for small cars running as long as six months, imports, which captured a record 22-percent share of the U.S. car market last year, now seem almost certain to coast to an easy 30-percent share in 1980.

MORE THAN HUMILIATION

To be sure, Detroit will be rolling out a new crop of small cars this fall. But they will be too few to turn around the situation rapidly. Detroit, once again, is simply out of step with the market. "We thought—rightly or wrongly—that we had to move down in an evolutionary way to better fuel economy," says Estes.

The revolution in Iran and the subsequent spiral in gasoline prices made that choice utterly wrong. While future gasoline price increases may moderate, U.S. auto makers cannot hope for the flattening of prices that gave them breathing room in the years following the Arab oil embargo. Even the most optimistic scenarios project that gasoline will rise from $1.25 per gal. today to more than $2 per gal. by the end of 1982. That in itself practically guarantees that the import share will remain at least at 30 percent through 1985 unless foreign exchange rates change radically.

For an industry that has always prided itself most on its marketing skills, nothing could be more humiliating than the prospect that it may have to cede nearly a third of its home market. But much more than Detroit's wounded pride is at stake. Indeed, what may be at stake is Detroit itself—at least in its present form. Already, there is ample cause for alarm:

Since the beginning of the year, 210,000 workers have been idled, many indefinitely, and six plants have been closed as Detroit begins to board up big-car assembly and parts facilities.

The big-car sales slump has vastly increased the chances of a Chrysler bankruptcy, has seriously weakened Ford, which lost $1 billion last year on its North American operations, and has reduced GM's earnings 18%, all at a time when Detroit must make huge new investments to improve its product.

The poor earnings outlook will probably force auto makers to slash dividends even as they must seek record amounts of outside financing in markets that are in terrible turmoil.

Detroit's malaise will probably lead to increased manufacturing in the U.S. by foreign-owned automobile makers. Some will make the move because U.S. manufacture is cheaper. Others, particularly the Japanese, are likely to manufacture here only if there is a possibility of import restrictions being placed on their cars.

In February, Volkswagen announced that it would open a plant in Michigan, its second in the U.S. By 1984, VW will be cranking out 200,000 Rabbits a year at its new plant, in addition to some 225,000 at its Westmoreland (Pa.) plant. Renault, a leading importer in the late 1950s, plans to make another large-scale assault on the U.S. market by having 100,000 cars a year made by American Motors Corp. at its Kenosha (Wis.) plant.

The Japanese, with lower labor costs and spare capacity at home, are reluctant to start U.S. production. But they, too, are moving to manufacture in the U.S. Honda will produce up to 10 percent of its cars in a new facility alongside its motorcycle plant in Marysville, Ohio. Toyota and Nissan both say that they are exploring the possibility of some U.S. manufacture. Their decision will probably be determined by how much anti-import pressure can be generated by the United Auto Workers.

A DEVASTATED PROFIT STRUCTURE

An increase in foreign-car manufacture in the U.S. would further cut Detroit's market share, although the cars would be counted as U.S.-made. But the predicament of the Big Three goes much deeper than lost market share. The collapse of big-car sales has devastated the industry's profit structure. Industry observers estimate that GM, for example, makes as much as $1,000 on a large car and only $200 to $300 on a small car. In the last year the market share of big cars—so-called full-size and intermediate models—has plummeted from 42 percent to 33 percent. Unless there is a miraculous recovery of large-car sales, Detroit's profits will be wretched, to say the least. For example, even though GM is selling a record 63 percent share of U.S.-built cars this year, it is expected to earn only $6.25 a share, half of 1978 earnings. Between them, Ford and Chrysler will probably lose $2 billion in the U.S. Sums up one industry analyst: "Detroit's dilemma is that it must sell cars that no one wants to get the cash to make the cars that people will buy."

To make that task even rougher, the outlook for car sales generally—big cars or small—is becoming increasingly gloomy. Rising fuel prices may push some buyers into small cars, but others, recognizing that they can rarely recover the cost of a new car in fuel savings, may simply not buy for as long as possible. Other consumers, aware that Detroit must make more fuel-efficient cars in the next few years, may also hold on to their cars. Such balking by consumers was responsible for the 1974–76 slump in auto sales. It could easily occur again. "We're tremendously overautomobiled in the U.S.," says a Ford executive. "We'd be able to drive for years without buying another car."

No such apocalypse is yet at hand, but the economic factors confronting Detroit are enough to make even the brashest auto salesman fidget nervously. The most serious is the runaway economy itself. The choices for next year, most economists believe, are continued

outlandish interest rates and inflation—or recession. Whichever occurs, Detroit will not benefit. Interest rates, as high as 18 percent on auto loans, are scaring away all but the most determined buyers. And they are badly pinching dealers, who cannot afford to pay 18 percent to 20 percent to finance an adequate level of inventories.

Prospective car buyers also face declining real income because of the high inflation rate. Even worse from Detroit's standpoint, disposable household income, one of the best indicators of future car purchases, is falling after rising for four years.

About the only bright spot in this gloomy picture is the series of new small cars that Detroit will introduce next fall. Chrysler is hoping it can sell as many as 600,000 of its new front-wheel-drive compact, code-named the K-car. Ford will replace the hoary Pinto and the Lincoln-Mercury Div.'s version of the car, the Bobcat, with the Escort and the Lynx, both of which will have front-wheel drive. GM, which introduced its first U.S.-made front-wheel-drive car last year, is planning another, the so-called J-car. It will give Chevrolet and Pontiac each a subcompact to go with the hot-selling Citation and Phoenix compacts.

These cars could help Detroit out of its sales slump. But because of the long lead times in the industry—all of these cars were designed in 1976—there is no possibility that it can shrink its big cars until at least 1983. Detroit made the error of relying too long on its time-tested formula of wringing out the bulk of its profits on large cars. As recently as nine months ago, the auto makers were pleading with the government to relax the standards that require every auto maker's fleet to average 27.5 mpg by 1985. Now the demands of the market have outstripped the regulators, and suddenly there is no end in sight to the quest for better fuel economy. Analysts say the market will want the mandated average of 27.5 mpg as early as 1982, and will want 40 mpg by 1990.

There is no way that Detroit can move up to 27.5 mpg by 1982, and even meeting the mandated 1985 goal will still require a desperate effort. The first forced change—after the Arab oil embargo—resulted in a weight reduction of 800 lb. in large cars. That helped to boost the fuel economy of domestic cars by 6 mpg to the present 20 mpg. The slimdown, minimal as it was, cost the industry $30 billion. Now the auto makers must spend at least as much again within four years. Merely reducing the weight of a traditionally designed big car will not work. To preserve maximum passenger room at the same time, auto makers must scrap their front engine-rear drive designs and switch almost entirely to the more efficient front-wheel-drive configurations.

THE IMPERATIVES OF ECONOMY

The costs will be astronomical. Auto "facelifts" that cost $500 million are giving way to $3 billion-a-model overhauls. The industry must spend $75 billion on new plants and products to reach a mileage goal that imports nearly match today. And pushing to 40 mpg by 1990 would double the cost, according to a study by Rath & Strong Inc., a Lexington (Mass.) capital-goods consulting firm.

Wall Street analysts calculate that the cash crunch will force Detroit to borrow at least $5 billion by 1985, doubling the industry's long-term debt. And during the latter half of the decade the auto makers may have to borrow another $5 billion or more. But until auto sales reverse their current decline, lenders may be tough to find. "There will be a need for tremendous outside capital," warns auto analyst Maryann Keller of Paine Webber Mitchell Hutchins Inc., "and I don't think it will be available."

Officially, auto executives downplay the problems of financing what is sure to amount to a $150 billion capital spending program over perhaps 15 years, even though that figure amounts to nearly two years' domestic sales for GM and Ford combined. Detroit hopes that sales will rebound by the end of 1980, returning profit margins from their current level of near-zero or worse to a more traditional 6 percent to 7 percent. But even such profits, coupled with non-cash allowances for depreciation and tool amortization, will not be enough. Concedes Ford's Caldwell: "We'll probably have to go to the money markets to get through this gap."

But getting loans may be difficult, particularly if Detroit's profit margins continue to suffer. Some analysts speculate that the federal government could find itself bailing out the industry, much as it has propped up Chrysler with $1.5 billion in proffered loan guarantees. As part of the Chrysler loan legislation, Transportation Secretary Neil E. Goldschmidt was ordered to undertake a wide-ranging review of the capabilities of the nation's most basic industries—including autos—to finance their own rejuvenation. "I wouldn't say auto companies are necessarily headed down the road to direct federal assistance," insists Charles Swinburn, Transportation's Acting Assistant Secretary for policy, "but [survival] will require a combination of private financing, selling more cars, and plowing back every penny."

BILLIONS NEEDED NOW

The automotive borrowing binge begins this year with a bang, despite a prime interest rate of 17 percent and more. Chrysler, which reported a $1.1 billion loss on $12 billion in sales last year, will need $2 billion in 1980 from various sources—including those covered by government loan guarantees—to pay for its new-car programs and to cover another $500 million to $600 million loss for the year. Analysts say Ford will need roughly $1 billion to recoup the decline in working capital suffered in last year's billion-dollar loss on North American operations. In addition, Ford must seek outside financing for part of the $3.5 billion in capital spending in 1980 needed to revamp its cars and trucks.

Even GM may be a heavy borrower in 1980, for the first time in five years. That is partly because of the company's decision last August to accelerate its conversion to front-wheel-drive cars by about two years, from 1985 to 1983. As a result, GM's predicted outlays of about $6 billion per year worldwide have now risen to about $7 billion annually. "GM can live off its balance sheet for a while," says auto analyst David Healy of Drexel Burnham Lambert Inc. "But if they keep their dividend of $4.60 a share, their working capital will decline about $2 billion this year."

Ironically, in many cases, Detroit will be borrowing money to finish production lines for components that are already obsolete. The three-year lead time on tooling orders means that the auto companies are still locked into spending plans for engine, transmission, and other parts that were ordered in the late 1970s to preserve full-size cars. But interest in full-size autos is dead. Their share of total U.S. sales has fallen from 30 percent in 1977 to only 14 percent today.

That spells trouble for some major facilities. It will have a severe impact on Detroit's 11 V-8 engine lines that three years ago were running full-tilt to equip 76 percent of U.S. cars sold. It could mean premature write-offs for the V-8 diesel capacity that GM has built up in the past two years for its large cars, because front-wheel drive versions due in 1983 and 1984 will require smaller powerplants. And it promises disaster for Ford's one-year-old, $313 million lockup automatic transmission, built in Livonia, Mich., which was designed solely to extend the market life of Ford V-8 engines. That line will probably have to be shut down and written off within several years.

LeRoy H. Lindgren, a vice-president with Rath & Strong, estimates that the Big Three must write off undepreciated capital goods totaling at least $8 billion between now and 1990 because of the premature obsolescence of its big-car plants. "Basically," he says, "anything spent on rear-wheel drive in the past two years is a write-off."

There could be a bright side to these capital investments: improved productivity. Auto industry managers are hoping that the steps required to revamp their product lines will also let them beat the now-lower production costs of foreign rivals by incorporating the latest technology, set in new or completely remodeled factories. "In the next three years," declares Robert C. Stempel, general manager of GM's Pontiac Motor Division, "we're going back to a 3 percent gain in productivity per year."

PRODUCTION PLANNING

Smaller cars and more automation invariably mean higher assembly-line speeds as older plants are converted or new ones built. GM, for example, plans to build two brand-new assembly plants that together will be able to produce 150 cars per hour with no more manpower than it took to build 115 per hour at the 60-year-old plants they will replace at St. Louis and Pontiac, Mich. Ford's venerable Dearborn (Mich.) engine plant—converted at a cost of $650 million—will turn out 250 four-cylinder engines per hour compared to 200 per hour at the best of its V-8 engine plants.

To squeeze out better fuel efficiency, cars of the future will be more complex. But the productivity penalties from more sophisticated assembly work are being offset by a sharp reduction in the variety of model sizes, engines, and other mechanical options. Those parts of the car not outwardly visible will become increasingly standardized and interchangeable. Product differentiation—the cornerstone of Detroit's marketing philosophy—will be preserved through a wider array of highly visible buyer options, such as interior finishes. The goal of the production planners is to build a wider variety of cars on each assembly line without creating a parts-flow nightmare. GM, moreover, is designing plants that could shift quickly from one car size to another to gain higher utilization rates than in the past and to respond to the increasingly volatile swings in consumer preferences. Three-shift operations will become the norm at capital-intensive engine and transmission plants. And analysts predict that a larger share of the Big Three's parts needs will be farmed out to suppliers, rather than made in-house.

The reason is that the cost of capacity has soared. The long-time GM policy of building enough plants to meet peak demand without requiring heavy overtime may no longer be affordable. "After being burned twice (in 1974–75 and again in 1979–80)," says Robert J. Orsini, automotive consultant with A. T. Kearny & Co., "they won't let it happen again."

Eventually as many as 7 of the 46 car and truck assembly plants operated by the Big Three last year may simply be closed rather than converted or replaced. The first signs of this came in February with the permanent closings of Chrysler's huge Hamtramck (Mich.) assembly plant and Ford's suburban Los Angeles assembly plant. Higher efficiency at the remaining plants, converted to build smaller cars, could probably handle current levels of demand plus modest growth. "Over the next three years there undoubtedly will be extra capacity," acknowledges James K. Bakken, Ford's vice-president of operations support staffs.

That could be an understatement. For

there is no guarantee that Detroit will win back a substantial portion of the market it has lost. Many Detroit executives fear that the industry will simply not be able to make small cars whose quality, price, and performance will prevent further erosion of U.S. market share. It is a concern rarely voiced in Detroit. But Lee A. Iacocca, Chrysler's outspoken chairman, concedes that imports' reputation for superior quality, at least, is not undeserved. "They earned it," he says. "In fits and finishes, they've done better."

WHAT DOES THE MARKET WANT?

And car buyers' perceptions go a lot further than that. When the Motor & Equipment Manufacturers Assn. canvassed 10,000 American households in 1978 and 1979, it found that imports strongly outranked U.S. small cars in perceived fuel economy, engineering, and even durability. "It's a deep-seated conviction," says James A. Lang, the association's director of marketing and research, "and it's going to be very, very difficult for Detroit to dislodge that feeling just by making its cars smaller."

In fact, every time that Detroit has brought out a so-called import fighter, such as the Chevrolet Vega, it has failed. Part of the reason is that while foreign car manufacturers were forced to engineer cars for very high fuel prices, U.S. manufacturers were pursuing their "bigger is better" style of marketing, happily loading up their cars with profitable but gas-guzzling features, such as automatic transmissions, power brakes, and power steering. The average fuel economy of U.S.-built cars declined from 15.4 mpg in 1936 to only 13.5 mpg in 1972.

But when it comes to small-car technology, Detroit has lagged. For years it resisted front-wheel drive. Chevrolet's rear-wheel-drive Chevette, for example, which was introduced in the U.S. in 1975, was a design unchanged from the same car produced elsewhere in the world by GM for three years before that. Chrysler's popular four-door Omni and Horizon subcompacts—both front-wheel-drive—are virtual copies of Volkswagen's five-year-old Rabbit.

Detroit's inability or unwillingness to develop small-car technology could very well mean that once buyers turn to foreign cars, wooing them back to U.S. makes is very difficult. GM's X-car—the Chevrolet's Citation is one—has been wildly successful: 390,000 Citations were sold in the first year. But the Citation has flopped as an import fighter. GM concedes that the car is appealing largely to former big-car buyers. Very few foreign-car owners have switched. No one in Detroit knows what these new small-car buyers want. "We are dealing, or about to deal, with a generation that is inherently anti-big," says Bennett E. Bidwell, vice-president of Ford and head of its Car & Truck Group. "We still don't know what compromise in vehicle size this younger generation will accept."

That means that Detroit's investments have suddenly grown riskier. The industry is dealing with a market that it does not understand. At this point, it feels it cannot simply abandon its full-size and intermediate cars. But it could spend billions to improve them only to find buyers turning up their noses.

This heightened risk has not been lost on the government. The Transportation Dept., for example, has delayed proposing fuel economy standards for cars built after 1985. Says Transportation Secretary Goldschmidt: "We will not make a move until we have a lot better feel for the difficulties and problems of the industry." The hitch, says Goldschmidt, is that in the past it could make huge investments—in engines, for example—and expect to get a return on that capital for as long as 20 years. Now, he says, "they are confronted with the prospect that today's entire retooling effort might have to be done again in some significant fashion after 1985."

Whether the market or the government demands it, that would be a horrifying prospect for Detroit. But if the industry must lay out $75 billion in new investment between now and 1985 only to be forced to do it again, it will have only itself to blame. It shortsightedly tried to prop up the big car, a dinosaur that relied on cheap energy. Cheap energy is now gone for good, and with it the big car. "After the oil embargo in 1974, we went back to big cars as if nothing had happened," admits a chastened Caldwell. "I think the elasticity is out of the rubber band now, A permanent set has taken place."

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. BRADLEY). Under the previous order the Senator from Louisiana is recognized to call up a conference report.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for 1 minute?

Mr. LONG. I yield.

INDIAN CLAIMS

Mr. ROBERT C. BYRD. Mr. President, this request has been cleared on the minority side.

Mr. President, on behalf of Mr. MELCHER, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2222.

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

Resolved, That the bill from the Senate (S. 2222) entitled "An Act to extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That (a) the third proviso in section 2415(a) of title 28, United States Code, is amended by striking out "after April 1, 1980" and inserting in lieu thereof "after April 1, 1982".

(b) The proviso in section 2415(b) of title 28, United States Code, is amended by striking out "on or before April 1, 1980" and inserting in lieu thereof "on or before April 1, 1982".

SEC. 2. Not later than June 30, 1981, the Secretary of the Interior, after consultation with the Attorney General, shall submit to the Congress legislative proposals to resolve those Indian claims subject to the amendments made by the first section of this Act that the Secretary of the Interior or the Attorney General believes are not appropriate to resolve by litigation.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MELCHER, I move that the Senate disagree to the amendment of the House and that the Senate request a conference with the House on the disagreeing vote of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. MELCHER, Mr. DECONCINI, Mr. INOUYE, Mr. COHEN, and Mr. HATFIELD conferees on the part of the Senate.

WINDFALL PROFIT TAX ACT OF 1980—CONFERENCE REPORT

Mr. LONG. Mr. President, I submit a report of the committee of conference on H.R. 3919 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3919) to impose a windfall profit tax on domestic crude oil, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of March 7, 1980.)

Mr. LONG. Mr. President, when the President announced his program for the phased decontrol of oil prices last April, he ended an era of cheap energy which has hindered conservation efforts, domestic oil production and the development of alternative fuels. Decontrol of oil prices is the single biggest step we will take to solve our energy problem.

This program of decontrol will result in greatly increased receipts by oil producers and royalty owners. Without a windfall profit tax, this would amount to $40 billion per year over the next 11 years, even after existing State and Federal taxes have been paid. While these additional profits would provide an added incentive to explore for and develop additional oil reservoirs, in the absence of a windfall profit tax, they would cause the American people to resist decontrol. Thus, as an integrated part of the decontrol program, the President has insisted upon a windfall profit tax on domestic crude oil to recapture for the American people some portion of the increased revenues which oil companies will receive. I have supported this proposal for a temporary windfall profit tax because decontrol is absolutely essential to achieve greater domestic oil production and greater conservation efforts.

A well designed windfall profit tax bill must balance conflicting considerations of revenue on the one hand and production incentives on the other. Tax rates on oil from which a significant production response can be expected must be kept low. However, the tax must also be large enough to permit the President to go forward with decontrol. The conference agreement is an effective compromise of these competing considerations.

First, the tax is large enough to enable the President to go forward with decontrol. It will raise an amount almost exactly halfway between the House and Senate bills. Of the $440 billion which oil producers and royalty owners are expected to receive from decontrol over the next 11 years, even after existing State and Federal taxes and royalties are collected, the tax will recapture about half.

Second, special incentives for the production of newly discovered, incremental tertiary and heavy oil, which were major factors of the Senate bill, have been preserved in the conference report, as have the provisions recognizing the important contributions of independent producers.

Third, the most important of the energy tax incentives proposed by the Senate have been accepted by the House.

Fourth, the conference agreement includes the Senate provisions repealing carryover of basis and enacting a $200 interest and dividend exclusion.

OVERVIEW OF BILL

The conference agreement is a carefully negotiated and balanced program addressing our energy needs on five fronts.

First, the windfall profit tax permits decontrol to go forward uninterrupted. At the same time, it recognizes the difficulties faced by independent producers who drill so many of the Nation's new wells by providing for reduced rates on their first 1,000 barrels a day of old and stripper oil. The bill also preserves all the rights that independent producers have to percentage depletion under present law.

Second, the conference agreement strengthens the residential energy conservation program enacted in the Energy Tax Act of 1978. The most important provisions are an increase in the solar energy tax credit and establishment of special standards which the Secretary must use in deciding whether a credit should also be given for wood stoves, heat pumps and similar items.

Third, the bill contains a wide-ranging program of tax incentives for businesses to encourage energy conservation and alternative energy production. The conference agreed on most of the incentives passed by the Senate, including important provisions to encourage solar, hydroelectric, and synthetic fuel investment.

Fourth, the conference agreement responds to the hardships which high energy prices impose on low-income families. These provisions include a program of grants to the States to provide low-income assistance for which more than $3 billion is authorized in fiscal year 1981.

Fifth, the bill establishes guidelines allocating the net windfall profit revenues.

The conference agreement also includes three significant tax provisions insisted on by the Senate: The repeal of carryover basis, an exclusion for dividends and interest received by individuals, and certain changes in the LIFO inventory rules.

The windfall profit tax is the largest tax increase ever levied on an American industry. The conference bill will raise $227.7 billion during the next 11 years. For the entire bill, the fiscal year 1980 receipts will be $3.1 billion. This is $700 million more than was required by the budget resolution for fiscal year 1980. In fiscal year 1981, the bill will contribute at least $13 billion to reducing the budget deficit, and even more if oil prices prove higher than expected.

The residential energy tax credit provisions in the conference bill will cost $600 million between 1980 and 1985. The business energy incentives agreed upon by the conference will cost $8.1 billion through 1990.

The repeal of carryover basis will decrease revenue by $4.3 billion over the next 11 years, and the interest and dividend exclusion will cost about $2 billion in each of the 2 years for which it is effective.

Let me summarize the major components of the conference agreement.

WINDFALL PROFIT TAX

The windfall profit tax is a temporary excise tax on the production of domestic crude oil. Since domestic prices are set by world prices, the burden of the tax will fall entirely on producers and royalty owners, not on consumers. It is decontrol and OPEC price increases, not the tax, which will cause consumer prices to rise, although the greater efficiencies resulting from decontrol could cause the rise in consumer prices resulting from decontrol to be only temporary.

The windfall profit tax applies to crude oil in any one of three tiers. For each tier, the taxable windfall profit is the selling price reduced by a base price and an adjustment for the State severance tax on the windfall profit amount. The base prices average $12.81 for tier 1, $15.20 for tier 2, and $16.55 for tier 3. For tiers 2 and 3, exact base prices are to be set in Treasury regulations, but the bill provides an interim rule for producers to use during the initial months of the tax. These base prices are adjusted for inflation and for grade, quality and location differences.

In the case of oil sold at a temporary depressed price in late 1979, such as California oil, a special rule is provided for determining interim base prices so that this oil will not have too low a base price. In establishing permanent base prices, the Secretary of the Treasury will have sufficient authority to take into account any abnormalities in 1979 oil prices which might otherwise prejudice any particular class of producers.

For major oil companies and royalty owners, the tax rates applied to the windfall profit are 70 percent for tier 1, 60 percent for tier 2, and 30 percent for tier 3. Under a compromise, which the House conferees resisted vigorously, the rates on tier 1 and tier 2 are reduced for the first 1,000 barrels a day produced by independent producers to 50 percent for tier 1 and 30 percent for tier 2, another very important part of this compromise is that it drops the restrictions on percentage depletion which were in the House bill. These special rates for independents and protection of percentage depletion represent a sound compromise for the independents in light of the strong position of the House. This compromise recognizes the problems independents encounter in trying to compete with major companies and gives them an added cash flow which they will invest in drilling additional wells.

Tier 1 oil is oil that would have been lower or upper tier oil had decontrol not occurred. Under both the House bill and the Senate amendment, lower tier and upper tier oil were treated differently until after July 1984. The conference agreement merges these two categories of oil and taxes them in a single tier by treating all previously controlled oil as upper oil for tax purposes. This eliminates a great deal of complexity which would otherwise exist in the bill.

Tier 2 oil is stripped oil and oil from the National Petroleum Reserve.

Tier 3 oil is newly discovered oil, incremental tertiary oil, and heavy oil. These three categories received the most favorable treatment under the Senate amendment because they are the areas where the greatest increase in production can be expected. The Senate conferees, therefore, insisted on as low a tax rate on tier 3 oil as was consistent with the revenue constraint under which he had to operate.

Oil owned by State and local governments, Indian tribes, and charitable schools and medical institutions is exempt from tax under the conference agreement.

The tax will phase out starting with the first month after the Secretary estimates the aggregate net windfall profit tax revenue exceeds $227.3 billion. This phaseout will not start any later than January 1991 nor any earlier than January 1988 and will be accomplished over 33 months. The phaseout essentially preserves the Senate position on this vital issue.

Some have criticized the conference agreement as too heavy a tax on the American oil industry. We must remember, however, that this is a temporary tax designed to allow the President to go forward with decontrol and will raise $50 billion less than the tax proposed by the House. Any lesser tax would have been unacceptable to the House and to the President and would have caused the President to reimpose price controls.

RESIDENTIAL ENERGY TAX CREDITS

The conference bill makes several changes in the residential conservation and solar energy credits enacted in 1978. First, there is a significant increase in the solar energy tax credit to 40 percent on the first $10,000 of eligible expenditures. Many believe solar, wind, and geothermal energy offer our best long-term hope for clean, efficient energy production. This increased credit will help launch this industry into full development.

Under the conference agreement, the Secretary will be required to evaluate the energy-saving merit of items such as wood stoves, high-efficiency furnaces and heat pumps, which were in the Senate amendment. In making his evaluation, the Secretary will use specific standards agreed on by the conferees and will have to report on his determination within a year of any request for a product to be added to the list.

The conferees also adopted "anti-double dipping rules" to limit the use of multiple subsidies by taxpayers who might otherwise be encouraged by the availability of overlapping programs to make wasteful investments.

BUSINESS TAX INCENTIVES

The House conferees have accepted the most important of the business incentives proposed by the Senate, although certain modifications and compromises have been worked out. To allow Congress to review the effectiveness of these credits, most will terminate after 1985.

Under the conference agreement, the present credit for solar, wind, and geothermal equipment is increased from 10

percent to 15 percent. This should encourage the development of renewable energy sources. This credit will also apply to expenditures for ocean thermal equipment at two experimental sites. Development of small-scale hydroelectric facilities will be encouraged by an 11-percent energy tax credit and greater availability of tax-exempt bond financing.

The conference agreement contains changes, which the Senate recommended, to the business energy credits enacted in 1978. These include restoration of the regular investment credit and accelerated depreciation to petroleum coke and pitch equipment and a 10-percent energy credit for nonoil or gas cogeneration equipment, for modifications to alumina electrolytic cells, and for coke and coke gas equipment.

Several provisions of the conference agreement will encourage production of alternative fuels. These include extension of the energy investment credit for equipment that produces or uses fuels from biomass, availability of tax-exempt bond financing of certain solid waste disposal facilities and certain renewable energy property, and a price guarantee for the production and sale of certain alternative energy sources in the form of a $3-a-barrel credit which generally phases out as oil prices rise above $29.50.

Under the conference agreement, the Federal excise tax exemption for alcohol fuels is extended through 1992. If alcohol is used as a fuel and the exemption does not apply, a tax credit is available to the blender. This provision was widely supported by the Senate.

The conference agreement also encourages mass transportation by providing a 10-percent credit for certain intercity buses acquired to increase the operator's seating capacity.

LOW-INCOME ENERGY ASSISTANCE

Those who support decontrol of oil prices have a special obligation to see to it that higher energy prices do not impose an excessive burden on the poor. The conference agreement establishes a program of block grants to the States to provide assistance to lower-income families for heating and cooling costs for which $3.115 billion are authorized in fiscal year 1981. This is essentially the program that passed the Senate. Only households with incomes less than the Bureau of Labor Statistics lower living standard are eligible. States may also give assistance. regardless of income, to food stamp, AFDC, needs-tested veteran's pension, or most SSI recipients.

DISPOSITION OF WINDFALL PROFIT TAX REVENUE

Net windfall profit tax revenues over the next 11 years are allocated, for accounting purposes only, to a separate account in the Treasury as follows:

First, 25 percent for aid to lower income households;

Second, 60 percent for income tax reductions; and

Third, 15 percent for energy and transportation programs.

The low-income account will be divided between an energy assistance program and a program of aid to SSI and AFDC recipients.

Any net revenues in excess of those projected under current price assumptions is allocated one-third for aid to lower income households and two-thirds for income tax reductions. The residential and business energy tax incentives in the conference agreement, and the Synthetic Fuel Corporation will be funded from general revenues. Since the funds from the windfall profit tax cannot be spent without further legislation, Congress will be able to review these allocations in the future. Without further legislation, the revenues would reduce the deficit.

CARRYOVER OF BASIS

Under present law, the basis of property that people receive by inheritance is the same as the decedent's basis. This carryover basis rule has caused much controversy and taxpayer resentment and is repealed under the conference agreement. Thus, the basis of property people inherit from others will be the value of the property at the time of inheritance.

INTEREST AND DIVIDEND EXCLUSION

Under the conference agreement, the existing exclusion for dividends is increased from $100 to $200 and is expanded to include certain types of interest received by individuals from domestic sources. For a married couple, the maximum exclusion will be $400. Qualifying interest includes interest from banks and savings institutions, interest on certain corporate debt, and interest paid by the United States or a State or local government if it is not already excluded from gross income. The exclusion for interest and dividends applies to 1981 and 1982.

LIFO INVENTORIES

Finally, the conference agreement provides two changes involving LIFO inventories. First, if a Department of Energy regulation or request regarding energy supplies or a significant disruption of foreign trade causes taxpayers to liquidate their LIFO inventories, a refund of taxes paid on the LIFO profits from the sale will be available if the liquidated inventories are replaced within 3 years.

Second, under the conference agreement, a liquidating corporation that distributes LIFO inventory must recognize the inventory's LIFO recapture amount as ordinary income. The same is true for a corporation that sells its inventory as part of a 12-month liquidation. The LIFO recapture amount is the amount by which the adjusted basis of the inventory determined under the first-in, first-out (FIFO) method exceeds the adjusted basis determined using LIFO. The effective date of this provision is delayed until 1982. Thus, these rules will apply only to distributions and sales after December 31, 1981, under plans adopted after that date.

Mr. President, I ask unanimous consent that the following staff members be allowed on the floor during debate and votes on H.R. 3919, the Crude Oil Windfall Profit Tax Act of 1979:

From the Committee on Finance: Michael Stern, William Morris, Edward Hawkins, James Heinhold, and Joseph Humphreys.

From the Joint Committee on Taxation: Bernard Shapiro, James Wetzler, Clint Stretch, Tom Gallagher, Carl Bates, Randy Weiss, Al Buckberg, and Al Geske.

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

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I ask unanimous consent to have added to that request, Robert Lighthizer and Roderick DeArment.

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

Mr. DOLE. Mr. President, I missed a portion of the chairman's comments, but I assume in the next 2 or 3 weeks we will have a chance to hear them again. It is my understanding that a number of Senators would like to talk at some length on this proposal. Since it does call for the largest tax in the history of the country, it is fair to say that an extended debate is probably justified.

In addressing this conference report, the Senate has a number of options. One is to just kill it outright. One is to pass it. One is to postpone it indefinitely. One is to recommit it to the Finance Committee. One is to recommit it to the Finance Committee with instructions. One is to table it, which I assume would be rather damaging.

I am not certain how many votes there are for any of these options. I assume right now there are more for passage than any of the other options. But I would like to point out to the chairman, that there are a number of fertile minds at work, and therefore no one knows for certain what will happen in the next few days.

I hope that we can fully discuss this bill and then, sooner than later, vote—vote on something, whatever it is.

Mr. President, today we begin round four on H.R. 3919, the so-called windfall profit tax bill. The Finance Committee first began consideration of this subject on May 7, 1979—more than 10 months ago. Since that time, the Finance Committee spent 37 days in hearings and executive sessions on the bill, the Senate spent another 23 days with the bill on the floor, and we recently completed 16 days of conference consideration. That is a substantial period of time.

The Senator from Kansas understands very well how much time that was.

Unquestionably, this has been an exhausting process. As a result, there is a great temptation to give only pro forma consideration to the conference report in order to simply get the bill finished. In the opinion of the Senator from Kansas, this would be a serious mistake. H.R. 3919 is the single, largest tax bill ever considered by Congress. As it returns from conference, H.R. 3919 will raise $227 billion from 1980 to 1990, even using extremely conservative economic assumptions. This legislation will have profound effects on the economic and social development of this country for the remainder of this century. Consequently, we have a duty to review the conference report and its ramifications in a thorough and deliberate manner. This is

a far too important matter to rush. I am certain the chairman will understand that there are some, like Senator BELLMON, who feel very strongly about the impact of this bill and who want to discuss it and raise some questions.

In order to sell this tax, we have to convince the American consumer that he will not end up paying it.

In the last several months the Senator from Kansas has traveled around the country some, not with any impact, and around his own State. There is a great feeling out there among consumers that in the final analysis they will pay for this so-called windfall profit tax through higher prices at the gas pump.

In the event this bill passes, whenever the price of gasoline rises in the future, someone will blame the increase on the Senate and the Congress for passing a windfall profit tax.

It was certainly not the intent of the bill, to pass on the burden of the tax to the consumers. It is an excise tax at the wellhead, collected by the first purchaser.

Nevertheless, there is a strong feeling that this is just another gimmick to raise revenue, to soak the American consumer, and the American motorist, with higher prices at the pump. That is a question that must be addressed.

As I will say later in more detail, there is another group out there that suddenly has discovered this tax applies to them. These are the royalty owners who thought that this tax applied just to big oil companies.

Last Saturday the Senator from Kansas had an opportunity to visit Herington, Kans. During this visit, I spoke with a former royalty owner who handed me a letter from an oil company informing him, for the first time, that he would have to pay a windfall profit tax. He did not realize that the tax applied to royalty owners because they do not make a lot of money. He thought it was a tax against big oil and those with massive profits.

There are 125,000 of royalty owners in Kansas, and I understand, about 300,000 in Oklahoma. They are now getting letters from all the companies saying, "Greetings, you are about to be entitled to pay another tax."

Nobody wants to pay another tax. It is not that they have been denied a good price for the oil. But, they have gotten that good price and now they are told that, effective March 1, there will be a tax of 60 percent on the difference of an arbitrary base price and the market price. This is all very confusing to the royalty owner. In the final analysis, it means they will get less money. That is one problem.

Second, the royalty owners, do not understand why they are paying more tax than the independent producer who drilled the well. On stripper oil the royalty owner will be paying twice the tax that the independent is paying.

This is a very practical problem that will probably affect Senators from States where there are a substantial number of royalty owners who are learning that they are also included in this tax.

This fact was never any secret. I think we made it clear. But it just had not gotten out where royalty owners live. Nobody here represented the royalty owners. There was not any lobby around this place for royalty owners and when the bill left the Senate the royalty owners were fairly treated, when it left the conference committee they were not, despite our efforts.

Mr. President, the bill that the Senate sent to conference would have collected an estimated $178 billion from 1980 to 1990. As all in this Chamber are aware, the Senator from Kansas had serious concerns about the Senate bill and, particularly, about the provision which imposed a tax on newly discovered oil.

We argued that issue for days. We had Republicans and Democrats, liberals and conservatives in agreement that there should not be any tax on newly discovered oil.

We made the argument that there could be no windfall profit on something not yet discovered. That argument seemed to make a lot of sense.

The argument was made that we should be energy independent in this Nation, and thus we should not penalize or punish those out trying to find new sources of supply.

If domestic production is even to be maintained at current levels, by 1990 approximately 4 million barrels per day, or close to half of U.S. production, must come from new discoveries because of the natural decline in existing fields. Burdening newly discovered oil with this tax will inevitably have a major detrimental effect on U.S. production. For this reason, the Senator from Kansas strongly opposed the 10-percent tax that the Senate bill imposed on new oil and he opposed other provisions that he believed would have serious production consequences.

Nevertheless, when we left the Senate, there was a 10-percent tax on newly discovered oil. It was called a minimum tax. We agreed that everybody would pay something.

Nevertheless, the production disincentives in the Senate bill were mild in comparison to those embedded in the conference report. The so-called 10-percent minimum tax on newly discovered oil has been raised to a not so minimum 30-percent tax and the base price has been dropped by about $3. The exemption for independents, who do most of the wildcat drilling in this country, was sacrificed in order to squeeze an extra $50 billion in revenues from the Senate bill.

That was necessary because in the second meeting of the conference it was decided to split the difference between the House revenue provisions and those in the Senate bill. This difference amounted to about $50 billion in additional revenues, and somebody had to pay for that difference.

President Carter has urged us to act very quickly on this legislation as part of energy program. But this is a massive tax bill not an energy bill. From this Senator's first-hand experience, in town meetings or in Q and A sessions, the American people believe that they are going to get tagged with this tax in the final analysis. The major companies will figure out some way to pass on the windfall tax.

I think it is quite clear that this massive new tax is not needed to pay for the President's energy program. The conference bill would raise at least $85 billion more than the President has requested for energy-related programs. Moreover, under the conference bill, only 15 percent of the windfall tax revenues are allocated to energy uses, and that 15 percent is to be shared by transportation uses. I am certain of the sharing of the 15 percent with transportation use because that was an amendment that the Senator from Kansas, the Senator from South Dakota (Mr. MCGOVERN), and others were interested in.

From an energy production standpoint, I asume that we might be better off not to pass the bill at all, except for the portion of the bill that provides tax incentives for conservation and the development of alternative energy sources.

There were a number of Senators—Democrats and Republicans—who deeply wanted to see an independent exemption and to see that exemption apply also to royalty owners. We hoped that exemption might emerge from the conference. But once we agreed to split that down the middle on revenue, that was out of the question.

I believe that within the framework we had to operate—and for this I commend the chairman and all the Senate conferees—the Senate conferees did well to salvage as much as we did for the independent producers. We prevailed in the Senate's position on percentage depletion, which represents a major victory for independent and royalty owners, as well as for the consuming public.

The restrictions on percentage depletion in the House bill would have raised the independents' taxes by $13 billion.

The Senate conferees also were able to obtain more favorable tax rates for independents on flowing oil. On the first 1,000 barrels per day of stripper oil, the tax rates for independents is 30 percent instead of the regular 60-percent rate. Similarly, the tax rate for independents on upper and lower tier oil is 50 percent rather than the 70-percent rate. This approximately splits the independent exemption in half. Under the conference bill, independents will pay about $22 billion of the $227 billion total.

Nonetheless, I believe that if we could have exempted independents and royalty owners, we could have increased production and certainly increased exploration.

Based on the fact that independents put 105 percent of their net income back into the ground, industry experts have estimated that an exemption for independents and royalty owners would enable 41,250 new wells to be drilled. It is estimated that this would add 4.2 billion barrels to proven oil and gas reserves and would add about 950,000 barrels of new oil and gas production by 1990.

Throughout the debate on this tax, attention has been focused entirely on oil companies—on their profits, on their exploration activities, on big companies, on independent companies. Nevertheless,

this is not just a tax on oil companies. As I said before, as H.R. 3919 has emerged from the conference, it sweeps into its clutches hundreds of thousands of small royalty owners throughout the United States.

Virtually everyone has ignored the royalty owners in the debate about this bill. We apparently have been too busy trying to find ways to punish Exxon, Mobil, and the other big oil companies for their profits to pay attention to the effect the tax will have on individual royalty owners.

The conference bill subjects royalty owners to the full windfall tax rates for independents. Thus, royalty owners will have to pay a 70-percent windfall tax on upper and lower tier oil and a 60-percent windfall tax on stripper oil. For royalty owners on stripper properties, the imposition of this tax will cause a substantial rollback in the amount of royalties they receive. That is why royalty owners are frustrated. They have had some of the payments without the rollback, and now they will be told that, as of March 1, they will pay a substantial new tax.

For example, on a barrel of stripper oil selling for $38, a royalty owner would typically receive a $4.75 royalty payment. After the imposition of the windfall profit tax, the royalty owners will have to pay a $1.71 tax on this royalty. Thus, the royalty owners payment per barrel will be slashed from $4.75 to $3.04 by this tax—a 36-percent drop in income.

Most of the royalty owners affected by this tax are not wealthy individuals. They are working farmers who have leased their mineral rights on their farms or ranches. They are landowners. They get an eighth royalty interest because somebody is drilling on their land. It is true that they do not take any risk or put up capital, but neither do they have to lease the land. In many cases they have gone to some expense, and now they are told, "You're going to pay twice the tax."

Many of those, in addition to landowners, are retired persons and others who bought royalty interests to supplement their social security payments. It is hard to explain to the farmer or a retired person why they have to pay this windfall tax at all, much less why they have to pay the same rate that Exxon pays.

It is hard for me to tell that man in Herington, Kans., why he should pay the same rate as Exxon. People of such modest means can hardly be regarded as oil profiteers. It seems to me that there is very little equity in a bill which subjects these individuals to the windfall profit tax.

I know this is a matter of concern. The distinguished chairman of the committee, the junior Senator from Oklahoma (Mr. BOREN), and the senior Senator from Oklahoma (Mr. BELLMON), raised the point in the debate on the Senate floor. I am not certain at this point what, if anything, can be done, unless the bill is somehow revised. The conference report cannot be amended, so I suppose it would have to be defeated in order for it to be restructured.

There are however, provisions in this bill, which are very positive as the chairman has pointed out. The Senator from Kansas voted for the Senate-passed bill. The Senator from Kansas signed the conference report. I said at the time that I reserve judgment on the conference report itself. I believe that now, in the next few days—or however long it may take—we have to make a judgment on the bill.

I am prepared to acknowledge that there should be some tax. There are many in the oil business, and some were here in the last couple of weeks, saying that we should not have any tax. I do not share that view. But we should be careful that the tax is not discriminatory, as it is now, against some of the royalty owners; that it does not discourage production, as I think it may do in some areas; and that it does not close down small stripper wells and other marginal wells. I have been told by many that this will happen.

So what we have, in effect, is not an energy bill. There is not much in here to produce much energy, except for the tax incentives on conservation and alternate energy source. We do have repeal of the carryover basis rule and some other worthwhile provisions. We have the exclusion of the tax on dividend income on a joint return. There are a number of other positive provisions in the conference report.

Those of us who have wrestled with the matter for a total of 76 days—either in the committee, on the floor, or in the conference—have to decide within the next few days whether we should vote for the conference report or whether we can figure out some way to make some changes in the conference report or at least provide that royalty owners pay the same rate of tax that independents pay.

I know there is a problem with some approaches to aid royalty holders. If you give royalty owners more favorable tax treatment if their land is drilled by independents than if it is drilled by major companies, then the majors will sign up with independents.

Mr. President, there is a great deal of interest in this conference report. The Senator from Kansas met with a number of Republicans on this report following our policy luncheon. There is a great deal of interest, as I said before, as to whether we can assure the American consumer that he is not going to end up paying this tax. Two hundred twenty-seven billion dollars is a lot of tax.

I would guess if a poll were taken among Americans today, we would find a heavy percentage would say that we are going to end up paying the tax, that somehow the oil companies are going to figure out some way to pass it on.

That is the first point, I think, that we must address.

Second, we must find or should find or I hope we can find some way to ease the tax on royalty owners and independents.

I believe that there are a lot of discussions to take place and hopefully they are going to be constructive.

I am prepared to yield the floor.

Mr. BELLMON. Mr. President, first, I compliment the members of the conference for resolving what I feel certain were extremely difficult bills as passed by the House of Representatives and the Senate.

The bills had many areas in which serious difference existed, and having been through a few House-Senate conferences, I think I have some small idea of the difficulty that the chairman and ranking minority member and the other Senate conferees had in working out a conference report which they have now brought to the Chamber.

I must say that I was not for the bill when it originally cleared the Senate and while there are some features of the bill which probably deserve support, such as the tax exemption for small savers and repeal of the carryover provision, most of the features of the bill that relate to this Nation's effort to solve its energy problem I find difficult to agree with. Particularly I was sorry to see that the Senate conferees were not able to prevail in the conference and retain all or a part of the exemption which the Senate put in for some royalty owners and for the independent producer.

I think most Members of the Senate who have studied this Nation's energy industry realize that some 85 or 90 percent of the exploratory or, to say the oilfield term, wildcat wells that are drilled in this country are drilled by the independents. Those are the risktakers. They are the ones who stayed in this country when the larger oil companies gave up on finding significant quantities of oil in the continental United States and went to the Persian Gulf or to north Africa or to Indonesia or to South America and began to make their efforts there.

They, for all practical purposes, trained a staff that was accustomed to looking for large oilfields in foreign countries and largely dispersed the staffs that were capable of looking for the smaller, harder to find, and more costly to produce oil that is left in the continental United States.

The result of it is that over the years since the mid-1950's we have in effect had in this country two different oil industries, one, the international oil companies primarily looking for, finding, producing oil abroad, and the independents who are heavily oriented toward finding oil in the continental United States.

What this bill does, and one of the major problems I have with it, is to in effect exempt those larger companies who produce abroad, who produce foreign oil and who make most of their profits from oil produced abroad and from their processing or marketing or distribution systems and instead tax heavily those independents who had confidence that more oil could be found in the continental United States, who have built the capability of finding that oil and who have been highly successful in many cases in finding oil to keep up with the decline in the older fields.

So what we are doing here, Mr. President, is totally missing the idea that a lot of Americans have that this bill is going to be a tax on the so-called excess profits of the international oil companies

and rather we are taxing the royalty owner and the domestic producer whose profits are not excess by anyone's definition of the term.

Anyone who will compare the profits of the domestic oil producer with the profits of other segments of American industry will find that on the average American oil producers, domestic oil producers are not making excess profits and more than that they will find that industrywide the industry is plowing back well over 100 percent of revenues in new exploration activities.

Therefore, the net result of this bill on the domestic oil industry will simply be this, that rather than having available the resources needed to drill the 60,000, 70,000, 80,000 wells a year that we need in order to overcome our declining domestic oil production and begin to work our way away from dependence on imported crude oil, this bill is going to cripple the domestic industry's ability to increase our production and make us increasingly dependent upon the costly, undependable foreign sources that have already driven our economy to the wall and which threaten our ability to independently develop our foreign policy.

Mr. President, anyone who has taken the time to become informed about this Nation's future energy supply cannot help but be terribly concerned about what the next 5 to 10 years hold.

It is fairly well known that the Soviet Union at the moment is self-sufficient in oil production both to meet its own needs and meet the needs of its satellites. But looking ahead only 2 or 3 years and certainly looking ahead toward the middle of the decade, it becomes completely obvious that the Soviet Union is going to be competing on the world market for crude oil that is now going to the United States, to Japan, or to Western Europe.

The world oil supply demand is already in a very close balance, particularly since the disruption of exports from Iran.

If there is presently no surplus oil in the world market and if the Soviet Union which is presently self-sufficient begins to compete on the world market for 1-, 2-, 3-, 4-million barrels a day within the next 5 years, it is very obvious that two things will happen.

First, there will not be enough to go around so someone is going without; and, second, since the demand will exceed the supply, the price is certain to jump dramatically.

It is this period of time, perhaps the next 5 or hopefully 10 years, that the United States has available to develop its own abundant natural resources, resources that are conservatively estimated to be enough to last this country at least 500 years. A lot of it is oil shale. A good bit of it is coal. But it is not commonly recognized that there is still more oil left in the old oil fields of this country than has been produced. I wish to say that again. There is more oil left in the old oil fields than was produced under primary and tertiary recovery methods and, therefore, by the use of tertiary methods and by the employment of literally billions of dollars of capital, it is possible in the immediate future, the next 2, 3, 4, 5 years, to significantly increase domestic oil supplies and to in this way lessen the dependence the United States has on imports and at the same time reduce the competition worldwide for the supply of oil that will be sought both by the Soviet Union and by the Western World.

So, Mr. President, what we are about to do with this conference report is to take from the domestic oil producers, those who look for and find the oil and who develop our domestic resources, the billions of dollars that they need and use that money not to produce more energy but to produce more government.

If there is one thing we need in this country it is more energy. If there is one thing we do not need it is more government. Here we in the Senate are about to make a choice. We are about to vote to spend not $227 billion that the conference speaks about, but rather some $400 billion or more this bill will raise, using the current price of crude oil, which is somewhere between $38 and $40 a barrel.

So here we are about to take some $400 billion to work our way toward self-sufficiency and use it for a wide range of Government programs, most of which will be no more successful or no more popular than those we have been funding in the past through the debt ceiling.

When we look at the bill specifically there are many things about it that trouble me. One is that, as I have said, it is basically an unfair bill. It exempts or it does not hit those large international companies which have been so widely criticized for their excess profits, if that is the proper term. It is not the term the Senator from Oklahoma would use. But, at any rate, it is unfair because the criticism that has brought on this situation is not being dealt with by this legislation.

Second, the bill is mislabeled. It is not a tax on excess profits; it is an excise tax on domestically produced crude oil. It has nothing to do with profits. This tax will be paid by every oil producer and every royalty owner whether there is a profit involved or not. This tax will be paid by many individuals who are having a difficult enough time making a profit even to stay in business, and it will undoubtedly, it will certainly, result in the abandonment of many stripper wells far sooner than would have been the case had this tax not been applied against stripper oil, which, up to now, has been tax exempt in this country.

An old stripper well that may be making 1 barrel of oil and 100 barrels of water is an extremely expensive proposition to keep in operation. It costs a lot of money to maintain equipment, it costs a lot of money to dispose of the water, to find an operator, a worker, who is skilled enough to maintain the old equipment and keep it functioning and, therefore, when those wells begin to lose money, as they will when this $7, $8, or $9 tax is applied for each barrel, the operator has no choice but to shut the well down, salvage the equipment, and sell it for whatever he can get, and when this happens, of course, the country then loses the crude oil that would otherwise have been produced.

Once those wells are abandoned and salvaged there simply is no way they will ever be redrilled because if you cannot afford to produce them when the oil well is already in place, there is certainly no way you can afford to drill another well in that same reservoir for the small quantity of oil that will remain.

The other problem, another major problem that I see in this bill, is that it is not only a rollback on stripper oil prices, it is also a rollback on new oil from its present level.

I will readily agree that the President has done the right thing in decontrolling new oil, and I want to give him credit for that. But this bill, in effect, will roll back the price of new oil by the same tax that is placed on stripper oil, which will be $7, $8, $9 a barrel, depending upon the market price and the quality of the oil.

The result of this will be a demoralization of the producers who have now become accustomed to receiving some $38 or $40 a barrel, and when they look at the economics of going out and drilling new oil wells and selling the oil they are fortunate enough to find for $30 or less it is certainly going to mean a rapid decline in the rate of drilling which, at the present time, has been going up month after month.

This bill, as explained by the chairman of the Committee on Finance and by the ranking member, is expected to tax some $22 billion away from independents over the next 11 years. That figure, I assume, is based on the assumption of $30 oil. If one applies the realistic figure of $40 per barrel or more then it is obvious that this tax will be much higher than the $22 billion and, conceivably, could be easily double that.

All that means is that these independents who, up to now, have been reinvesting every dime they can get their hands on, will simply have $30 billion, $40 billion, $50 billion less to invest, and that means the country will have that much less production from its own abundant energy resources.

Mr. President, perhaps my strong feeling about this bill is partially due to my own close relationship over the years with the energy business. I am not in the energy business. The Senator from Oklahoma is a farmer. On my land I have two small stripper wells. Between them they make about 3 barrels a day and about 300 barrels of salt water. But the operator is a typically small independent, this man who operates those wells. This man worked for many years for an oil company, was able to save enough money to buy an overworked rig, and when companies would hire him to salvage out the old stripper wells, on occasion he would buy those wells, work them, try to improve them, and go ahead and operate them at a small profit.

After having done this for some 15 years or so, this man was able to get enough capital to drill a well of his own, and he was fortunate enough to get a moderate producer. The tax on that well

now will amount to thousands of dollars per year. The money he borrowed to help drill the well will have to be repaid at a much slower rate, which means it will take longer before he will be in position to drill an additional well, and it means that this man's incentive to go ahead and take these risks is cut by a large factor.

If this man had taken his money and invested it in real estate or if he had bought a bank or if he had looked and found a goldmine, he probably would have been much more successful in making money than he has been in the oil business, and he would not now be hit by his Government with a so-called excess profit tax.

I feel it is extremely unfortunate that we in Congress have chosen the one industry that we most need to encourage, and singled it out for this, the largest tax burden that has ever been placed on one industry in the history of our country. It is almost as if we decided we had a shortage of houses in this country, and that the houses cost too much and, therefore, the right solution to the problem is to place a tax on two-by-fours.

Here is a situation where we have too little oil. We would like to encourage people to go out and invest and try to find and produce more. Yet, by the action of the Senate and the House, we are going to take exactly the wrongheaded approach, and penalize those who make these investments by this tax, and make it more difficult for them to get the capital they need to increase production in future years.

Mr. President, there have been many studies showing this country can work its way out of our present energy difficulties. A study made for the Hart subcommittee of the Budget Committee by a local think-tank organizaion shows if we will follow appropriate policies we can cut our oil consumption in this country by 3 million barrels a day by 1990; that we can substitute coal for oil and thereby save about 2.2 million barrels a day by 1990, and that by providing both the incentive and the means for the producer, domestic producer, we can increase oil production in this country by some 3 million barrels a day by 1990. Taken all together, these actions will reduce our dependence on imported crude oil by down to something like 3 million barrels a day, which is the level that obviously the country can live with.

The action we are taking is going to make it absolutely impossible for the private sector, the private oil industry, in this country to come anyplace close to increasing our domestic production by the amount necessary to make our dependence on foreign crude oil less onerous than it is at the present time.

Mr. President, the distinguished Senator from Kansas (Mr. DOLE), in his opening remarks, commented at some length about the royalty owners. I would have to agree with the Senator that here is a case where the royalty owners have felt their interests were being protected.

Like the Senator from Kansas, the Senator from Oklahoma has been in many meetings with royalty owners in recent weeks, and it is sad and it is unfortunate that in almost every case the royalty owners will suddenly wake up to the fact that they are going to be paying the same tax as the world's largest oil companies, because of the fact that the bill that passed the Senate had a 1,000-barrel exemption, and for some royalty owners the word seems to have gotten out that both of those groups are largely to be exempt from the taxes imposed by this bill.

When the royalty owners begin to understand that they are going to be paying these high taxes, and the independents also get this bill accurately in focus, it is interesting to see how frustrated, how angry, how betrayed these particular groups feel.

I am of the opinion that Members who come from States where royalty owners live—and that includes virtually every Member of this Senate—are going to be surprised to find how disappointed, how unhappy, how angry this group of property owners is. They feel this tax is unfair. They do not feel they are getting any kind of a windfall profit, and they simply do not understand why their Government has singled them out for this discriminatory tax.

I suggest to my colleagues that a tax on the royalty owners is not a tax on wealthy people. In most cases, it is a tax on farmers; most of them are small landowners; many of them are having a difficult time making a living in agriculture because of the low price of farm commodities. In many cases, the royalty checks they get simply subsidize the farm operation and makes it possible for them to continue as good producers.

This action will also hit a lot of retired people who have either deliberately made investments in royalties or who have retired and perhaps turned their farming operations over to their families or other members of the farming community in the expectation that the royalty income would continue and would be adequate so they could have a decent standard of living.

What we are about to do with this tax is to take away from a large number of helpless people in this country the income that has been absolutely essential to their existence in the past.

Mr. President, there are others who will have comments to make on the conference report. I do not want to use all the time of the Senate this afternoon. I hope to have an opportunity to make other comments later.

I would sum up by saying that this tax, as it exists now in the conference report, is going to injure this Nation's ability to work its way out of our energy dependence more than anything the Senate has done since I have been here—and that certainly covers a wide variety of mistaken actions.

As I understand it—and I hope to have a table inserted in the RECORD later after it has been thoroughly researched—this bill will leave in the hands of producers of oil far less money, far less capital per barrel of oil than it takes to go out and find a new barrel. The obvious conclusion from that information is that every time a producer sells a barrel of oil, he is going out of business, because, unless he gets enough net income from that barrel to go find another barrel, then it is obvious that he cannot continue in the business very long.

At some future point, I hope to go into that discussion in greater depth. But, suffice it to say at this time, Mr. President, that even though—and I am reluctant to admit that we are going to have a windfall profit tax—but it is my hope, as was the hope of the Senator from Kansas, to defeat the conference report and to ask for a new conference and instruct the Senate conferees that we need to retain the exemption for the independent owner and for the royalty owner, because these are the groups that do the most to solve this Nation's energy problems and they are the ones that are least able to pay the heavy taxes that this bill would place upon them.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. BELLMON. Mr. President, I am happy to yield.

Mr. ROBERT C. BYRD. Mr. President, I respect the distinguished Senator for stating that he hopes to defeat the conference report and send it back to conference. But I must remind my colleagues——

Mr. BELLMON. If the Senator will yield, not send it back to conference. It is no longer a conference. The House has dismissed it. We would have to ask for a new conference.

Mr. ROBERT C. BYRD. Yes; I understand. But that is getting it back to conference.

I remind my colleagues that the Senate spent weeks and weeks and weeks in coming to a resolution of this matter. It was extremely difficult. But, because Members were willing to give and take, cooperate, work for a bill, the Senate finally passed the bill under the leadership of the distinguished Senator from Louisiana (Mr. LONG) and the distinguished Senator from Kansas (Mr. DOLE), and with the support of many other Senators.

I remind my colleagues that although I was not a conferee, I was very aware of the time that was spent by the Senate and House conferees in working in conference to resolve the differences between the two Houses there. Weeks and weeks and weeks went by while the conferees labored.

I was pleasantly, to a degree, surprised that conferees were able to hammer out their differences and get this tax bill back before the other two energy bills had been resolved in conference.

Now, to talk about rejecting this conference report after all of the many months of travail, labor, and sweat, I think is being unrealistic.

I think it would serve no good purpose to reject the conference report. It would serve no good purpose to go back to conference on this bill.

Mr. BELLMON. Will the Senator yield?

Mr. ROBERT C. BYRD. If I may just finish what I was attempting to say, then I will be happy to yield.

It would serve no good purpose. Aside from that, it would be a signal to the country that the energy legislation,

which has been promised and which is so sorely needed, is still going to be ruminated over and delayed and delayed and delayed. And, who knows, the product of the next conference could be subjected to the same criticism. And there would be those who would be displeased with it.

I am displeased with this. Nobody is pleased 100 percent with the product. But that is normal for the course around here. We have to all compromise. In order to enact legislation, there has to be give and take. Nobody can expect to have it all his own way.

I am sure the conference report is not pleasing to the manager of the conference, Mr. LONG. And I am sure he could write a conference report that would be far more pleasing to him and to his constituents than is this one. So we all just have to do the best we can.

I think it would be extremely unwise to reject this conference report. If we reject this conference report, I dare say we might not get any bill at all. Maybe that would please some people. I am sure it would. But it would not be carrying out our responsibilities to the American people. And I think it is our responsibility to the American people to enact this piece of legislation.

I think that, on the whole, it is fair to the American people, it is equitable, and I think they are entitled to that.

I hope that our colleagues would not be persuaded to vote against the conference report. I say this with great respect for the Senator from Oklahoma. He is a Senator whom I admire greatly. I have often taken this floor to pay tribute to him and I have often done so off the floor, because I admire and respect the convictions that he holds.

I admire his integrity. I admire his courage. He has demonstrated this time and time again. He has demonstrated statesmanship time and time again in dealing with the budgetary process.

I have said so many times that the budgetary process under the Budget Control Act would not have worked had it not been for the leadership of men who were made of steel, rather than twine string as a backbone, men like ED MUSKIE and HENRY BELLMON. It has been that kind of bipartisanship, statesmanship-like cooperation on the part of HENRY BELLMON, working with ED MUSKIE, that has made the budget process work. And it has been their leadership that we have been able to follow.

So what I say in this instance is out of genuine disagreement with the distinguished Senator. I do not question his viewpoint or his motives at all. He is doing what he thinks is best. He is standing for what he thinks is best.

But I have to look at it from the overall viewpoint of the legislation as a whole. And, being the majority leader, I am in a position where I have to take an overview of the whole legislative process.

Mr. President, we just do not have the kind of time that we are talking about here. We do not have time, in view of the fact that we have spent months already in hammering out a resolution of problems that has already passed the other body as the conference report has. I think it would be very unwise to reject this conference report.

For those who want to kill this bill, who want to kill it dead in its tracks, bury it with no possibility of resuscitation or bringing it back to life, then that is the way to do it.

There are some in this body who will do it and they do not make any bones about it. I respect them for that.

But, Mr. President, realistically, we cannot think in terms of rejecting this conference report and expecting to get this legislation. Without it, the American people are going to look at Congress and say, "They just cannot legislate. We have an energy crisis in this country and they cannot legislate. They spend weeks and months on a piece of legislation, go to conference, and then bring it back to the Senate and the Senate rejects it."

That would be, I think, the height of irresponsibility on the part of the Senate.

It is not for me to say to other Senators what constitutes responsibility. Each Senator has to view it according to his own heights. But I think to reject it would be most unwise and we would be most derelict in our duty and very unresponsive to the needs of the people. It would be unrealistic in view of the fact that the President has carried out his end of the bargain for those of us who said to him, "Deregulate domestic crude oil prices, but when you do that, send us up a piece of legislation that will recapture for the American people some of the unwarranted profits that are bound to flow from that deregulation process."

He kept his promise. We are keeping ours, those of us who supported deregulation. But the other half of that promise has to be kept. This bill constitutes the other part of that pledge.

I say the Senate has a duty to debate this conference report and then to act on it and to act to adopt it. We have had our day in court. Those who have been opposed to the bill have had their day in court. They have had their opportunities to offer amendments. They have had their opportunities to conduct hearings on the bill. They have had opportunities to modify. They have had opportunities to debate it. They have had opportunities to defeat it, but the Senate did not defeat it. The Senate passed it. It went to conference and came out of conference and the House adopted the conference report. Now the responsibility is up to us.

UNANIMOUS-CONSENT REQUEST

I would like to ask the distinguished Senator from Kansas and the distinguished Senator from Oklahoma if we might enter into a time agreement that would provide for a final vote on the adoption of the conference report on a given date and at a given hour so that all Senators would be informed in advance and could be present to cast their vote on the conference report.

I would hope that with the rest of today and starting early tomorrow, we could have a vote tomorrow afternoon at 5 o'clock on the conference report. I make that request.

(Mr. MORGAN assumed the chair.)

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Objection, Mr. President.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. If the Senator will yield, I hope we may be able to do that one of these days, but there are a number of Senators, as the distinguished minority leader knows, who want to speak on the bill. There may be efforts to refer it to the committee with advisory instructions, which I understand is permissible under the rules, because of the interests of royalty owners and some feeling about the independent producers, though I think the royalty owners are the key irritant. They are not the irritant but the way we have treated them, I think, is really the problem.

I would hope that we could work out some agreement. I do not think the Senator from Oklahoma would be opposed to that. We would hope that in the next couple of days, in any event, we would have a chance to discuss it. I am not certain what the schedule is for next week or the week after that. The minority leader is here now. I might say there is not any intent that I know of—well, in total candor, I think there is some. There are some who might want to speak at length, but I do not know that that is the fact at this point.

Mr. BAKER. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. Mr. President, the Senator from Kansas is entirely correct, that there are a number of people who desire to be heard on this bill. That is correct. We are talking about a bill that would essentially impose a half trillion dollars in taxes. I do not know of anyone who has expressed to me a determination to filibuster. There is in this case a real and meaningful distinction between discussing this matter adequately and a filibuster. I am talking about a number of days, maybe a week or 10 days.

As I indicated to the majority leader yesterday, I think it is possible to get an agreement at some point, but I think it is not possible to get it at this time. On the contrary, I might advise the majority leader that were a request directed to me at this time, I would have to object to protect other Senators other than those who are in the Chamber at this point and who have already spoken.

Mr. ROBERT C. BYRD. I appreciate what the minority leader has said, Mr. President. He and I have discussed this. I want to see if there is a possibility that we are thinking in terms of not 10 days but in less time than that. I do not think it will take that long to discuss this conference report. Every Senator who wishes to speak would have the opportunity to have his say. Perhaps tomorrow afternoon is expecting too much. The Senate will be in session Friday and we can discuss it today, tomorrow, Friday, and, if need be, on Saturday. I do not want to come in Saturday for that purpose. We could discuss having a vote on Monday. How about a vote on Monday?

Mr. DOLE. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. DOLE. The Senator from Kansas would like to be here to vote on it. I cannot be here on Monday. I could be here

on Monday, but I would prefer not to be here on Monday.

I might say we are in the process right now of checking each Republican Senator to find out just what their intent may be, in other words do they want to come to the floor and talk at all and, if so, when. I understand as the majority leader understands that unless there is somebody here to discuss it we are not in a very good position to say we ought to extend debate, unless we are debating. We are in the process right now of checking that out on this side of the aisle, plus we are in the process of finding out how people might come down on a vote to refer or to reject the conference report, to postpone indefinitely, or to table.

I would think by early next week we would have a good count on what we could expect. I know the Senator from Oklahoma has six names to check and there are six others who are checking six names.

Mr. BAKER. Will the Senator yield to me?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. I would say briefly that I think time could be well spent in holding the giving of serious consideration until next Tuesday. As far as I am concerned, I would be happy to sit down with the majority leader after our regular policy luncheon next Tuesday, which is a meeting of all of our Senators. At that time I expect the preliminary work of head counting and assessment of positions will have been completed, which is being undertaken by the Senator from Kansas, the Senator from Oklahoma, and others. I will sit down in good faith to see if we cannot work out something. But I think we are spinning our wheels if we try to press this at this time.

Mr. ROBERT C. BYRD. I would hope that the distinguished Republican leader would attempt to get some agreement on this conference report before waiting until next Tuesday.

I think we ought to get on with this conference report. I am not saying there should not be adequate debate on it. I do not want to rush to enter a cloture petition on it, but I do not think we can go on and on. Of course, we just started the debate, but it seems to me that if we could agree this week on a vote on a certain day next week, then all Senators could schedule themselves accordingly.

Next Tuesday, either Monday or Tuesday, under the order of the Senate, the majority leader is bound to call up the Roth resolution. There is a time agreement on that resolution and I shall have to do that either Monday or Tuesday—no later than Tuesday. If we could reach some understanding this week as to the pending matter—to vote on it, say, next Wednesday—I think we ought to let our colleagues know.

Today being only Wednesday, may I say most respectfully to the distinguished Republican leader, I hope that we do not have to wait until next Tuesday to find out whether there is going to be an agreement on the other side of the aisle as to a date certain to vote on this conference report. I merely urge him most respectfully to see if we can reach some kind of a conclusion, either tomorrow or Friday, as to a date certain next week when we can dispose of this matter.

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

Mr. ROBERT C. BYRD. Yes.

Mr. BELLMON. Mr. President, I am of the opinion, based on some of the reports I have heard, that the distinguished majority leader may have reached the conclusion that the Senator from Oklahoma is going to undertake a filibuster on this proposition. That is not my intention. I have been around here over 11 years; I have yet to see a filibuster succeed when there was a deliberate, all-out effort to overcome it by the leadership. I think I recognize the futility of that method as much as anyone here.

At the same time, I think the distinguished majority leader will recognize that the report we have before us is significantly different in many ways from the Senate bill. For instance, I did not make reference to it in my earlier remarks, but the earmarking provisions of this legislation give me great trouble. When the bill was before the Senate originally, there was the Magnuson amendment that knocked out earmarking. Now the conference report comes back with earmarking back in it, in some ways even more onerous than it was the first time. I should like to have some time to check further into it to see what the impact is and perhaps discuss it with the chairman of the Committee on Finance.

Also, Mr. President, let me thank the majority leader for the very kind remarks he made earlier about the Senator from Oklahoma. I feel they are not deserved, but they are appreciated nonetheless.

I have signed a letter, along with the Senator from Kansas and my colleague from Oklahoma, and we hope to have some other Senators. I ask unanimous consent that it be printed after I read this paragraph:

Plainly, a crude oil tax bill will become law. We accept that fact and are willing to support and vote for a crude oil tax provided it more nearly resembles the Senate passed version. The parliamentary situation now requires that the conference report be defeated and that a new conference be requested.

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

U.S. SENATE,
Washington, D.C., March 19, 1980.

DEAR COLLEAGUE: When the windfall profit tax (Domestic Crude Oil Excise Tax) was under consideration on the Senate floor, an amendment to exempt the independent producer and royalty owner was offered by Senators Bentsen, Dole and Boren. This amendment passed by a vote of 53–41.

As you are well aware, the independent exemption was removed during the House/Senate Conference on this bill. The Senate is expected to take up the conference report later this week.

Plainly, a crude oil tax bill will become law. We accept that fact and are willing to support and vote for a crude oil tax provided it more nearly resembles the Senate passed version. The parliamentary situation now requires that the conference report be defeated and that a new conference be requested.

We are contacting those who voted for the independent exemption originally to urge their support for the motion to reject the conference report and ask for a new conference. The bill as it now stands will not heavily tax international oil companies but will seriously penalize independent producers and royalty owners. Independents drill 89 percent of the exploratory oil and gas wells and find most of the new field.

The profits of the international oil companies, which produce primarily in foreign countries, are largely untouched. We feel that taxing away exploration funds used by independents to find new supplies of domestic crude oil is contrary to our nation's interest. It is the independents who have continued to search for the costly, hard-to-find oil in the United States. The independent producers have been plowing back more than 100 percent of wellhead revenues in exploring and developing new domestic oil supplies for this country. The conference report will take away much of the capital needed for this purpose and make the United States even more dependent upon costly, insecure imported crude oil.

Over 180 House members signed H.R. 6206 (copy attached) favoring an exemption for independents. During the House consideration of the conference report, 185 members voted for the independent exemption. We are confident that Senate conferees can prevail on this issue in a second conference and urge your support of actions to achieve this result.

Sincerely,

HENRY BELLMON.
DAVID L. BOREN.
BOB DOLE.

Mr. BELLMON. Mr. President, we are willing to accept the fact—in fact, I voted against the original bill because it put a tax on stripper oil, which I think was a great mistake. But if the bill comes back from a second conference close to where it was when it left the Senate the first time, I would be compelled to vote for it, because I realize how much better off we were then than we are now.

Furthermore, I say to the distinguished majority leader, normally in a conference, you get a better deal than the original bill. Here, we had a 1,000-barrel exemption for independents in the Senate bill, before the conference, and we come back with zero now. I think it is extraordinary when the Senate gives up such an important provision in its bill and has nothing to show for the original position the Senate took. I think this is another reason for us to take a little more care than the ordinary in discussing this bill to see why it is that this feature, which a good many of us thought was the key to our position, has now been lost.

So I would agree that, in due course, a time agreement can be reached on it, but I join my Republican colleagues in resisting establishing that date today.

Mr. ROBERT C. BYRD. I shall not press further today, Mr. President. I would though, again, express very strongly the hope that the Senate will not have to wait until next Tuesday, which is a week from yesterday, for the Republican conference to decide on whether or not it wants to enter into an agreement as to an agreed time and date to vote on the conference report. The Senate does not have that much time. I do not think it requires that much time. I would hope, as I said earlier, that there could be agreement reached this week on

a date next week on which the Senate will have an up-or-down vote on the conference report.

Incidentally, with respect to the talk about a filibuster, I have never said that the Senator from Oklahoma is going to filibuster the conference report. I have had no indications, no evidence, of that fact. I have heard some say that the Senator might, but I have said in response that the Senator is a reasonable man and has shown a lot of statesmanship already and that I do not think we would have that kind of problem out of HENRY BELLMON.

Mr. President, I am willing to leave it at that. The distinguished Republican leader has assured me and so has the Senator from Kansas and the Senator from Oklahoma of their effort to reach an agreement. But I say again to the distinguished Republican leader, I plead with my colleagues on that side of the aisle not to wait until next Tuesday to decide whether or not we can have an agreement.

I do not want to wait until next Tuesday to file a cloture motion. I do not want to go the cloture route. I prefer not to. That is always my preference. But if there is any thought of delaying this unduly, then we just have to do the best we can to bring it to a vote. But I think that reasonable men can come together and decide as to the appropriate length of time for debate on this very important conference report and reach an agreement so that the Senate will be on notice as to that date and time.

Mr. BAKER. Mr. President, I do not want to prolong this. I just wanted to correct one impression that I believe the majority leader has. I did not mean to say, and if I did say, I misspoke myself, that the Republican conference will decide that issue. I rather meant to suggest that Tuesday is our regular Policy Committee meeting and luncheon and that serves as a convenient time to discuss this matter. There is no intention on my part to make a submission of this question to the Republican conference. I shall be perfectly happy to expedite the business of canvassing our side to ascertain the attitude of our Members. The next Tuesday suggestion was made by me because I thought it would be a reasonable and proper length of time.

Mr. ROBERT C. BYRD. I thank the distinguished Republican leader, and I am very satisfied with that.

Mr. DOLE. Mr. President, the Senator from Tennessee has indicated that we prefer to work it out rather than that we just stand here and talk through Friday and Saturday and Monday, because sooner or later, we are going to have to vote on something. I think once that decision is made and once those Senators who feel strongly about some portion of the conference report have had an opportunity to speak—or, if not speak, at least indicate to the minority leader or to me or to someone what their intentions are—then we can certainly be happy to report that to the majority leader.

No one is more frustrated about the windfall profit tax than the Senator from Kansas. There are 76 days wrapped up in this little program so far. That is about 15 weeks, I guess, if you take 5-day weeks. I do not want to spend another 3 or 4 weeks on it. But I do believe that there are such strong feelings, and I know of some on the other side, that at least, we would like to have some expression through a vote, which we may or may not win. That is what we are trying to figure out, which is the best strategy to follow, if these is a successful strategy.

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

Mr. HEINZ. Mr. President, I would like to know if I could enter into a colloquy in the near future with the senior Senator from Louisiana on some parts of the windfall profits.

Mr. DOLE. He will be back soon.

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

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, after very careful consideration of this matter, I join in the conclusions of my distinguished colleagues from Oklahoma (Mr. BELLMON), from Kansas (Mr. DOLE), that it is in the interest of this Nation that the conference committee report on the windfall profit tax bill be rejected, and that we seek further a conference to try to improve that bill.

I reached that conclusion because of my feelings about what, fundamentally, is in the national interest and not through any disrespect for or lack of appreciation for the efforts of those, particularly, in the Senate who served on the conference committee.

While I think this is an unwise piece of legislation, I would say quite readily that the bill would have been far worse had we not had on the conference committee several able representatives of the Senate position, not the least of whom was the able chairman of the Senate Finance Committee, the Senator from Louisiana (Mr. LONG), who in his 30 years in the Senate has perhaps done more than any other individual Member to encourage and to provide proper incentives for the domestic production of energy in this country.

It certainly reflects no lack of appreciation on my part for the tremendous contribution which he has made in the past and this year on this piece of legislation to the cause of energy independence in this country that I take a position in opposition to the bill.

Nor does it reflect a lack of appreciation for the able Senator from Texas (Mr. BENTSEN), who worked as a member of the conference committee to retain the exemptions for the independent producers which he helped place in that bill on the Senate floor.

Nor does it express any lack of appreciation for the efforts of the able Senator from Kansas (Mr. DOLE), who represented my colleagues on the other side of the aisle on that conference committee.

It is well known that he was engaged and involved in other political activities on the national scene at that time. As one Senator without regard to partisan position, I want to say that I have seen him put aside his own personal ambitions to spend hour after hour fulfilling his duties as a Member of the Senate, particularly working hard as a member of that conference committee.

I have great respect for the Senator from Kansas, for his statesmanship, for the fact that he worked for what he saw as the national interest, ahead of any of his own personal ambitions in this situation.

I also understand the problems that have been well outlined by the distinguished majority leader, the Senator from West Virginia.

There are two Houses in this Congress. All of us realize that the Senate cannot have its way on all matters in dispute between the two Houses and that no one can work miracles and sway the conferees from the other side to adopt completely the viewpoints of the Senate.

There are, as I have said, many features to this bill that undoubtedly would not have been there had it not been for the very diligent work of the Senate conferees under the leadership of Senator LONG.

The conference committee did preserve the depletion allowance for independent producers, a very important incentive for additional production of energy in this country. It did preserve the Senate repeal of the carryover basis as a method for determining inheritance tax liability, and that also is an important contribution, one which will help to prevent massive injustice from being perpetrated on many citizens across this country, particularly those in small businesses and family farms who are endeavoring to keep them intact.

In addition, the bill also contains a very worthwhile provision to provide for an exemption from income taxes of the first $200 of interest earned by small savers.

Mr. President, there are some good elements to the conference committee report, and they are a testimony to the work, hard work, by those who represented the Senate position on that conference.

But even considering all of those factors which I have mentioned, all of the positive aspects of the report, I still must conclude that on balance this is a bad piece of legislation, not just for the citizens of the State that I try to represent in the U.S. Senate, but for the entire Nation, because I think along the way as we have debated this windfall profit tax measure, we have gotten confused about our objective, the objective of an energy policy for this country.

As expressed by the President and many others, it has been to reduce our dependence upon overseas sources for the vital energy which this country needs, to reduce our dependence upon those unreliable sources in other parts of the world, in areas like the volatile Middle East where developments have recently so gravely threatened our national security.

We have learned, Mr. President, that those who have warned us about the need for energy independence for this country in the past have told us the truth. We have learned that they were right when they said that energy inde-

pendence for this country and national independence and security are intimately interwoven.

Our goal then must be to conserve the use of energy and to produce more energy within the boundaries of the United States, all forms of energy, to produce more here at home so that we will not be so dependent on overseas sources for the energy which we need.

Our goal must be more energy for Americans, more domestically produced energy. Yet, as this debate moved along, it seemed that the focus of the debate shifted to another issue. Journalists, in fact, began to report about this bill in very different terms, by a very different measuring stick. They began to describe the bill as strong or as weak, not on the basis of how much energy it would produce for the American people, the proper standard, a strong bill being one that would produce the most energy for this country. They began, instead, to weigh the merits or demerits of this bill by how much revenue it would produce, how much additional taxes on the American people it would produce.

They began, in a misguided way, to describe the bill as stronger as it began to raise more and more taxes and not as it began to produce more and more energy.

Mr. President, that is a serious mistake. Our goal must be not to produce more taxes; it must be to produce more energy.

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

Mr. BOREN. I yield.

Mr. HELMS. Is it not a fact, in referring to the taxes, that much of the media coverage has obscured the fact that the consumer is the one who is going to pay the tax?

Mr. BOREN. The Senator is absolutely correct.

There is no free lunch, as the Senator well knows. Ultimately, the person who is going to pay for this tax is going to be the average American citizen, the consumer, the person buying the gas and using the electricity.

Mr. HELMS. I would have no objection to what the judgment of the American people would be about this piece of legislation if they fully understood that it is they who are being taxed and not some paper corporation, way out yonder, referred to commonly as the big oil companies.

Mr. BOREN. The Senator is correct, and I appreciate his pointing out that there has been an attempt to fool the American people.

Mr. HELMS. They have been fooled.

Mr. BOREN. I think the Senator is correct. I believe that, one of these days, they will wake up and realize that they are footing the bill. Then they will ask who passed this most massive tax increase on them in the history of this Nation.

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

Mr. BOREN. I yield.

Mr. BELLMON. Mr. President, I ask my colleague from Oklahoma to repeat for the Senate a statement he made on another occasion about how much capital it is going to take to invest in the energy industry in order to work our way out of this situation. I think it is an impressive figure, when we realize how much it costs to drill the additional hundreds of thousands of wells that will have to be drilled, plus building the plants and the refineries and everything else needed.

The Senator might tell us what the impact of this bill is going to be on the efforts of the industry to solve our Nation's energy problems.

Mr. BOREN. My distinguished colleague is absolutely right in saying that there are immense capital needs if we are going to meet the energy problem we have.

If we are going to maintain full employment in this country, we will have to have sufficient supplies of energy to move the products we are producing. We will have to have sufficient energy to ship the farmers' wheat and corn, to move the industrial products of this country. We will have to have sufficient energy to keep the turbines turning and the machinery operating in the plants.

According to the best estimates of experts, people such as Dr. Winger and others, it is going to take $1 trillion—a figure that literally boggles the mind—of additional investment over and above the present amount being invested in energy production in this country, by the year 2000, if we are going to have enough energy to maintain full employment in this country.

The shocking thing about what we are doing right now is this: It has been estimated that the decontrol of domestic energy prices could generate—if oil were in excess of $40 a barrel over the same period of time—approximately $1 trillion over this period. Yet, what are we doing with this $1 trillion that the experts say is needed in capital investment if we are going to produce more energy? In connection with this bill, when we consider how much the Government is going to take in additional income tax collection, Federal and State; when we consider how much the States will collect in additional severance taxes; and then when we add the windfall profit tax now being discussed, on top of the other taxes that are going to be collected over the same period of time, the windfall profit tax plus the income taxes will take approximately $1 trillion into the coffers of the Government.

In other words, it is exactly the same amount of money we need to produce the energy to give full employment for this country, the same amount of money being generated by decontrol, which could be used by the private sector to do the job to produce the energy, and we take it away and put it into the coffers of Government. Then we say, as this report indicates, that we might use 15 percent of it to produce the energy we need in this country. We will use 85 percent of it for other purposes. That means we will only use $150 billion out of the $1 trillion that we are going to need in order to have full employment.

There is no magic way to produce energy. I think the citizens of this country are smart enough to know it. I believe that, in many cases, those who are involved in politics are underestimating the intelligence of the American people.

How are we going to get more energy for this country? How are we going to build more solar panels in the United States? How are we going to dig more coal mines? How are we going to drill more oil wells or deep gas wells, such as those in the western part of Oklahoma, where it costs as much as $10 million per well to drill, or in Alaska, where the figure can reach as much as $50, $75, or $100 million to develop a relatively small area?

Where is that money going to come from? There are only two places it can come from. The private companies, private enterprise, can produce the energy. Where do they get the money? It has to come from profits. They have no other way of getting the money. The only other group or entity that might produce the energy for this country is the Government. Where does the Government get the money? Not out of the sky. The Government gets the money from taxes.

So we really have two choices. If we want to have more energy produced in this country, there are only two things we can do about it; and under both choices, the average American citizen pays the bill. Let us not be fooled about that, either. The average American citizen is going to pay the bill to produce the additional energy we need. The question is, which way will they pay it?

Will they pay it out of the profits of private enterprise, which then uses it to produce more energy, or will they pay it in the form of higher taxes the Government will use to produce more energy? For this Senator, the choice is clear. When we compare, in general, the efficiency of free enterprise to produce something with the efficiency of the Government to produce something, I will come down on the side of free enterprise every time.

I believe that the cost to the American citizen ultimately will be far less if we have free enterprise do the job instead of having Government do the job.

For example, as many know, it costs more to transport a letter from Houston, Tex., to New York City—10 times more with the Government doing the job—than it costs free enterprise to move a barrel of oil from Houston, Tex., to New York City.

Mr. President, as I started to say in explaining why I have reached a decision to vote against the conference report, if we had too much energy being produced in this country, an overabundance, a surplus of energy; if we did not have enough government in this country; if we did not have enough bureaucracy; if we did not have enough spending programs; if taxes were too low, I would vote for this bill; because that is what we are going to get from this bill, higher taxes and more government on the one hand and less energy production on the other.

So if our goal is higher taxes and more government and less energy production in the United States and more dependence on the Middle East, more dependence on overseas sources, more threats

to our national security, the kind of dependance that looms so large that the young people in this country even today are worrying about whether or not their lives are going to be disrupted so that we can make a display of force that may be necessary to preserve those vital oil supplies in the Middle East, then this is a strong bill because it certainly raises taxes more than any other bill in the history of the United States. It certainly is going to give us more Government, more Government bureaucracy, more regulation. It is a strong bill in that sense. And if our goal is to produce less energy here at home, to dry up the sources of capital for the private sector, to have more reliance on government and more reliance on those sources in the Middle East, then this is a strong bill.

But in my opinion those are not our goals. Quite obviously they should not be the goals of the people of this country. And I have to conclude that it is a weak bill and a bill that is simply not in the national interest.

I can give several examples. It has been estimated we could produce 4 million barrels a day of additional energy if we just had decontrol, without imposing an additional tax, if we could have had decontrol with some kind of appropriate plowback provision that would have encouraged reinvestment of the profits that resulted from decontrol. By passing this kind of legislation we are going to drastically cut the amount of energy that can be produced.

It has been estimated that it may take back ultimately in income taxes and windfall tax put together close to 90 percent of all the money generated as a result of decontrol.

And it literally sets up the private industry to be the fall guys when we have the next serious energy problem in this country, to be the fall guys when the whole house of cards come tumbling down because what we are doing is saying we have decontrolled and that then makes it easy for Government to point the finger of blame at private industry, at the private sector every time the prices go up. And yet because the Government is taking back with one hand what it has given with the other, because it is taking back 90 percent of everything it gives through decontrol, we are depriving the companies of the capital they need to do the job to solve the energy problems in this country.

Se we set the private companies up to take the blame for the higher prices. We deprive them of the means to meet the problem and to produce the additional energy so that we make it very, very likely that they will fail. That sets the stage to make them national scapegoats, when, Mr. President, instead we should be setting the stage for solving in a realistic way America's energy problems.

Mr. President, there are several specific things that give me special concern with the conference committee report.

First of all, as the Senator from Kansas and my colleague from Oklahoma have already pointed out, this bill ends up hurting most of all not the large companies, not those companies that operate internationally whose profits have been widely reported with banner headlines in the daily newspapers. It ends up hurting most of all people who have been discussed very little during this debate. It ends up hurting people who I believe many of my colleagues here in the Senate do not even know about. One group that it is going to end up hurting is literally hundreds of thousands, even millions of small royalty owners all across this country, the people who own the minerals. In the State of Oklahoma, for example, there are over 200,000 different individual royalty owners, more than 10 percent of the population. Many of these people are in the lower income groups. Many of them are elderly. They have made investment decisions for their retirement to purchase mineral interests and now in a way that is totally unexpected to them they are being hit with a 70 percent tax on those royalty incomes.

It is hurting the independent producer, the very people who here in the Chamber received a vote of confidence from the Members of the Senate when my colleagues recognized the very special role that the small independent producers play in this country by adopting an exemption on the first thousand barrels a day of production by independent producers. By "independent producers" we are talking again not about the large integrated oil companies, but about those people who do not own retail outlets, who do not own refineries, who do not own pipelines, and who do not have production overseas. We are talking about the smaller producers who simply explore for, drill, and produce the oil in this country and do not have operations in other places. The Senate quite correctly recognized the special contribution of the independent producers and passed an exemption for these producers. And yet what has happened?

After all of the talk and all of the rhetoric about the huge profits that were being made by the international oil companies, who ends up bearing the heaviest burden under this tax? Not the big companies, not the overseas operations. No. Under this bill those who will bear the heaviest burden in terms of taxes and in terms of new bureaucratic regulations that they are to small to cope with are the royalty owners and the independent producers.

To turn around and tax the smaller producers and mineral owners here in the United States because there are some who are dissatisfied because of the profits of the large international companies just does not make any sense.

It is like saying we are upset about all the oil that is being produced overseas and about profits being made on oil produced overseas; our solution is we are going to put a new tax on all the oil produced inside the United States. That is exactly what this bill does. It is not a tax on the profits of the big oil companies, and the press should so report that it is not a profits tax. There is nothing in this bill, there is nothing in this conference report, not one word, that imposes one penny of tax on profits. If anyone can show where there is one word in this bill that imposes one penny of tax on profits or puts one penny of tax on any international operations or other operations, I wish to see what it is. I wish to see in what section of the bill it is found. It is not there.

There is not one penny of tax on profits in this bill. We know what it is a tax on: Only on oil, not on companies, on oil being produced inside the United States.

And especially it is going to hurt the small independent oil producers, the individual citizens who own royalty and it is going to eventually come out of the pocket not of the oil companies, not out of their profits; it is going to come out of the pockets of the average American citizen.

So let us call it what it is, not a profits tax, but a domestic oil excise tax, and it makes just about as much sense as saying we are alarmed that the domestic automobile industry is in trouble, that too many people are buying cars produced overseas and that it is hurting our automobile industry here in the United States. Many of us are concerned about that problem.

Well, do you know what we would do to help the auto industry here in the United States if we are going to follow the very same policy that we follow here in this bill? Why, we would come up with a program to put a tax on automobiles. No, not a tax on automobiles produced overseas; a tax on automobiles produced here at home. That is what this bill does.

We are concerned because we are getting too much oil from overseas. What are we going to do about it? We are going to tax the oil producers in the United States. It would be like saying we are concerned about producing too many automobiles overseas. What are we going to do? Put a $5,000 tax on every car produced in the United States. That sure would help Chrysler, Ford, General Motors, and American Motors and our other domestic auto producers.

That is about as illogical as this policy reflected in this bill really is. If we want more energy for this country, I wish someone could explain to me how we are going to get more energy by putting a tax on the independent producers. These small producers last year went out and found 89 percent, they drilled 89 percent of the exploratory wells. They found 75 percent of the new wells. They spent during the last decade 105 percent of their wellhead revenues. In other words, for every dollar they earned in new wellhead revenues, these independent producers spent $1.05 looking for more oil.

Some people might say how is that possible? How could you stay in business by spending $1.05 out of every dollar that you earned? Well, of course, what they did when they found new oil and they had a new oil deposit, they ran down to the bank and said, "We pledge the new oil we found as security to borrow money from you to go out and drill more oil wells." That is, exactly what they did.

So when you can get $1.05 of new drilling and new production out of every

dollar those companies earned, if you want to have more oil production inside the United States, what should you do? It does not take anyone of great insight to figure that out. You try to improve their cash flow because you know that the more dollars you can get into their hands, particularly if we can write an appropriate plowback provision in this bill that would give them tax incentives for every dollar we could put into the hands of these producers, obviously we would end up giving ourselves $1.05 of additional energy production.

But this so-called strong bill does not do that. It is a weak bill. If it were strong it would encourage cash flow and get more energy production for this country. Instead it opts to get more taxes.

What about the stripper wells, the small wells that are near the break-even point economically? These are wells that make 3, 4, 5, up to 10 barrels a day. Back in the days when we used to control the prices of these wells, what happened? Hundreds of them, thousands of them, were prematurely plugged. We lost precious energy resources for this country prematurely because these wells were abandoned.

You are making $2, $3, $5 a day from a well like that, $100 a month, and let us say all of a sudden that well breaks down, and you know oil wells break down, equipment breaks down in the oil field just like it does anywhere else, and you find out it is going to cost $3,000 to work that well over or maybe you find out it is going to cost $17,000 to get a new pumping unit on that well. A new surface pump costs $17,500, and you are making $50 or $100 a month on that well. What are you going to do, particularly if you are about ready to be hit with a new 60 percent tax on it that you did not expect before?

You are not going to spend the $17,000 and have a payout over a century, over 50 years, who knows how long, because of this tax. Why, you are going to plug that well, you are going to shut it down. Who loses? Not just the producer but the American people lose because that is oil that is lost forever once that well is plugged.

We learned that lesson back in 1975 when this Congress very wisely decontrolled the price of oil for stripper production. Do you know what happened as a result of that wise policy followed by Congress? The plugging rate, the abandonment rate, of stripper wells went down by 500 percent. Five times as many wells were saved and continued in existence as was the case previously.

So what have we done, followed a wise policy we have learned in giving special treatment to stripper wells? No. Under this bill we impose a tax on stripper production that will result in a rollback of anywhere from $6 to $10 a barrel on the revenue for oil coming from stripper oil wells.

So, Mr. President, I have to conclude that I cannot vote for the conference committee report in spite of the hard work of my colleagues on the conference committee, and they have worked hard, in spite of the very able leadership on that committee of the senior Senator from Louisiana who has made such a great contribution to the encouragement of energy production in this country, in spite of the very valiant efforts they made.

While recognizing that what the majority leader said earlier is true, that there is no guarantee that if we go back and seek further conference with the House that we can prevail, there is no guarantee we can do any better than we have done before, because we realize that when there is a difference of opinion between the two houses there has to be a compromise struck, in spite of all those factors, and considering all those factors, Mr. President, I simply have to conclude that we should try, that we owe it to the country to try, because our goal must be not to produce more taxes, not to produce more government, not to put and not to foist new bureaucracies on the American people, but our goal must be to try to produce more energy, to try to make it less likely that our young people might be drawn into some kind of violent eruption in the Middle East because of our dependence on oil supplies there, because it is our duty to try to strengthen our Nation's security, to strengthen our Nation's economy.

Mr. President, I said when we were considering this bill earlier in the Senate that at this critical period it is time for Congress to do what is economically right for this country without regard to whether or not it brings short-term political advantage. At that time I quoted Mark Twain when he said something that I have always liked, in fact it is something I have framed and have hung on my wall. He said an important admonition that I think we should remember, "Always do right," Mark Twain said. "It will gratify some people and astonish the rest."

I think that is a wise saying and a good challenge for us to keep in mind in these times. Mr. President, I think it is time for the Congress to astonish the people and to do what is right for the country and, in my sincere opinion, it would be right for us to reject this conference committee report and try again to come up with a bill that, in a genuine sense, will be stronger, will be better, for this country in the sense that it might be a bill that would reflect as its goal more energy production, less energy dependence, instead of just higher taxes on the American people.

(Mr. SARBANES assumed the chair.)

Mr. WALLOP. Will the Senator from Oklahoma yield?

Mr. BOREN. I am happy to yield.

Mr. WALLOP. Mr. President, does the Senator recall when the windfall profit proposal first surfaced that some of us tried to do what we thought was a reasonable, sensible approach to this tax. We tried to apply uniformly on all oil an excise tax, whether it was imported oil or domestic production, whether it was newly discovered, stripper oil, heavy oil, or whatever, but uniformly applied? Does the Senator recall that effort?

Mr. BOREN. I do recall that.

Mr. WALLOP. Mr. President, does the Senator recall that the administration at the time said that that was an impractical thing; the public would never tolerate it?

Mr. BOREN. The Senator is correct.

Mr. WALLOP. Now, we are taking a look at where we have gotten with the windfall profit tax, punitive in the extreme. The public is going to pay, both in terms of diminished production, where they could have had more, and in terms of prices at the pump; and now another 10 cents a gallon on their gasoline because of the $4.62 import fee which the President, in his wisdom, has decided to impose.

It strikes me that the public would be astonished to know that they could have no new oil import tax, that the windfall profit tax could be reduced and would produce more money. It would provide energy at a lower rate of inflation if we just went back to that simple theory and provided the tax that was equitable and just on foreign and domestic oil and foreign and domestic oil producers.

The interesting thing is that this $4.62 per barrel import fee is supposed to bring in $10 billion a year and help balance the budget on the backs of the poor consumer. A more logical approach would be to go now to immediate decontrol instead of postponing it until 1981. We could forego the $4.62 per barrel fee and the 10 cent increase in the price of a gallon of gasoline, and raise $19 billion the next year instead of $10 billion. And there would be more money in the domestic productive sector which would help us produce our way out of this oil shortage.

Mr. BOREN. Mr. President, I think the Senator from Wyoming has a good suggestion and I regret that it did not get the proper serious consideration that it deserved earlier.

I think the Senator is absolutely right; that we should try to find ways that will hold down the tax burden on the citizens that will be a simple procedure—that is something else that ought to be considered—not a highly complex regulatory scheme.

We have all heard again and again what has happened with all the complex programs developed in the past. Again, complex programs do not hurt the large, sophisticated companies nearly as much as they hurt the average citizen, the small operator, the little company that is trying to operate.

Also, it would be a program, the way the Senator has outlined it, that would not discriminate against those who are doing the job of producing oil here in the United States.

Again, I go back to the point I was making earlier: It just does not seem logical or fair to me that we put the major part of the burden for additional taxes on the backs of those people who have been here in the United States producing energy here at home, only on the domestic producers, and particularly the small producers, when we have been standing up and saying: "It's your duty. It's your duty. Produce oil here at home."

How do we reward them for producing oil here at home? Why we say, "Tax

them. Don't put any tax on anybody overseas producing oil. Let's take those little companies that have been staying here in the United States producing the energy, with the sources of energy here to be secured here in the United States. Let's tax them."

Mr. WALLOP. They are not going to tax big oil. They are just going to tax the consumer. Ultimately, it is still the better venture for anybody with good business sense to search for and produce and to broker foreign oil than it is to search for it within our own boundaries and within our own shores.

But the ridiculous fraud of all of this is that there has not been real decontrol and there is not going to be real decontrol. This tax simply transfers controls from the Department of Energy, to the IRS. DOE was not very adept at imposing controls but would certainly be better than the Bureau of Internal Revenue Service.

Mr. BOREN. The Senator is correct. And it is going to be massively complicated.

I talked with a small producer just yesterday who was saying he was trying to figure out how in the world to figure out all of the different aspects of the various kinds of oil that he is producing. One barrel you are producing is taxed at 30 percent; one barrel at 60 percent; one barrel at 70 percent. And it depends on when it was produced. And not only is it taxed at 70 percent, but one is at 70 percent on a $13 base and one on a $15 base; and all these various exemptions.

If we just did our best to try to create a program that is doomed to fail, I think we have done it. And the sad thing is not only have we produced a program that is guaranteed to fail, we have also devised one that is going to cost the American people more money than any other program that I have ever figured out and it is going to be less cost-effective than any program that I think we could possibly devise.

Mr. WALLOP. Mr. President, I wonder if the Senator will yield to me for a minute. I see the distinguished chairman of the Finance Committee appears to be pulling up stakes. I wonder if I could ask the Senator from Louisiana a couple of questions about the conference report.

Mr. BOREN. Mr. President, I am happy to yield to the Senator from Wyoming.

Mr. WALLOP. Mr. President, will the Senator from Louisiana answer a couple of questions for me on this conference report?

Mr. LONG. Yes.

Mr. WALLOP. Mr. President, I suppose the Senator may be aware of the effort in the House yesterday, whereby they were seeking to roll back the severance taxes that some States charged for the production of coal. In that dog and pony show, they assumed that the ad valorem taxes of local units of government are severance taxes. And in the national gas policy tax the ad valorem taxes of local units of government were severance taxes.

But it is my understanding that the conferees, for the purposes of the windfall profit tax, decided it is not. Is that the correct understanding?

Mr. LONG. Mr. President, it is my understanding that we agreed that the State severance taxes can be deducted. In both the House and Senate bill they can deduct the State severance taxes. But we deal with ad valorem taxes.

Mr. WALLOP. Well, I would refer to the conference report on page 105. It would appear to eliminate any chance of a county ad valorem tax being viewed as a severance tax for the purposes of this bill. If that is the case, I think that is a drastically shortsighted move on the part of the conferees. I wonder if I could be reassured that that is not the case.

Mr. LONG. If I understand it, the House bill and the Senate bill both said that the producer could deduct the severance tax being charged by his State. Of course, it is my understanding that from the income tax one pays, he can deduct an ad valorem tax that is charged by the State against an income tax.

But, really, if we wanted to permit them to deduct the ad valorem tax from the windfall profit tax, then I suppose we were all derelict on both the House and the Senate side because no one suggested it.

Mr. WALLOP. It was this Senator's understanding, when it left here—and I think the hearing record and markup will clearly indicate that it was our understanding that that was all. Senator BENTSEN is the author of that very same severance tax proposal on the Senate side, and that came up as an issue between us.

It was decided that the local ad valorem taxes were determined to be a severance tax for the purposes of computing the total State severance tax.

Mr. LONG. Here is the way I understand the situation: The severance tax deduction was in the House bill. The staff who did much of the work on it are represented here. And in doing the work for the Senators, their impression was that, in preparing the amendments that Senators wanted, that they simply picked up what the House had with regard to the deduction of the State severance tax. There really was not much debate about the matter.

As far as Louisiana is concerned, I must report that Louisiana relies in this area heavily on severance taxes and we do not provide for ad valorem taxes in the oil and gas industry. From our point of view, it is logical that we simply would not have been planning one way or the other because it does not really affect us. If a State wants to change its ad valorem tax over to a severance tax, they have the right to do it. If they want to do that, the producer can deduct it.

Mr. WALLOP. But the process that is involved there is a 3-year process of changing a State constitution. It may be a matter of convenience for those States who levy separate taxes straight through but for other States it is not.

As long as we have his issue before us, we would like to have the assurances of the Senator from Louisiana that when such a bill hits the Finance Committee, and it is drafted, it can be assumed that we will treat ad valorem taxes as local ad valorem taxes for the purposes of computing the total amount of State severance tax just the way we have in this bill. Or will we revert and call those local ad valorem taxes severance taxes for the purpose of putting a cap on the State severance taxes?

Mr. LONG. Offhand, as far as the Senator from Louisiana is concerned, if someone had wanted to suggest that one should be permitted to deduct an ad valorem tax on oil as far as the Senator from Louisiana is concerned he would have no particular objection to it. But I do not recall that coming up. Therefore, from the point of view of the Senator from Louisiana, we just did not deal with it because the point was not made,

Mr. WALLOP. I know the Senator from Louisiana is a fair man and also known for his consistency in what I am hoping I am getting him to understand, that we should not differentiate in our treatment as far as local ad valorem taxes.

Mr. LONG. As far as I am concerned, I do not think there would be a problem. I do not think I would have any objection if someone wanted to propose that you should be permitted to deduct an ad valorem tax on oil from the windfall profit tax.

Mr. WALLOP. But would the Senator be willing to refer it back to the committee so that can be taken care of?

Mr. LONG. At this stage I cannot support a motion to recommit the bill.

Mr. WALLOP. Can we look forward to having a reasonably consistent approach? The reason I am asking this is because the next question I hoped to address to the Senator was what possible reason was there in taxing Federal royalty oil and the States straight 50-percent royalty on windfall profit tax? At the very time that we are seeking to remove or eliminate revenue sharing and we are now saying that our counties can, without increasing the burden on the energy production on this country, continue levying their ad valorem taxes, we are taking an awful lot of money out of the hands of local government here and now we are going to tax royalties, too. I wondered what the rationale was for taxing their share of the Federal royalty which was a commitment made by this Congress just 8 years ago.

Mr. LONG. I am just not familiar with an effort to tax State royalties.

Mr. WALLOP. Federal royalty oil, including oil production from the national petroleum reserves, and royalties from Federal leases is subject to taxes under the bill, and the conference agreement would follow the House bill with respect to royalties on oil. Am I misconstruing what the conference report has adopted? I would certainly be grateful if I was.

Mr. LONG. I believe what we are talking about there was we put an amendment on the bill, and I believe I played a part in this—yes, I offered the amendment—and we thought we were simply affirming the existing practice when we did it. We did not think that we ought to tax the Federal royalty. We did not think there was any point in doing it. It would just be taking the money out of one pocket and putting it in another pocket. We did not think we should tax

the royalty payments to the Federal Government from Federal lands. That would be the Federal Government taxing the Federal Government at that point.

I offered an amendment to say that would not be the case. The Senator from Missouri (Mr. DANFORTH) inquired about the matter. He wanted to be sure that we were not changing the situation then before the Senate. My impression at that time was that we were not.

When we got to conference with it, the point was made that this did have the effect of changing that situation and it would make it work out differently than it would have worked out in the absence of the amendment. Therefore, we yielded on the amendment merely because we felt, or I know that I felt, that to do otherwise would be not to keep the faith, when one said we were not changing the situation then before the Senate when we offered the amendment and later on when it appeared that the situation was changed.

From the point of view of the Senator from Louisiana I simply wanted to make it clear that the situation would remain the same as we thought it was and in view of the fact that it would seem to be a substantive change we felt we should yield on it.

Mr. WALLOP. By how much will it reduce the States' 50 percent share of the royalties?

Mr. LONG. I do not have the figures. At the moment they are not available to me. It may be that we can get them for the Senator.

Mr. WALLOP. What I do not understand is that the Mineral Leasing Act of 1920 gave the States 50 percent royalty and now they have the 50 percent royalty less the windfall profit tax. It seems to me we changed the existing law and did not stand by it.

Mr. LONG. I will be glad to look into the matter further and advise the Senator and try to give him the figures he is seeking, perhaps tomorrow. I do not have them right now and there is no one here who can give them to me.

Mr. WALLOP. But will it reduce what the States were otherwise getting as a matter of a royalty payment from the Federal Government?

Mr. LONG. Yes, to the extent of the tax that would be the case. I will be glad to get that information for the Senator.

Mr. WALLOP. It is my opinion that the conference felt that the States would have the right at least to expect what they had been entitled to as a matter of law. We decided on the one hand that we would not tax the States' royalties on their own oil, and the agreement that the Federal Government had made to the States before was that that, too, was theirs, or 50 percent of it. Now it seems to me that there is a direct walkout on a commitment of some 50 years standing.

Mr. LONG. When I brought the amendment up its purpose was to protect against taking money from one Federal pocket and putting it in another.

Mr. WALLOP. I know.

Mr. LONG. I did not feel at the time that I was changing the situation then before the Senate; I felt that I was merely confirming it.

Mr. WALLOP. I think the Senator was.

Mr. LONG. But in conference the argument was made that what we were doing with that amendment was to change the situation and that it made much more of a difference than I explained here on the Senate floor, and in order to make clear that we were not seeking to change the situation, we thought that we would have to yield on that.

Mr. WALLOP. Could I ask the Senator a question. I believe what he personally believes to be the case. I wonder if staff could provide him with an answer so that, before we get to the end of this, we might see what kind of possible change could have been in existence from the way the Senate had it. There was no tax on royalties, and I do not know what kind of change the conferees could have been referring to. It is a matter of mystery to me and I am sure it is to the Senator from Louisiana, because I think the first way was dead right.

Mr. LONG. When I offered the amendment, I thought it was dead right. I did not think I was changing the situation that then existed on the Senate floor by doing it, and I so assured the Senator from Missouri (Mr. DANFORTH) that it seemed to me what we were doing was merely confirming the situation to be what I thought it was all the time.

I shall be glad to give the Senator some further information about the matter tomorrow, because I do not expect to vote today. I should like to vote today, but by tomorrow, I can give more detailed information on what the Senator wants. I shall be glad to do that.

Mr. WALLOP. I would appreciate that, because this is a matter of some concern. Here, the great born-again budget balancers have suddenly emerged from the woodwork in the last several weeks and have taken after it with the idea in mind—which I generally support—of eliminating State revenue sharing. But we cannot eliminate State revenue sharing and tax their royalty, which has never been taxed before, and expect them to have the ability to deal with their problems like the rest of this energy-hungry country. It just does not make sense.

I hope the Senator can appreciate the fervor of somebody from a State like mine, which has problems of impact from one end to the other. We are trying to provide the country with coal and oil from the overthrust belt, where I have school districts that have 500 kids one day and 2,000 at the end of that month. Then to start taking all the revenue from the States—not only that which we have been given but that which we had already possessed. It is not as though the State of Wyoming were one of the seven sisters or some big, hungry oil company. We are just a little State oil company trying to provide the rest of the country with energy which it so badly needs and which it so fervently desires to produce.

Mr. LONG. As the Senator knows, I think he has made a very fine contribution to the debate, both in passing the bill in the committee and on the floor. He is making a very good contribution here. I am sure the Senator knows that as far as the Senator from Louisiana is concerned, he has not been in favor of taxing Government royalties, period.

Mr. WALLOP. I understand that, I am trying to get at the heart of the conference report and by no stretch of the imagination am I inferring for the Sentor from Louisiana anything but the same kind of sensitivity as the Senator from Wyoming.

Mr. LONG. Furthermore, the Senator from Louisiana is not in favor of taxing State governments and I know the Senator from Wyoming is also opposed to taxing State governments. It did not make a lot of sense to the Senator from Louisiana for the Federal Government to put a tax on the State government. So far as the Senator from Louisiana is concerned, the whole idea of taxing royalties did not make much sense then, any of it, and does not now. But in trying to pass a bill, we have to make some compromises and some of those we make, we would not make if it were not that we have to give some in turn to those on the other side.

Mr. WALLOP. It would be easier if we would abandon this whole idea of the $4.62 a barrel import fee and abandon this complicated tax and just slip one simple tax through that would raise the amount of money they are looking for. That would be an excise tax on each barrel of oil consumed in the country.

Mr. LONG. I believe the Senator has a good idea and I think I have been known to endorse it.

Mr. WALLOP. Is it not strange that the country is not able to take a simple course when it is available to us and we have to go to the hard way? I understand the Senator's position on this, but I just cannot believe that we have in our hand the ability to do something simple, to raise the money the country needs.

At any rate, Mr. President, the Senate vote on the conference report of the Windfall Profit Tax Act of 1980 will ultimately end nearly a year of congressional debate on the largest peacetime tax imposed on a single industry in the history of the United States. It is interesting to note that this same President is going to put even a greater tax on the consumers of American energy with the import fee. Two of them together amount to a monument to taxation that will not soon be forgotten, I hope, by the American taxpayer.

Congress will finally be able to set this contentious legislation aside so that it can address other pressing issues. The challenge of this Congress and of the 1980's is to find answers to the problems posed by our growing dependence on foreign oil, the oppressive burden of inflation, and the need to insure the security of this country and of our allies. Unfortunately, the Windfall Profit Tax Act will only make it more difficult for Congress and the American people to find solutions to these problems. The vote on this conference report will end our work on the tax, but the enactment of this bill will only signal the beginning of a series of problems that we create for the domestic petroleum industry and the economy in general.

An undisputed priority for the Nation is to lessen our dependence on insecure foreign oil supplies. By taxing the production of domestic oil, this bill will reduce the amount of money that industry will be able to reinvest in domestic oil exploration and development. The media, bless their little hearts, have focused on the $227 billion raised by the windfall tax, but little attention has been given to the fact that over the next decade, the oil industry will pay some $360 billion in income taxes and royalties in addition to the windfall tax. When all taxes and royalties are combined, domestic oil producers will be left with only 18 percent of the increased revenues resulting from decontrol.

The impressive track record of the domestic oil industry in reinvesting profits in oil exploration and development indicates that in the absence of the windfall tax, additional billions would be reinvested in domestic energy development. The independent segment of the industry has a strong record of reinvesting 100 percent of its profits and then borrowing additional funds to finance the search for more oil. By comparison, the conference report dedicates only 15 percent of the revenues from the windfall profit tax to energy development and conservation.

Now, what a disgraceful way for the Congress of the United States to behave. Fifteen percent of the money to be raised by this is going into relieving our problems of dependence on unreliable foreign oil supplies? It is a disgraceful and unaccountable way to act. I cannot believe that anybody in either party can justify 15 percent of these revenues to try to relieve America of its dependence. Our dependence on oil has driven the situation in Iran, driven the situation in Afghanistan, leaves us vulnerable all over the Middle East, driven all the countries in the world to take a straight look at us and say we are a puny giant, unable and unwilling to deal with our own problems.

So we tax and tax and tax, try to balance the budget on the back of a single industry, do nothing about getting on with the business of securing our energy independence, and then hold up our heads and say it is important and responsible and accountable to the American public that we pass this monstrosity.

(Mr. ZORINSKY assumed the chair.)

Mr. WALLOP. Mr. President, after months of committee action and floor debates, we find that less than one-sixth of the tax revenue will be dedicated to the emergency energy programs that justified the enactment of a new tax.

The tragedy is that the American people will be paying more for gasoline, fertilizer, home heating oil, and all products made from petrochemicals, but they will not enjoy the full benefits of increased domestic supplies that could accrue to the Nation if greater incentives were allowed for production. To the extent that the tax deters domestic oil production, the Nation will import more foreign oil.

This tax does not tax foreign oil—and the oil import fee is not going to tax foreign oil—it is only going to tax consumers—the poor American citizen is going to sit here and have no reduction in his dependence, no reduction on the fearsome problems that he faces in trying to look up to his Nation as a leader in the world. Indeed, who can tell me where this tax is going to hit the big oil companies? It is the consumer that will ultimately pay this tax.

Last year, the Nation experienced a 30 percent price increase on imported oil. Is there any wonder that we have unacceptable levels of inflation at home when we depend upon foreign producers for 47 percent of our oil and international oil prices continue to climb out of control?

Where is it going to happen? We are taxing domestic oil producers; we are taxing the consumers with an import fee, but nobody will tax the foreign oil profits we see listed in the New York Times and the Wall Street Journal, which labor union leaders, Presidents, and leaders in the Senate and the Congress point to as obscene, disgusting, and otherwise horrendous phrases.

Nowhere in this bill are those profits going to be taxed. And we have done something we say is accountable and responsible?

I cannot believe anybody here can believe the American public will long remain in total ignorance of what we do here. It is unfortunate but true that in many respects the conference report has blended some of the most destructive tax provisions of the Senate, House, or administration versions of this bill. There may be some that can recall the days when the President called for 50 percent windfall profit tax, explaining that a 50-percent tax provides a balance between capturing windfalls and providing incentives for increased energy production.

Everybody has long since forgotten about increased energy production, whether with synthetic fuels, or domestic products available to us.

The balance was forgotten in an effort to raise more revenue, which led the conference to impose a 70-percent tax on old oil. By imposing a 70-percent tax on oil discovered before 1979, we have removed the incentive to make the costly investments required to arrest the decline in production in old oil reservoirs. In my State of Wyoming, nearly two-thirds of the oil was discovered prior to 1973. Many of these fields are over 40 years old, but with increased infield drilling, well workovers, and other investments the declining production from these old oilfields could be reversed. Unfortunately, the windfall tax creates economic conditions that only discourage oil companies from recovering the oil in these old reservoirs.

I am equally disappointed in that the bill does not recognize the economics of stripper well production and provide a lower rate of tax for that category of oil. Congress has traditionally exempted stripper production from price control, allowing it full incentives to keep this oil flowing. Although stripper accounts for only 5 percent of the production in Wyoming, stripper oil represents 15 percent of the daily oil production in the United States. Again, the tax can only discourage the costly investment required to keep these marginal wells operating.

Mr. President, long, difficult battles were fought on the floor of the Senate to exempt the incentive categories of oil; newly discovered tertiary and heavy oil. Many Members of the Senate were willing to pass a high tax on flowing oil in exchange for an exemption for the categories of oil whose production must be expanded if we are to replenish depleting reservoirs and guarantee the maximum possible recovery of existing reserves. There is great promise of finding new oil reserves in places like the overthrust belt of Wyoming or the offshore oil platforms in the Gulf of Mexico or the Baltimore Canyon.

It is possible that the oil and gas reserves from the overthrust belt may equal that already found in America today, excluding Alaska. Yet, we have done the best we can, not only through this preposterous tax, but through the machinations of the Secretary of the Interior, to see to it that we have brought exploration and leasing in that part of the world to an absolute standstill.

If anybody can explain where this administration's commitment to relieving our dependence on foreign oil is, I would be happy to read it and evaluate it, because the public is being fooled.

There is not one responsible soul in this administration who is dedicated to permitting this country to explore for and develop its oil resources.

Yet we say here we have some kind of a cohesive, well-balanced energy program.

In the future, oil will be discovered in difficult to reach areas that demand increasingly costly techniques to unlock the oil found in complex geologic formations. Similar high costs and risks will be met by those who try to extract old oil through tertiary recovery techniques. Finding and producing newly discovered, heavy, and tertiary oil demands large investments and greater incentives, yet we have saddled producers with a 30-percent tax on the production of these types of oil. Imposing a tax on newly discovered oil extends the disincentives and the complexity of price and profits controls into the future. Where oil was previously controlled by the Department of Energy through the regulation of price, future controls will be maintained through a tax mechanism.

The IRS is going to be the controlling mechanism. Let nobody in the American public mistake it; there has not been decontrol. They have simply transferred the mechanism of control. As a result of this tax we will find and recover less oil, forcing us once again to import more foreign oil.

I regret that the conference also failed to exempt the owners of royalty interests in domestic oil. Many royalty owners are farmers and small landowners who look to their oil revenues not only to augment their income but to compensate for the very real disruption such activities create on the land, and the very real one of permitting that activity to exist in competition with their agricultural pursuits.

This tax was originally proposed as an effort to prevent major oil companies from reaping enormous windfalls at the expense of the public. Unfortunately, in taxing the oil companies the bill also hurts many small royalty owners who do not share in the real windfalls that major oil companies earn on their international operations. Small royalty owners do not reap windfall profits, and should have been exempted from this tax.

The imposition of the windfall profit tax on the independent oil producers is undoubtedly the most harmful change made in the Senate bill. The Senate originally provided full recognition of the aggressive oil exploration efforts of the independent oilmen. Subjecting independents to this tax guarantees that less money will be spent on domestic exploration and production. This tax is placed on the small independents at a time when they face another significant increase in their tax burden through the scheduled decline in the percentage depletion rate. The percentage depletion rate is scheduled to decline from 22 to 15 percent by 1985. This represents a cut of a producer's depletion deduction of as much as 32 percent compared to the 20-percent reduction when the rate dropped from 27½ percent in 1969 to 22 percent in 1970. This means that we are placing another tax on the independents just as they are trying to cope with dramatic changes in the calculation of percentage depletion. Consequently, I call on my colleagues to support my legislative effort to prevent the scheduled decline in the percentage depletion rate and freeze the rate at 22 percent.

The loss of the independent producer exemption is tragic because it will drain additional resources from the companies that invest all of their profits in oil exploration, and whose track record reliably demonstrates that commitment. It is equally destructive to sound energy policy that the tax will subject independent producers to the administrative complexities of this tax. The life of the dependents to this tax guaranntees that cate pricing formulas of oil price controls will appear to be carefree in comparison to the complexity of the windfall profits tax. The tax bears no relationship to profit levels, but it depends upon calculations of base prices, adjusted for inflation, adjusted for differences in gravity, location, decline curves, and real price escalators. If this bill passes, the independent producers will not only pay more in taxes, but they will pay more for accountants, lawyers, consultants, and computers in an effort to comply with this tax.

Many of the complex provisions have been written without hearings and with little time for thorough consideration and discussion in conference. I submit, Mr. President, that more attention has been paid to meeting symbolic revenue targets than to the practical applications and effects of the provisions on the taxpayer. It should be made perfectly clear that I direct no criticism toward the conference and staff who had the difficult task of blending the two extremely complex bills into a consensus.

Throughout the long deliberations on the windfall profit tax, the staff of both the Finance Committee and the Joint Committee on Taxation have done an outstanding professional job for which we owe them our thanks. It is inevitable however, that there will be provisions in this mammoth, complex bill that will need clarifying. My concern is that provisions may exist which upon further study are unworkable or have unintended results, with possible adverse impact on domestic energy production. We must also recognize that the Department of Treasury is being handed extensive discretionary authority in drafting regulations to enforce this new law.

To enforce this tax properly without inflicting unintended harm on domestic producers, the Department of Treasury will have to develop an understanding and expertise in the affairs of the oil industry that as of yet has not been demonstrated at the Department of Energy. I predict that the combined efforts of the Departments of Energy and Treasury in implementing this legislation will create so many complexities that this law will employ as many accountants and lawyers as it puts oilmen out of business. At least, we will not suffer an increase in our unemployment statistics.

I fear that even the interim rules provided in this conference report to guide in implementing the law before final regulations can be published will lead to many unintended results that deter production. Mr. President, I call on the distinguished chairman and the ranking minority member of the Finance Committee to hold hearings on this bill and its possible technical problems, whether or not we get it passed in the immediate future, because we undoubtedly have created some nightmares of which we yet know nothing. These questions must be addressed if this law is to be enforced equitably and without unintended adverse impacts on domestic oil production.

Mr. President, I will not list the many deficiencies in this bill without praising the sensible measures which the conference report chose to retain. First, the decision to retain the Senate phaseout of the tax will provide greater promise that this tax will end and usher in an era of full incentives for domestic oil production. The argument for the windfall profit tax was that we are in an era of transition from subsidized energy prices and hazardous dependence on foreign oil to an economy based on the true cost of energy and increased energy security. The tax is supposedly needed to raise revenues to fund specific energy production and conservation programs that will assist the Nation in making such a transition. Once sufficient revenue has been raised, the tax should be phased out; because, again, a commitment of but 15 percent of these revenues to the production of energy from all sources is an utterly irresponsible route for Congress to take.

Clearly, the spending target adopted by the conference is already too high, and goes far beyond the funds the President requested for this tax. I will remind my colleagues that the President requested $144 billion over the decade from the windfall profit tax, and he provided a very rough outline of how he would allocate this Federal windfall to various energy and low-income assistance programs. Congress has acquiesced to the President's demands for more revenue from this tax, without ever asking how he plans to spend $227 billion; $83 billion more than the President ever requested. In spite of the fact that this tax will raise more revenue than what is really needed, and will be in effect too long, we can find some comfort in the fact that there will be an end to this disincentive to domestic oil production.

The conference should also be commended for retaining the amendment to allow independent oil producers to calculate percentage depletion on the full decontrolled price of a barrel of oil. Under the House bill, independent oilmen would calculate percentage depletion as if the price of oil remained under controls. As inflation boosts the cost of production and exploration, the independent would have found the usefulness of the percentage depletion deduction frozen by the House amendment. This provision, combined with the scheduled decline in the rate of percentage depletion, would severely complicate producers cash flow problems at a time when they need additional financing for their domestic exploration efforts. Retention of the Senate amendment in the conference report will allow the independent to take full advantage of what is left of the percentage depletion deduction.

Mr. President, there were some beneficial provisions in this conference report which have no relationship to energy issues, but they are long awaited changes that have had my enthusiastic support. Anyone who knows of the estate tax problems faced by all individuals, particularly owners of farms and small businesses, shares my relief that the conference agreed to a repeal of the carryover basis provision. The carryover basis provision was a nightmare for any estate tax planner. It made it nearly impossible for the owners of small family farms or ranches or small businesses to pass on their estate to the next generation. Such laws can only accelerate the decline of family owned enterprises and guarantee that large businesses will dominate private enterprise in the future. The repeal of the carryover basis provision was a long awaited reversal in tax laws that threaten the survival of small businesses. I look forward to hearings scheduled in the Taxation and Debt Management Subcommittee on other necessary changes in the estate tax laws affecting family owned businesses.

Finally, the increase in the interest and dividend exclusion from $100 to $200 is a welcomed first step in removing the bias against saving. Support for this type of action has been growing over the years, especially as people began to compare the rate of savings and economic performance of other industrial countries to our own. Countries with high rates of economic performance, such as Japan and West Germany, are those that save and invest in industry. I supported this change in the treatment of saving and dividend income, and I will continue to

support legislation that removes the tax bias against saving, investment and capital formation.

Despite all the rhetoric about this massive $227 billion tax on oil producers, one fact is absolutely certain: This tax will not produce a single additional barrel of oil. Standing alone, this tax will make no positive contribution of any kind to the ultimate resolution of a national energy problem that can no longer be viewed as anything other than a "crisis."

It is not only tragic but also outrageously irresponsible that only 15 percent of the revenue raised by this "energy" tax has been set aside to provide incentives for the production of alternative fuels, the conservation of energy or the conversion to coal. The Senate and House have just completed work on legislation that will encourage the production of synthetic fuels, but the results of these efforts will not have a significant impact on domestic energy production until the 1990's. If the windfall tax conference report is approved, the way in which we use the additional tax revenues will determine in large measure whether the 1980's will be viewed as a decade of progress in energy or as yet another period of missed opportunities. The necessary progress of which I speak requires that we act to develop and implement an effective national energy policy both for the short term and the long term.

In the short term, an essential ingredient of our national policy must be to promote energy conservation by industry. Both the Senate Energy Committee and the Senate Finance Committee have heard testimony describing how industrial energy conservation measures can provide the largest and most immediate effect on lessening our dependence on foreign oil. Professors Stobaugh and Yurgin in their highly acclaimed book, "Energy Future," estimate that a balanced energy conservation program could lead to a reduction of imports of 8 million barrels a day by the end of this decade. It is time for the Congress to focus on developing an accelerated conservation program to help the Nation form an energy bridge through the 1980's to the increased supplies of the 1990's.

While American industry has made great strides in the area of energy efficiency, I am convinced that even more progress can be made with existing technology if funds are available to meet the massive capital investment that will be required. Last September, I introduced legislation to provide the needed financial incentives. The bill was also introduced as a floor amendment to the windfall profit tax, and subsequently withdrawn after the distinguished chairman and ranking minority member of the Finance Committee agreed that hearings would be held on the issue of industrial energy conservation this year.

As many of my colleagues are aware, Mr. President, my bill seeks to provide a variable tax credit incentive to industries that undertake major energy conservation or coal conversion projects. By encouraging business to make the necessary capital investments at the earliest possible date, the energy efficiency gains that result will benefit the Nation at a time when the need is greatest. This legislation has three principal features. First, it uses the existing and effective investment tax credit mechanism. Second, it contains provisions designed to screen out from the incentive program those projects which are already sufficiently attractive to business from a financial standpoint. Third, the bill provides for incentives only in those cases where they will be cost effective to the Nation.

As the conferees on the windfall profit tax bill have worked over the past few months, so too have we. Based upon our work, I expect to introduce shortly a new bill which will contain provisions designed to make S. 1819 more effective and to expand its coverage to include industrial conservation projects not covered by the original bill. In 1978, we agreed to provide limited tax incentives for industrial energy conservation and the pending conference report provides for some improvements in the 1978 rules. But more significant incentives are necessary if we are to do the job we can and must do in the conservation field. The substantial targeted tax incentives contemplated by S. 1819, and the revised bill now nearly ready for introduction, can and should be enacted this year.

The Finance Committee should address itself to this issue and hold hearings in the near future on legislation to provide incentives for industry to undertake accelerated energy conservation programs. It is critical that we not permit ourselves to find false hope that passage of the windfall profit tax conference report will resolve our national energy crisis. It will not. If we are to impose this tax let us at least make sure that some of the revenues are spent wisely on programs that make our energy future more secure. Let us not try to pay for programs and future dreams of spending agencies on the backs of the American taxpayer once again.

Mr. President, I yield the floor.

Mr. GRAVEL. Mr. President, we here in Congress have wrestled with the problem of increasing energy costs for some time. Every President since 1970 has supported controls or taxes of some type on the price of domestic oil in the face of price increases by OPEC. The justification for these controls has been that energy prices are being established by a cartel of foreign producers and bear no relationship to free market conditions. We tend to lose sight of the fact that for the 25 years following the Second World War America benefited from cartel pricing by the major oil companies. It was as a result of their successful efforts to keep the price of foreign crude oil low that OPEC was formed. We have enjoyed cheap energy for 25 years because the major oil companies were doing an effective job.

Control of the pricing of oil has shifted from the producing companies to the producing countries. This shift occurred because of growing world oil consumption and an awakening of the producing countries to their own potential in an oil short world. Cartel economics worked to keep the price of oil low during a period of relative abundance and cartel economics is now making oil dear during a time of relative scarcity. We have chosen to castigate those who did a good job for us for 25 years, to blame the messenger for the message of higher oil prices. We have found a scapegoat in the oil producers, but scarcity is the problem, the cornerstone of OPEC.

In response to the growing crises in energy we have failed to enact policies which would discourage consumption of foreign energy and encourage the production of domestic energy. While this failure has been most apparent in the production and consumption of oil and oil related products such as gasoline the problem has been evident in other areas as well. By limiting the use of tax-exempt financing we have discouraged the development of our remaining hydroelectric resources. In a similar manner through price controls we have thwarted the development of natural gas and gas delivery systems. Unnecessarily complex environmental statutes with interminable review make it difficult to develop major energy projects or transportation systems. The trans-Alaska pipeline, which provided United States access to its only major new source of oil in the decade of the 1970's, required congressional termination of the environmental process in order to expedite its construction.

Without congressional action, approved by a single vote, the TAPS line might still be under litigation in the courts over environmental questions. Yet, after 2 years of operation objective and knowledgeable people concede that the pipeline has not had the unfavorable impact on the environment which was projected prior to its construction.

One look at the record of energy production in the United States over the last two decades tells the story. In spite of, or perhaps because of, massive Government involvement in energy production and distribution we have failed miserably to keep up with the demand for energy in America. We clearly have an energy crisis in the United States, but it is a crisis of our own making. More than any other entity, the Government of the United States has contributed to the current and potential shortfall in energy availability in the United States. Misguided programs proposed by the President and considered by Congress have been implemented by shortsighted bureaucrats and the result is chaos. Yet, the solution proposed is more Government, more controls, more taxes. This is not the way to solve our problems.

To deal with the problem of scarcity we need to return to basic economics. Allowing the price of a product to the producer to increase encourages more people to invest in production. Since 1954, when we began to regulate natural gas the United States has kept the price of energy below the market price encouraging consumption and discouraging production. The flow of capital into the oil and gas industry has been retarded by price controls and production of domestic resources has been stifled. The obvious solution is to allow oil prices to rise to a market clearing

level thereby encouraging new domestic production while discouraging unnecessary consumption. Instead, this Congress is attempting to repeal the fundamental law of supply and demand.

The issue at hand is the "windfall profit tax." The deception surrounding this legislation begins with its title. It is not a tax on windfall profit; it is not even a tax on profits. It is an excise tax on revenues resulting from the termination of price controls on domestic oil production. In addition, it levies an excise tax on some categories of oil the price of which has never been controlled, resulting in a price rollback on these categories. But, the relaxing of price controls does not create a windfall to the producers of a product except in the most convoluted of thinking. It simply allows fair market value compensation for the deregulated goods. Regulation results in lost revenues to which producers are entitled in a market economy. Deregulation simply restores the proper economic relationship between the value of a goods and its cost of production.

The deception regarding this bill has continued as Congress considered the legislation. We have been prodded continually to pass this bill in order to provide the Nation with a "rational" energy policy. But, this bill has almost nothing to do with energy except to tax its production. The bill will simply redistribute over $200 billion from the energy industry (and ultimately those who purchase energy) in America to another group of consumers and taxpayers. The bill will raise at least $227.3 billion from the domestic oil industry in new Federal taxes and will invest less than 10 percent of that sum in new conservation and production measures.

This windfall profit tax is particularly insidious. It has been billed as a tax which will be paid by the oil companies of America. But, corporations do not pay taxes, they collect taxes. The windfall profit tax will fall on the consumers of America who will not see the tax except in higher prices for oil products which politicians and the press will blame on the oil companies and OPEC. Although the tax is hidden from those who actually pay it the conferees decided to set aside half the revenues from the tax to be used in income tax cuts. Thus, we return to the consumer half of what the oil companies tax away on our behalf. The other half goes to Government for additional programs. This is like taking blood from the taxpayer's leg and putting it in his arm. He thinks he is getting a transfusion, but cannot understand why his health is not improving.

The proposed tax reductions in this bill are the right medicine in the wrong place. The revenues from the windfall profit tax should not go toward general tax cuts where they can only spur consumption. If we must have this tax its revenues should be dedicated to increased production. Income tax cuts must be undertaken to encourage increased productivity in America. However, cuts in taxes must be accompanied by intelligent reductions in Government spending. Only in this way can we assure increased productivity accompanied by a balanced Federal budget.

No wonder we have an energy crisis. We tax those who are successfully producing domestic energy supplies making it relatively less attractive to produce energy in the United States and we use the revenues to increase the disposable income of consumers reducing the impact of inevitably higher energy prices allowing consumption to continue unabated. I submit that this is not a "rational" energy policy, but a policy guaranteed to bring us an ever increasing shortfall between the demand for and the production of energy in the United States. It is a blueprint for creating an energy crisis, for exacerbating the already critical problem. Discourage production and encourage consumption. This bill will lead America to economic disaster.

THE TAX

Before entering into a detailed discussion of the conference committee bill I would like to point out three fundamental errors which were committed by the conference. First, prior to the adjournment of the first session of the 96th Congress the conferees, in an attempt to show progress on the bill, agreed to target a revenue figure of $227.3 billion over the period through 1990. That number was arrived at with no thought as to its impact on the production of energy in the United States. Thus, as the first major step in a bill designed as the cornerstone of our national energy policy, energy production was disregarded entirely; the production of revenue became the goal of this bill. Throughout the conference this target revenue figure was used as a justification for decision after decision, impairing the ability of the domestic oil industry to raise capital for the expansion of oil production in the United States. It was a grievous error for the conferees to begin with a revenue target rather than a target for the production of oil.

Second, throughout the consideration of this bill in both Houses of Congress and in the conference committee, great weight was given to the providing of incentives for the production of new and high cost oil. These categories were given special lower tax rates in an effort to encourage their development. But no thought was given to the question of how this new exploration and development was to be financed. In the oil industry exploration and development is financed out of existing production. To the extent that you reduce revenues from existing production, you reduce the ability of producers to explore and develop new fields. This is exactly what the 70-percent windfall profit tax on existing production will do. All the incentives in the world will not encourage investment in new production if the capital for that investment is unavailable. Several years from now we will wonder why our incentives have failed to produce major new reserves. The reason will be the flawed assumption in this bill that incentives alone are sufficient to bring on new production in the face of heavy taxation of the capital sources for exploration and development.

Finally, the conferees appear to have been laboring under the misapprehension that, regardless of price, adequate supplies of domestic oil are not available. Some believe that geology has limited our resources in such a way that we cannot produce enough oil for our own needs. Testimony before the Finance Committee suggests that such is not the case. Conventional and unconventional sources of oil in the United States are sufficient for many years to come, but these sources cannot be developed economically at the controlled prices which have prevailed and will continue to prevail under this legislation. If we must have a tax on oil it should not be an excise tax on the oil directly, but an income tax on the profits from that production. Then, at least, we would assure ourselves that production of the oil itself would not be made unprofitable by imposition of the tax. The conference, however, rejected the notion that domestic production should be strongly encouraged through price deregulation without an excise tax.

DEREGULATION AND THE TAX

I applaud the decision of President Carter to deregulate the price of domestically produced oil. The only way to effectively encourage production of a resource in a market economy is to allow that resource a market price. The argument that the price for oil is not a market price, but one set by a producer cartel, does not wash; for it seems clear that long-term projected demand for oil outstrips supply and, in such a case, price can be expected to rise rapidly. In fact, some OPEC nations have shown considerable restraint in pricing, to their own detriment.

While I support deregulation of oil and the termination of price controls on other forms of domestically produced energy, I cannot support this tax which the President has made part of his energy package. The windfall profit tax is simply the continuation of price controls on domestic oil in another form. The effect of the tax will be to prevent the producer of domestic oil from receiving the full fair market value for his product. At the same time, redistribution of the revenues from the tax to consumers will increase disposable income, some of which can and will be used for energy consumption. The net result will be that through this very complex piece of legislation oil producers and consumers in America will not be much better off than before the decontrol of oil.

Make no mistake. I am not suggesting that in order to encourage the production of domestic oil, we exempt producers from all tax. Producers should pay tax on their income just like everyone else. What I do object to is the levying of an excise tax, unrelated to income, on a domestic resource, the production of which we ought to be encouraging. Such an excise tax reduces the incentives for production and the access to capital for further exploration and development exacerbating the shortage and contributing to the scarcity which engendered the high prices. The tax also increases dramatically administrative costs and

overhead associated with oil production forcing manipulation of production and subjecting the industry to charges of dishonesty when it fails to comply with Government requirements which even those charged with enforcement cannot understand nor explain. If the income of domestic oil producers is "too high" then let us tax that income, but we should not tax the resources themselves for we risk making their production uneconomic.

Because of its broad coverage and important consequences this tax warrants careful scrutiny. I should like to take this opportunity to review and comment upon some of its provisions.

COMBINED TIERS

Under price controls, old oil (tier 1) had a controlled price of about $6 per barrel, while new oil (tier 2) was controlled at about $13 per barrel. The windfall profit tax would tax away 70 percent of the amount received for a barrel of oil in excess of the old controlled price, adjusted for inflation and allowing for an annual growth in the real price of 2 percent. In the interests of simplification the conferees agreed to combine tier 1 and tier 2 oil and use a base price of approximately $13 for this new combined tier. This means that the owners of old oil receive approximately $7 in price increases from deregulation which will be free from the tax on windfall profit. It is very interesting that the largest single tax-free boost in price under this bill goes to the category of oil which needs it the least. I support this move because I oppose the tax, but I find the anomaly most interesting.

STRIPPER OIL

Stripper oil, oil from wells producing 10 barrels a day or less, was exempt from price controls. But, stripper is not exempt from the windfall profit tax, even though this tax has been rationalized as a means of recovering some of the profits accruing to producers as a result of price decontrol. Under the conference committee bill the revenues earned by producers of stripper oil will be taxed; 60 percent of everything a stripper producer receives for his oil in excess of $15.30 per barrel will be paid to the Federal Government. This amounts to a price rollback for the producers of stripper oil. For the first time we have effectively levied price controls on stripper oil.

This tax cannot help but reduce the amount of stripper oil produced in the United States. Stripper oil is not speculative, it is not oil which must be found, it is not oil for which large exploration costs must be incurred. Stripper oil is in the ground and identified, the facilities are in place to pump it, but the returns from such production are not great and the costs can be high. What we do through this bill is to take a stripper well which, under price controls is producing oil at $30 per barrel (because stripper prices are not subject to regulation) and, through the windfall profit tax reduce the revenue per barrel from that well to $21.18 per barrel, nearly a 30-percent reduction in price to the producer. Common sense tells us that this cannot help but reduce the amount of stripper oil produced in the United States. This is what we are doing to reduce our reliance on OPEC.

NEWLY DISCOVERED OIL

As if the decision to tax stripper oil and thereby impose price controls on that resource for the first time were not absurd enough in these times of short supply, the conference committee bill taxes new oil. Again one has to ask how a windfall profit can occur as a result of the price deregulation of a resource the price of which was never controlled? And what of energy production? Newly discovered oil holds out our only short term solution to the problem of shortages and rising energy prices. Yet, we choose to tax this resource, assuring a tax wedge between what consumers pay for newly discovered oil and what producers receive. Both producers and consumers are cheated in the process.

Producers get less than they are entitled to for their product and consumers, in spite of high prices, will be faced with shortages because the production which should be encouraged by high consumer prices will not reflect those prices, but will reflect the lower price caused by the payment of the windfall profit tax to the Federal Government. Of all the unreasonable provisions of this bill, the decision to tax new oil, oil which is yet to be discovered, is probably the worst. In the name of additional Government revenues we are destroying our domestic sources of oil, discouraging the production of existing oil and the discovery of new oil. The energy crisis has become a self-fulfilling prophecy as a result of misguided Federal energy programs such as this windfall profit tax.

SEVERANCE TAXES

The conference committee bill allows as a deduction against the windfall profit tax amounts paid as State severance taxes up to 15 percent, to the extent that the tax is levied uniformly across the entire barrel of oil. It denies any deduction at all for local or tribal severance taxes. There are two aspects of this provision which I believe establish unfortunate precedents. The committee agreed to disallow any deduction against the windfall profit tax for severance taxes in excess of 15 percent. This flies in the face of longstanding Federal policies allowing deductions for State income and severance taxes thereby preventing double taxation of income, recognizing the State's first right to tax the revenues produced within a State. In effect, by this limitation on severance tax deductibility, the committee is saying to the States that, even if you levy a severance tax in excess of 15 percent on this particular type of resource within your State, the Federal Government will disregard its traditional position and refuse to allow a deduction for that amount.

This is an unnecessary and unwelcome invasion of the right of States to tax their own resources. It is an effort on the part of the Federal Government to dictate State tax policy through Federal penalties on State citizens and producers. It will bear fruit in further attempts by the Federal Government to limit the ability of States to levy severance taxes on their natural resources. If limitations on the deductibility of severance taxes on oil are appropriate, why not similar limits on the deductibility of severance taxes on coal, copper, iron ore, and even personal income taxes?

The attempts to limit State severance taxes on natural resources is an aspect of the most acrimoniously debated and most divisive issue in this entire bill: The question of a State's right to control and benefit from its own resources. This issue was hotly debated in both the Senate Finance Committee and on the Senate floor during consideration of an exemption from the tax for State royalty oil. The question has been thoroughly discussed and I seek to add nothing here other than the observation that the regionalism and acrimony which surfaced during consideration of this issue holds out the promise of great economic disruption if we fail to recognize that each State has special benefits and resources which could be taxed by the Federal Government if we seek to create economic uniformity among the several States. But any such attempt can only be divisive and result, in the end, in all of us being poorer than before.

INDEPENDENT PRODUCERS

Nonintegrated oil producers have provided this country with the vast majority of its new oil exploration efforts in the search for domestic reserves. Between 1969 and 1973, independents drilled nearly 90 percent of the wildcat wells, found 75 percent of the new fields, and discovered 54 percent of the reserves added during that period. These figures have held relatively constant over time, suggesting that independent producers contribute significantly to the discovery and production of new domestic oil reserves.

Independent producers as a group are generally much smaller than integrated oil companies and, as such, have fewer resources upon which to draw in their search for new oil reserves. Since the exploration for oil is a high-risk venture, financial institutions are unwilling to finance new exploration without security in addition to any potential finds uncovered by the exploratory drilling.

As a result independents must finance oil exploration out of cash flow or through the pledge of their existing production. To the extent that the cash flow from or the value of their existing production is impaired, the ability of independents to explore for new reserves is reduced. The windfall profit tax does just that.

Independent producers have been enthusiastic in their search for new oil in the United States. Traditionally they have invested in exploration and development amounts in excess of their net income from production. Unlike major integrated oil companies, virtually all of the exploration and development undertaken by independents is within the United States, developing domestic rather than foreign reserves. Independent producers are a special group, doing exactly what needs to be done in order to resolve or ameliorate the energy supply problems we are experiencing. The response of the conference committee to this group was to levy a stiff excise tax

on their existing and new production. True, the committee agreed to provide a special lower rate of tax on the first 1,000 barrels of existing production owned by independents. The rates were reduced from 70 to 50 percent on flowing oil, and from 60 to 30 percent on stripper oil. But this is a mere token. Every dollar of capital that is taxed away from independent producers is one less dollar which the independent producer can reinvest in the exploration for and development of domestic oil reserves.

There has been considerable discussion of a complete exemption from the windfall profit tax for the first 1,000 barrels of production owned by independents. This approach would clearly have been preferable to the minor concessions adopted by the conference committee, but a complete exemption of independents from the windfall profit tax would have been the best solution for the future of energy production in America. It is an unfortunate aspect of this legislation that the conference lost sight of the goal of energy production in its rush to raise revenue.

ALASKA OIL

The administration, in its original proposals regarding the windfall profit tax, exempted from the tax production in Alaska. This was a wise decision upon which Treasury later reversed itself. Once it became clear that the Ways and Means Committee was willing to tax production from Alaska, the administration reversed its position and began supporting the taxation of current and future Alaska production. In spite of this change by the administration, the justification for exempting all Alaska oil from the windfall profit tax remains.

Under the conference bill, production from Prudhoe Bay is subject to tax at a rate of 70 percent. This is the highest cost-of-production oil in America. It is also the largest single addition to our reserves in the past decade. The costs of exploration, development, and transportation in Alaska are all extremely high, and in order to encourage further exploration and development in Alaska we must leave the revenues from Alaska production with those in the industry who can bring us new discoveries from Alaska.

The cost of drilling a well in Alaska is 15 times greater than the cost of drilling a well in the rest of the United States. The chart below shows the average cost of drilling in Alaska compared to the lower 48 States. These are average costs and many remote wells have costs far in excess of those expressed here.

	United States	Alaska	Alaska Multiple
1977	$227,181	$3,603,075	15.86
1976	191,615	3,004,827	15.68
1975	177,792	2,708,275	15.23
1974	138,718	2,301,667	16.59
1973	117,152	1,349,687	11.52
1972	106,424	1,777,308	16.70
1971	94,708	1,396,176	14.74
1970	94,885	1,762,603	18.58
1969	88,554	2,087,470	23.57
1968	81,463	1,512,404	18.56
1967	72,902	1,399,079	19.19

The cost per hour of a production worker on the North Slope of Alaska is more than four times that of a comparable worker elsewhere in the United States. The lower 48 worker costs approximately $9 per hour while the same worker on the North Slope costs approximately $41 per hour. These additional costs in Alaska come from several factors. Salaries on the North Slope must be much higher because of its remoteness, hard weather, and isolation. Employees have a built-in overtime component because of the hours worked while on the Slope. In addition, employees must be specially housed and fed and provided special clothing. Costs for these items exceed $150 per employee per day. Finally, an employee must be transported from Anchorage 800 miles to the work site and back 25 times per year at employer expense.

Transportation costs for Alaska North Slope crude oil are another high cost element running as much as 20 times the cost of getting a barrel of oil to market in the continental United States. Transportation for North Slope crude has two components, the trans-Alaska pipeline tariff, which is about $6.25 per barrel; and a marine component varying from $1 per barrel for west coast delivery to as much as $4 per barrel for east coast delivery.

Presently about 900,000 barrels per day of Alaska North Slope crude oil are being shipped to the west coast, 250,000 barrels per day are being shipped to the Gulf Coast, and about 100,000 to 175,000 barrels per day are being shipped to refineries in the Carribean and the east coast. Thus, Alaskan crude oil benefits all consumers throughout the United States by providing domestic oil to domestic refineries and supplanting foreign oil and foreign product. And yet, in spite of the major contributions made by Alaska North Slope crude oil, the conferees agreed to tax this very high-cost source of domestic production at the highest rate under the windfall profit tax.

The companies which developed Prudhoe Bay have contributed an additional 1.5 million barrels per day to domestic production. This major addition to U.S. reserves was made only at great expense. So great was the cost for one of the participants that control of the company was sold in exchange for financial assistance in completing its share of the development. But much work is yet to be done in order to fulfill the full potential of Prudhoe Bay. Extensive capital investment will be required to maintain Prudhoe Bay production at high levels. Estimates of the future capital requirements range from $15 to $19 billion. These capital expenditures will be made for such items as continued developmental drilling and secondary recovery through water flood. But, much of the capital necessary for this further developmental work on the Prudhoe Bay field will be taxed away from the petroleum producers by the windfall profit tax.

The conferees continually looked to the question of "incentive" for greater production, coming to the conclusion that the price for oil net of the windfall profit tax provided sufficient incentive to encourage new production and sustain existing production. This conclusion is erroneous generally and especially so for Alaska where costs are many multiples of those experienced elsewhere in the United States. In Alaska, and Alaska is not unique in this, producers will receive less than 10 cents from a dollar increase in the price of oil due to deregulation instead of the 40 cents which they would have received without this new tax. As a result of this tax, producers in Alaska will have 75 percent less to invest in new exploration and development in this extremely high-cost, high-potential area.

In an effort to recognize the high costs in Alaska and to encourage exploration and development there, the conference agreed to exempt from the windfall profit tax new production north of the Arctic Circle and new discoveries more than 75 miles from the Trans-Alaska Pipeline south of the Arctic Circle and north of the Alaska range and Aleutian mountains chain. While I applaud this attempt on the part of the conferees to provide "incentives" for exploration and development in these remote and difficult regions, I cannot help but look to the heavy tax on existing production in Alaska and wonder where the capital will come from to finance such high cost exploration.

NATIVE OIL EXEMPTION

The Senate voted to exempt from the windfall profit tax Native owned oil and, after reconsideration by the House conferees, the conference agreed to the Senate provision. Failure to include this exemption in the bill would have been a breach of the traditional relationship between American Natives and the Federal Government. The trust relationship between the natives and the Federal Government has a long history with consistent congressional reaffirmation.

Federal courts have often held that Native trust resources are exempt from tax and the IRS has ruled that the tribe is not a taxable entity. Under treaty and statute the Federal tax immunity of Native trust assets is protected by the Constitution and in recognition of this fact Congress has never imposed Federal tax on Native assets. The exemption in the windfall profit bill has a negligible revenue impact in terms of total revenues and is a strong reaffirmation that vested treaty and statutory rights will be respected by Congress.

Especially encouraging is the recognition of the unique status of the Alaska Native Claims Settlement Act (ANCSA) corporations and the continuing Federal responsibility toward the shareholders of those corporations. Considerable discussion occurred during Senate consideration of the bill regarding the question of whether these corporations and their shareholders should be included within the exemption for American Native oil lands. The conferees recognized that the creation of the ANCSA corporations did not sever the special relationship between the United States and the Alaska Native people. Indeed, this special relationship has been recognized again and again in Federal legislation and court cases. In

recognition of the corporations' role ANCSA and subsequent Federal legislation included ANCSA corporations within the definition of Indian tribe. As an example, the Indian Self Determination and Educational Assistance Act encompasses Alaska Natives and their corporations within the goals of economic development and self-determination for Native Americans. The Federal Government provides health care, educational opportunities and other services to Alaska's Natives in spite of the formation of the Native corporations.

The ANCSA corporations were simply a vehicle through which the United States paid a settlement to the natives in exchange for the release of their aboriginal claims to all Alaska. Thus, ANCSA is a modern version of the earlier treaty agreements by which native groups relinquished claims to American lands in exchange for compensation and clear title to certain lands.

ANCSA does not create a reservation system with a long term trust. However, a 20-year transition period was included in ANCSA during which Alaska Natives, and their corporations, are to enjoy the protections of a Federal trust relationship so that they may organize the corporations and begin the management of their assets. For example, ANCSA corporation shares are inalienable for 20 years and the shares are not subject to Federal estate tax. The windfall profit tax will not apply to these corporations during this transitional period scheduled to terminate in 1990. If the tax should not be phased out by 1990 and the period of stock inalienability is extended it would be appropriate and within the intent of the native exemption from the windfall profit tax to extend the exemption from windfall profit tax for ANCSA corporations until the shares actually become transferrable.

NET INCOME LIMITATION

The windfall profit tax is an excise tax, a flat tax per barrel of oil produced. The tax does not take into consideration the cost of producing the barrel of oil, and because of this the tax may reduce the return to a producer nearly to zero. If it were not for the net income limitation provision in this bill, the windfall profit tax could cause oil producers to realize actual losses on the production of oil solely as a result of the tax. To assure that this does not happen the bill prevents the windfall profit tax from taxing away more than 90 percent of the net income from a property.

An example might help to illustrate how the net income limitation works. Assume a producer has 20 stripper wells on a property each of which is producing 5 barrels of oil per day. He has spent a considerable amount of money working over these wells to maintain his production and he finds that it costs him $25 per barrel to produce oil from these wells. He sells the oil at the world price of $30 per barrel making a $5 profit or a return of 20 percent on his costs.

However, once the windfall profit tax is figured in the numbers change drastically. Our producer will receive a $15.30 base price on his stripper oil for purposes of the windfall profit tax. Everything he receives in excess of $15.30 per barrel will be subject to tax at a rate of 60 percent. Since our producer receives $30 per barrel for his oil he will be subject to a tax of 60 percent on $14.70 or $8.82 per barrel. Subtracting that tax from his selling price of $30 per barrel we find that our producer gets to keep $21.18 per barrel after tax, an amount that does not even cover his production costs. The windfall profit tax takes him from a modest profit on his 100 barrels a day to a loss. Unless some adjustment is made he will be forced to close down his wells or operate at a loss.

The net income limitation steps in at this point to rescue our producer, sort of. The net income limitation limits the windfall profit tax to no more than 90 percent of the net income from the property. In our example this means that the per barrel windfall profit tax on our producer could not exceed 90 percent of his $5 per barrel net income. Thus, instead of a windfall profit tax of $8.82 per barrel our producer would pay only 90 percent of $5 or $4.50 per barrel windfall profits tax. However, this is cold comfort to our producer who now has a profit on each $30 barrel of oil of 50 cents. The windfall profit tax has reduced his reasonable 20 percent return on costs to 2 percent, a 90-percent reduction in his return.

This producer will certainly not be eager to involve himself in the development of new stripper wells and will probably be unwilling to work over his existing wells when their production begins to fall off. He can get a better return on his money by simply depositing it in a savings account.

The net income limitation is touted by the proponents of the windfall profit tax as the means by which we insure no oil becomes uneconomic as a result of the tax. "Producers," they say, "are always entitled to 10 percent of the net income from all their properties." I submit that we are kidding ourselves if we believe that a tax rate of 90 percent, which is in effect the rate imposed on high cost oil under this bill through the net income limitation, leaves producers with sufficient incentive to do further oil development. We refuse to levy personal income taxes above 70 percent for fear of reducing incentives, but in this bill we are willing to tax the income from marginal oil production at 90 percent. Such a rate of tax cannot help but reduce the amount of oil produced in the United States in the future.

PRODUCTION AND CONSERVATION INCENTIVES

The incentives for production of alternative sources of energy and the conservation of existing supplies in this bill can be summed up in a single word: Insufficient. The bill pulls about $227.3 billion out of the domestic energy industry over the next 10 years, but allocates less than 10 percent of that amount, a mere $14 billion, to conservation and production of new energy sources. This is a disgrace. Not only will this bill discourage the production of oil, the energy resource on which we rely most heavly, but it fails to sufficiently encourage either conservation of existing supplies or the development of new sources of energy such as geothermal, shale oil, and hydroelectric. The Senate bill was clearly preferable to the conference committee bill in nearly every aspect of conservation and production.

RESIDENTIAL ENERGY CREDITS

The Senate adopted an increase in the residential solar energy credit to 50 percent of the first $10,000 of expenditures for residential solar installations. The conferees reduced this amount to 40 percent and failed to increase the home insulation credit.

The expansion of the residential solar energy credits reflect an anomaly apparent not only in this bill, but in earlier energy legislation as well. We hope to encourage energy conservation expenditures through these credits, an admirable goal. But, by adding the credits gradually and refusing to make them retroactive we have rewarded those taxpayers who have chosen not to make conservation expenditures until now.

Thus, a taxpayer who purchased a solar installation in March of 1977 at a cost of $2,000 received no tax credit at all. If he waited until March of 1978 to purchase his solar installation he received a credit of $600. However, if he waited until March of 1980 to purchase the $2,000 of solar equipment he receives a tax credit of $800. We have rewarded those who delayed and penalized those who acted in the manner we sought to encourage. This problem plagues the entire energy incentive portion of this bill. Eligibility for credits and incentives is cut off in such a way as to exclude those individuals and corporations who were leaders in the field. We have penalized those who have done what we wanted and rewarded those who have waited.

BUSINESS TAX INCENTIVES

The 10-percent business energy credits for solar, wind and geothermal are expanded to 15 percent by this bill and extended through 1985. This is an appropriate step, but a mere token when compared to both the needs and potential of this source for savings in oil consumption. In dealing with the business energy tax credits the bill fails to address the confusion and irrationality regarding what is and is not eligible for the credit. For example, the bill makes it clear that petroleum coke and pitch, products of petroleum refining, are not petroleum products for purposes of the provisions denying the 10-percent investment tax credit to boilers fired by oil products. It also makes it clear that the 10-percent energy investment credit is allowed to equipment producing solid fuel from biomass. Much confusion has been engendered by unnecessarily strick interpretations of statutes authorizing these credits such that many products and projects which displace foreign oil are not eligible for the credits.

The credits have been adopted piecemeal with each special source of alternative energy clamoring for attention within the budget limitations. There was clearly room within the fiscal constraints of the windfall profit bill to rationalize the business energy tax credits in such a manner that any new equipment which

reduces our reliance on foreign supplies of oil is eligible for the credits. However, the conferees did not choose this approach, but instead opted for continuance of the confusing and inequitable system currently in place while squabbling over the size and extent of particularly credits. The complexity and confusion within this part of the Internal Revenue Code must be laid at the feet of the Congress, the administration and the conference committee.

DOUBLE DIPPING

The business energy tax credits include a provision which prevents double dipping, that is if one is eligible for an energy tax credit on a project his credit will be cut in half if he uses tax exempt industrial development bonds to finance any part of the project. This provision reflects the inroad of an insidious policy which has been developing for some time at the administrative levels of our government. The policy is an outgrowth of the traditional antipathy of the Treasury Department toward tax exempt State and municipal bonds. Failing in its effort to remove the historical tax exemption of municipal financing we find the Treasury and other departments within the administration attacking this traditional congressional policy through indirect means.

The business energy investment credits are intended to stimulate investment in alternative energy sources. This goal is unrelated to the question of whether or not a particular project is financed through the use of industrial development bonds. Thousands of projects are financed each year using industrial development bonds as a result of specific provisions in the Internal Revenue Code placed there by the Congress after careful review. If these IDB provisions are no longer appropriate, or are inappropriate for the development of alternative energy projects, then Congress should repeal or amend them rather than taking cheap shots at them through the energy investment credits.

The provision on "double dipping" is premised on the notion that the tax exempt bond provisions of the Code represent a Federal subsidy to individual developers. However, the truth is that these provisions arose out of constitutional limitations on the right of the Federal Government to tax the States and simply constitute a Federal recognition of the right of the States to be free from Federal taxes on their assets. This is the same principle recognized by the conferees in their decision not to impose the windfall profit tax on oil owned by State and local governments.

Viewed in this context the rules on "double dipping" simply thwart the goal of the business energy tax credits in those situations where tax exempt financing has been used historically. The relative attractiveness of any given investment is based on the expected overall rate of return, a component of which is the cost of financing. The "double dipping" rules will simply lower the overall rate of return for certain projects making those on the margin uneconomic, assuring that they will not be built. We will all be energy poorer as a result of this indirect attack on industrial development bonds.

HYDROELECTRIC POWER

From 1930 to 1950 hydroelectric power supplied about 30 percent of the electric energy produced in the United States. Today hydroelectric accounts for only half that percentage and only 4 percent of all energy consumed in our country. This failure to develop our hydroelectric resources in the face of a national energy shortage is a disgrace.

Hydroelectric power is the cleanest, cheapest and most environmentally sound of the available conventional alternatives for major new sources of domestic energy supplies. Hydroelectric projects do not consume fuel, freeing consumers from reliance on oil and other hydrocarbon resources. Compared to alternatives such as coal, oil and nuclear fired powerplants hydroelectric facilities are nonpolluting. Hydroelectric facilities have long useful lives with very low operating costs. Often hydroelectric development is compatible with the development of water resources for other purposes such as recreation, water supply and flood control. In spite of all these benefits the Federal Government, in its push to solve the energy crises, continues to disregard and even thwart the development of hydroelectric power.

At the beginning of 1976 hydroelectric projects in the United States had an annual capacity of 57,000 megawatts. This is the equivalent of 250 million barrels of oil annually; 40 percent of United States developed capacity is in the Pacific Northwest and, as a result of this heavy emphasis on hydropower, that region has the lowest electricity costs in the country. In some cases power costs in the Northwest are only one-fifth the cost of power in major northeastern cities.

The theoretical limit for U.S. hydroelectric production under existing technology is approximately 390,000 megawatts. Practical limitations suggest that the real available capacity is in the neighborhood of 170,000 megawatts. Thus, we have over 120,000 megawatts of undeveloped hydroelectric capacity in the United States. Full development of this potential could reduce oil consumption in the United States by nearly 1½ million barrels per day.

Environmental constraints have temporarily prevented the development of some of this potential as was pointed out by the FPC staff in a 1974 report titled "The Role of Hydroelectric Developments in the Nation's Power Supply":

A number of potential projects, aggregating about 6,500 megawatts of capacity and capable of producing some 21 billion kilowatt-hours annually, are in river reaches being studied as possible wild or scenic rivers and their development may be precluded by legislation. It is recognized that some of these rivers may be found not suitable for inclusion in the national system and the projects may ultimately be developed. However, similar legislation has already prohibited the development of projects with a total capacity of about 7,200 megawatts with a potential annual generation of 23 billion kilowatt-hours, and these projects have been removed from the inventory. Incidentally, the 44 billion kilowatt-hours of annual generation that could be produced by the above two categories of projects would require about 70 million barrels of oil annually to generate in thermal plants.

The FPC report goes on to point out that, disregarding these projects, there remain 470 projects over 25 megawatts with capacity of 36,000 megawatts which have good potential for development. These projects could substitute for nearly one-half million barrels of oil per day.

If hydroelectric power is such a good source of energy one might ask why it has not been more fully developed. There are three factors involved: Environmental opposition, high initial cost and governmental apathy verging on antipathy.

Environmental opposition to hydroelectric development has been strong. The opposition has argued that major hydroelectric developments are unnecessary as the alternatives of small hydro, solar and wind generation can provide all the energy we need if effective conservation programs are in place. Thus, environmental groups do not oppose major hydroelectric development while supporting alternatives such as coal or nuclear fired plants. The alternative favored by these groups is the consumption of less energy obviating the need for any major new capacity.

While I appreciate these arguments and believe that conservation programs are important it appears that the majority of Americans seek expanded energy supplies at lower cost in order to improve their life styles. For this reason I believe that the development of environmentally sound hydroelectric power is the best of the available alternatives for new power sources. In addition, laws are in place to assure that any hydroelectric development which takes place will be consistent with a clean and healthy environment and the protection of plant and animal wildlife. As we all know, court and congressional battles have been fought to protect the environment from destructive hydroelectric development and these battles have been won. Now we must move ahead with those projects which are acceptable under the standards which have been established.

In spite of its long term low cost of power, hydroelectric development generally has a high initial or front end cost. Hydro projects are designed to take advantage of particular natural sites with specific maximum generating potential. Because expansion of containment facilities is very expensive hydro projects tend to be built to capacity at the time of initial construction. In most cases this means that during the early years a project will be overbuilt. It will be capable of generating more electricity than can be sold.

While this represents good planning for the future and effective use of the site resources it also means that the project is difficult to finance. The market for power in the area of the project at the time of construction cannot support the excess capacity which will be required for the future, but which must be financed during construction along with the rest of the project.

An illustration might be helpful in explaining why it is difficult to finance

hydroelectric projects compared to conventional oil-fired generating capacity. Assume that a local government estimates power requirements in the year 2000 to be 100 megawatts more than existing demand. The city is at the limit of its generating capacity and must add additional capacity to service its current needs. The city has a hydro site a few miles from town which could be used for a hydroelectric facility generating 100 megawatts.

But the city would not need that much additional capacity until 2000. Right now it only needs an additional 25 megawatts of capacity which can be supplied by an oil fired facility with a much lower cost of construction. The city can add an additional oil facility every 5 years and have its additional 100 megawatts by 2000. In spite of the high fuel costs for these oil fired facilities their lower initial capital cost and the ability to phase in capacity mitigates against the hydro facility except in the most farsighted and financially secure communities.

Until 1969 State and local governments could use tax exempt municipal bonds to finance hydroelectric development. The use of tax exempt financing allowed communities to lower the overall cost of financing hydroelectric facilities and made many projects possible which would otherwise have been beyond the financial reach of the communities involved. Since then a set of rules has developed governing the issue of tax exempt bonds seriously thwarting efforts to develop hydroelectric power. These rules may be found in the industrial development bond provisions of the Internal Revenue Code. The provisions are among the more complex of tax rules and I should like to take a moment to describe them.

Generally, the interest on a bond issued by a State or local government is exempt from Federal income tax. However, if such a bond is an industrial development bond the interest will be taxable, requiring a higher interest rate which results in higher financing costs.

An industrial development bond is one the proceeds of which are to be used in a trade or business not carried on by the Government and payment of which is secured by property used in a trade or business. On its face this definition seems acceptable, but interpretations of the statute hold that proceeds are used in a business not conducted by the governmental unit if 25 percent of the benefits (power output) are used by a nongovernmental buyer.

Thus, if a city builds a hydroelectric project and sells the power to a privately owned distribution system for resale to residents the city may not use tax exempt bonds to finance the project because it sells more than 25 percent of the power to a nongovernmental user for use in a business. However, if the distribution system were owned by the city and commercial users made up less than 25 percent of the market, tax exempt financing would be available.

As a result of the business use limitation most State and local government bonds to finance hydroelectric development are classified as industrial development bonds. But, there is another door through which some projects can squeeze into tax exempt financing. Even if bonds would be industrial development bonds the interest will continue to be exempt from Federal tax if the funds are used for an exempt activity, one of which is the local furnishing of electric energy. Local furnishing means the furnishing of power to no more than two contiguous counties or one city and one county.

The one-city one-county rule was added several years ago to allow tax exempt financing for power projects in New York City. Thus, we find that hydro, coal, and oil fired powerplants for major metropolitan areas serving millions of people qualify for tax exempt financing while a modest hydroelectric facility serving three counties and 50,000 people in a semi-rural area will not.

A final aberration created by the two county rule is that sale of excess power from a project onto a grid for use elsewhere will usually violate the rule and disqualify the project.

Thus, rather than selling the surplus power from a project onto a grid, increasing energy supplies elsewhere in the Nation, projects financed under the exempt activity rule with tax exempt bonds must simply waste any excess electricity which is generated for fear of violating the two county rule.

The combination of the business use test and the two county rule has served to eliminate tax exempt financing for all but the very smallest hydroelectric projects. These two rules draw irrational distinctions between different projects and minor variations in circumstances can result in dramatic increases in the cost of financing comparable projects. Thanks to these provisions restricting the rights of States to be free from Federal taxes the development of hydroelectric power has been thwarted.

The Senate recognized these problems and acted, in the windfall profit bill, to correct them. In an attempt to facilitate the use of tax exempt financing for the development of hydroelectric power and rationalize the treatment of industrial development bonds for hydroelectric projects the Senate bill provided that interest on industrial development bonds used to provide facilities the primary function of which is the generation of hydroelectric power is exempt from Federal income taxation. This provision applied to rehabilitation of existing sites under 25 megawatts and all new sites. It was a great step forward in the development of America's undeveloped hydroelectric potential.

The provision was deleted in conference. In its place the conferees adopted a watered down version applying only to existing projects of less than 125 megawatts allowing the use of industrial development bonds for the first 25 megawatts of additional capacity. The conference committee bill does nothing to promote the construction of new hydroelectric facilities nor to assist in their financing. The deletion of the Senate provision was a serious mistake by the conference, one which should be corrected at the earliest possible opportunity in order to expedite the construction of hydroelectric power projects in the United States.

CONCLUSION

This has been a rather long discussion of the windfall profit tax bill, but I do not apologize. Legislation of this importance warrants careful consideration and full discussion. As a member of the conference on this bill and a strong opponent of many of its provisions, it is incumbent upon me to state clearly my positions. I hope that I have done so here.

This bill does just the opposite of what should be done in this time of national crises. It discourages energy production while assuring higher prices. It is a fraud on consumers because it assures that, in spite of higher energy prices, through lack of capital, production of domestic oil and gas will decline. As a result we will face domestic shortages resulting in ever increasing prices, rationing and continued economic dislocation.

It does not have to be that way. If we were to return to the market principles which made this country great, the higher prices paid by consumers would encourage additional domestic production, reducing shortages and improving supplies. At the same time, billions in additional revenues from the corporate income tax, an issue entirely avoided by the conferees, could be used to encourage the production of alternative sources of energy such as shale, solar, wind, geothermal and hydroelectric.

I strongly oppose this bill, but I fear it will pass and in passing confirm predictions of energy disaster, insuring an energy insufficient future. The sad fact is that we are causing our own energy shortages; we are doing it to ourselves. I can only quote the statement attributed to the cartoon character Pogo: "We have met the enemy and he is us."

Mr. SCHMITT. Mr. President, unfortunately this body is still considering the issue of a windfall profit tax. I suspect it will still be considering it for some days now.

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

The PRESIDING OFFICER (Mr. PRYOR). 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.

AVOID A CARTER DEPRESSION

Mr. MELCHER. Mr. President, Congress will enact a balanced Federal budget which will probably reduce the rate of inflation by four-tenths of 1 percent or more. It will be evidence of determination by Congress and the Nation to curb inflation but it will not be nearly enough to avoid a severe depression.

Senators will, like good troopers, curb our expectations in Federal programs and troop to the floor to vote to make the necessary cuts, but if that is all we do, we will be like a Boy Scout troop working for merit badges. These are tough

times and it is time for tough talk and tough action.

These high interest rates—now at 20 percent—are killing us—killing the United States. When I hear Federal Reserve Board Chairman Volcker's platitudes on the need for high interest rates to control inflation or Secretary of the Treasury Miller's low-key explanations, it occurs to me that I cannot recall names of their predecessors in the Hoover administration. As a youth, I vividly recall the bitter resentment of the American people in the 1930's aimed at former President Hoover. A generation of Americans knew the great depression as the Hoover depression. They knew him neither as the great humanitarian he was, nor as a highly competent engineer but as the designer and the executioner of the greatest fall in the American economy in our history.

President Carter in these troubled times is heading full speed ahead into another great depression which, if not turned around, will be the Carter depression. Recent news accounts refer to a 6-percent decrease in housing starts. That is just wishful thinking—there are no housing starts today financed with mortgage money pressing 20 percent. American car sales are down 12 percent, and we can only wish that it will not get worse. Savings are down—we can wish they were higher but they will go much lower as Americans without jobs, or with inflation eating them alive, withdraw savings to pay living costs.

Balancing the budget and tinkering with credit terms and credit cards may be something, but not nearly tough enough. We have to get tough on imports so that the American dollars stay here rather than going abroad. We have to get tough on imports so that Americans have jobs and start to rebuild the U.S. economy. We have to get tough on imports to at least balance with exports.

We have to get tough with near-term energy supplies—synfuels are way down the road. We need gasohol which is near term and modified hydroelectric facilities for more electricity, which is near term, and coal conversion, which is also near term.

When I talk to my colleagues who favor the status quo on trade and they point out that their constituents have an interest in foreign trade opportunities, I can only warn them that we can no longer afford to drift into a great depression where their constituents' main concern will be the lack of a domestic U.S. market to sell their products. When plants are shut down, U.S. producers have no market for their products for lack of purchasing power in the U.S. economy. That is what happened in the last Great Depression and that is where we are rapidly heading again.

There is little time left to avoid that economic catastrophe. We must be tough enough on import of products and tough enough on lowering interest rates to save ourselves, including President Carter, from the Carter depression.

ANATOLY SHCHARANSKY

Mr. STEWART. Mr. President, I would like to take a moment today to remind us all of a most unfortunate event which took place just about exactly 3 years ago. We cannot forget that it has been that long since the arrest of Anatoly Shcharansky, a Soviet Jew whose plight made headlines throughout the free world. This man is a symbol of the desire we all have to cling to the basic freedoms to which we all have a right.

Rather than describe all the details of his personal nightmare, let me just say that he was a Jewish activist who tried to insure emigration rights for his fellow Jews. His goal was to promote, not alter, Soviet law; but his Soviet superiors did not see the situation quite the same way. The secret police were intent on destroying the Jewish emigration movement, and they would not allow Anatoly Shcharansky to stand in their way.

He has since suffered greatly at a Soviet labor camp and a prison for criminals. His health continues to deteriorate; he has been denied visits and letters from his family; and his bride, Avital, to whom he had been married just 1 day, awaits their reunion in Israel.

As lawmakers in a nation which knows well how dangerous oppression can be, we cannot allow the world to forget the nightmare of Anatoly Shcharansky. We must commit ourselves to attaining freedom for this man and insuring his right to rejoin his wife in Israel.

"HURRY-UP" HIRING

Mr. COHEN. Mr. President, at this very moment Federal personnel offices are scrambling to implement one of the administration's latest cost-cutting measures—a freeze on hiring of new employees. The freeze was announced only last Friday, and it will be some time before the dust finally settles. But, when it does, the story that will emerge is likely to be less than satisfying.

Rumors of an imminent freeze had been winding their way through the halls of executive agencies for weeks. One might have hoped that, given the likelihood of a freeze, agencies would have proceeded with caution in bringing on new employees until a final policy was announced.

Unfortunately, precisely the opposite seems to have occurred.

The Office of Personnel Management reports being inundated with requests to accelerate the certification of applicants for civil service positions in the 2 weeks before last Friday's announcement. Officials there said that requests for certification during the last pay period were running 20 percent above normal. On top of that, OPM officials said the number of employment positions included in each request had also increased significantly.

OPM's situation seems to be only the tip of the "hurry-up" hiring iceberg. While the final results would not be in for another month, a survey by my staff reveals that nearly every Federal agency engaged in accelerated hiring before the announcement of the freeze.

At the Department of Health, Education, and Welfare, the number of new, permanent, full-time employees on the payroll during the last pay period was up by 18 percent over that for an average 2-week pay period. Even more staggering, the number of commitments issued for future hires during the period skyrocketed by over 100 percent.

Officials at the Veterans' Administration estimated that, during the last 2½ weeks, their agency brought on between 500 and 900 more employees than is the norm, a potential 200-percent increase.

At the central office of the Bureau of Mines, in the Department of the Interior, hiring actions increased by 100 percent prior to the freeze.

At the Department of Transportation, a personnel official said, "there definitely was a boost to fill" positions still available because the agency was staffed under its hiring ceiling. Officials at the Department of Agriculture reported similar "increased activity."

And, at the Department of Commerce, a personnel official had this to offer concerning the situation: "There was an increase in activity as soon as the rumors started. It's like the cherry blossoms coming out when it gets warm in the spring. It always happens, and we don't make any attempt to track it or tame it."

To the President's credit, the guidelines governing new hires require agencies to count employees hired since February 29 against the limits imposed by the freeze. The obvious motive behind this retroactive provision in the order is to "punish" those agencies that participated in the hiring binge. Since the President's order requires agencies to lose two employees through attrition from their pre-March totals before they can hire one new employee, offices that engaged in "hurry-up" hiring will be waiting quite a while before they can begin hiring again.

But the real loser is not going to be the program manager who hired too many, too fast, and perhaps too inefficiently; the loser will be the taxpayer. It will be the taxpayer who will bear the brunt of program delays caused by inefficient staffing during the hiring binge. And, if OMB decides to grant exceptions to the freeze in order to expedite Government programs, it will be the taxpayer who will foot the bill.

It is perhaps not too late to ameliorate the worst effects of the "hurry-up" hiring spree. HEW Secretary Patricia Roberts Harris yesterday ordered an immediate moratorium on appointments made from commitments issued during the 2 weeks prior to the hiring freeze. Only in hardship cases, where, for example, an individual had sold his home or quit an old job in anticipation of Government employment, will exceptions be granted.

I think other agencies not only would be well advised, but should be compelled, to follow the example of Secretary Harris. If the President's inflation program is to work, it requires, at the very least, the cooperation of the executive branch itself. In a number of respects, that cooperation seems to be lacking lately.

Mr. President, I ask unanimous consent that Secretary Harris's order concerning "hurry-up" hiring be printed in full in the RECORD.

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

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C.

Memorandum to Assistant Secretaries, Heads of OS Staff Offices, Heads of Principal Operating Components.

Subject: Restrictions on HEW Employment.

This Department will act immediately to carry out the President's restrictions on Federal employment announced in his special message on combatting inflation. The restrictions limit hiring after February 29, 1980 to filling one of two vacancies which occur after February 29, 1980.

Effective immediately, agencies or offices are to make no new commitments for filling any full-time, permanent position within the Department of Health, Education, and Welfare by a new hire. This includes filling positions by new appointment, transfer from other federal agencies, reinstatement, or a conversion action which changes an employee's appointment from one with a time limit to one without a time limit. There are to be no exceptions to this policy, which will remain in effect until more detailed guidelines are prepared.

Also, effective immediately, agencies or offices are to make no appointments from commitments made prior to March 14, 1980, pending a review of the commitments and the overall status of employment within the Department. Exceptions have been authorized for appointments in accordance with firm commitments made in writing by agency personnel officers prior to March 1, 1980. The Assistant Secretary for Personnel Administration, in consultation with the Assistant Secretary for Management and Budget, is authorized to approve exceptions in individual cases of hardship based on commitments made subsequent to February 29, 1980.

The Assistant Secretary for Personnel Administration and the Assistant Secretary for Management and Budget will develop guidelines to implement all parts of the President's directive. I intend to define a policy for the Department to insure that all hiring permitted under the President's anti-inflation program supports the Department's most urgent needs and priorities. I ask for your complete cooperation and support.

PATRICIA ROBERTS HARRIS.

ANATOLY SHCHARANSKY'S CONTINUING IMPRISONMENT

Mr. HEINZ. Mr. President, I join my colleagues in marking the third anniversary of the arrest of Anatoly Shcharansky.

I think there is little doubt that Mr. Shcharansky was meant by the Soviet Union to serve as an example. His arrest was intended to check the increasing efforts of Soviet Jews to secure their long-violated rights to freedom of religious expression. Mr. Shcharansky was, after all, perhaps the best known and most effective publicist of the problems of Soviet Jewry.

First as a spokesman for the Jewish emigration movement (himself having been denied permission to emigrate) and later for a group of monitoring Soviet compliance with the Helsinki Accords, he became, thanks in part to his fluent English, a translator and trusted liaison man for Western correspondents and diplomats. There was never any question that his activities displeased Soviet authorities; he prudently took special precaution to stay within the limits of Soviet law. But the disclosure that his one-time roommate in Moscow had worked briefly for the CIA provided the long-sought pretense for his arrest, on the charge of spying for the United States. President Carter's explicit denial that Shcharansky had any connections with the CIA was not enough to prevent a sentence of 13 years in prison and labor camps.

The arrest of Anatoly Shcharansky had additional purposes beyond internal control. It was meant to serve notice to the Soviet people that dissent could be equated with treason. And it was meant as a message to the people of the United States that their concern for human rights in countries other than their own could be construed as subversion.

I propose that we Members of the United States Senate also make an example of Anatoly Shcharansky. I propose that we redouble our efforts to call the attention of the world to Mr. Shcharansky's unforgivable imprisonment. Through the example of this one man, we can show our continued concern for the welfare of all Soviet Jews. And we can give notice, through our efforts, that veiled intimidation will not dissuade us from speaking out on behalf of the cause of Soviet Jewry. The work that I and so many of my colleagues have in the past devoted to Anatoly Shcharansky must be continued until he is free. Let us make Shcharansky into an example of a very different sort from what the Soviet Union has made of him.

MONONGAHELA RIVER WATERWAYS IMPROVEMENT ACT

Mr. HEINZ. Mr. President, on February 28, I joined my distinguished colleagues from West Virginia (Mr. ROBERT C. BYRD and Mr. RANDOLPH) and the senior Senator from Pennsylvania (Mr. SCHWEIKER) in introducing S. 2369, the Monongahela River Waterways Improvement Act.

This legislation would authorize replacement of lock and dam Nos. 7 and 8 on the Monongahela River in Pennsylvania near the West Virginia border. Replacement of these obsolete and undersized facilities is essential to the efficient operation of the entire Ohio River navigation system, which is vital to the regional economy and the transport of increased quantities of coal as part of our national program of energy independence.

Because of the need for work on these projects to begin just as soon as possible, the cosponsors of this legislation have requested that our distinguished colleagues on the Water Resources Subcommittee, Committee on Environment and Public Works, include this authorizing legislation as part of S. 703, the omnibus water projects authorization bill.

I direct the attention of my distinguished colleagues on the subcommittee and in the full Senate to a recent newspaper article dramatizing the impact of these aging and inadequately sized navigation facilities on the industrial base of the region. I ask unanimous consent that this article from the March 9, 1980, Pittsburgh Press be printed in the RECORD.

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

DECAY ON THE WATERWAY

(By Rich Gigler)

If groceries moved on barges, maybe people would be more worried about the old brass bushings holding up the gates of the Emsworth locks.

When one of the decades-old fittings wears out, the gates can't function, can't seal the lock chamber off from the river around it, and Pittsburgh's vital Ohio River freeway is closed—for hours . . . or days . . . or sometimes weeks.

A one-week shutdown can tie up 378,000 tons of industrial products and raw materials, but the consumer doesn't feel it directly.

In fact, in his daily travels he may not even see any of the 23 locks and dams that make Pittsburgh's three rivers navigable. Unlike supermarkets, potholed roads and crumbling bridges, they are for the most part off the beaten track. But many of the locks and dams are crumbling, too.

Take the Emsworth complex, for example.

One of three sets of locks and dams on the Pennsylvania headwaters of the Ohio, the Emsworth locks lift or lower about 54,000 tons of coal, steel, steel by-products, chemicals, raw and finished products and fuels daily.

Perhaps 40 times a day, seven days a week, the 108-ton timber and steel frame gates swing open on a lock channel two football fields long to move 400-ton towboats and their strings of 100-foot barges exactly 12 feet, up or down.

CLOSED BY CRUMBLING

The hydraulic-powered hinges on these house-sized gates turn on steel posts the size of tree trunks, which revolve in bushings mounted in about 75,000 cubic feet of steel-reinforced concrete. And because of continued deterioration of the 44-year-old locks and dams, they are closed an average of seven to 10 days every year.

A $20-million repair job is set to begin at Emsworth next year, and that will result in two 45-day shutdowns of the larger lock in 1982.

Tucked away on the Monongahela River, in the heart of the Steel Valley, just upstream of Elizabeth, are the 73-year-old Monongahela Locks and Dam No. 3.

One of six on the Pennsylvania course of the Monongahela, old Lock No. 3 is one of the smallest yet busiest on the district's waterways—a chronic bottleneck in the flow of river traffic, because its lock chambers are only 56 feet wide, while most others on the Mon have at least one large 110-foot chamber.

ONE CHANNEL OPEN

Last year No. 3 bore 21.3 million tons of cargo, mostly the coal, limestone and chemicals to make steel and finished products of the Mon Valley steel mills. Yet, last year one of its two chambers was closed for rehabilitation, doubling the bottleneck of river barge traffic that has existed there for years.

Of course, all most people understand about a river traffic jam is that it doesn't make them late for work. But to local industry, time is money, and the time that barges stand idle waiting to pass through No. 3 represents quite a lot of money. River operators estimate they lose $1 million every day that an important link in the chain of 23 locks and dams is broken. There is no reliable way to calculate the monetary losses to local industry for delayed delivery of raw materials or shipment of finished goods.

In 1907 the U.S. government opened Lock No. 3 at a cost of nearly $1.7 million. Building the locks and the 670-foot dam took two years. Sorely needed rehabilitation work started in 1977. So far, nearly $12.4 million has been allocated for repairs to the eroding

concrete chambers, and work is 53 percent complete.

U.S. Army Corps of Engineers' records show old No. 3 holds the duration record in the 23-link chain of locks and dams in the corps' Pittsburgh district—70 years' continuous operation before a major rehabilitation.

But now the concrete walls of the lock chambers look like huge brown and gray sponges—riddled with holes, crevices and gouges where the cement and gravel have taken on the consistency of a dunked doughnut and melted away. The fallen concrete bares the steel reinforcement bars, once thick as a wrist, now rusted to the size of a finger.

After 73 years of collecting and expelling about 350,000 cubic feet of water, roughly 7,000 times every year, the lock chambers are simply eroding away, like a sand castle.

NO IMPROVEMENT

The Corps of Engineers expects to spend a total of $16 million to turn back the tide at Lock No. 3. The work should be complete by June, 1981. But after four years and $16 million, Lock No. 3 will remain a major bottleneck on the Monongahela.

"The repair work will not make any significant improvement in the ability to handle tows. It won't be any smoother or faster," says John Reed of the Corps of Engineers. "This work simply extends the life of the existing project."

Even as reconstruction continues, Lock No. 3's operable chamber is closed about once a month for some type of temporary repair, and acres of coal barges are regularly parked above and below the locks wating for a chance to get through this weak link in the chain.

But old Lock No. 3 is making a comeback. The rehabilitation should extend its life 20 years. It is not the weakest link in the chain.

Tucked away on a wooded hillside along the Mon at the Greene-Fayette County line, near Point Marion and the West Virginia border is Lock and Dam No. 8, in a state of antiquity and deterioration beyond repair.

Lock No. 8, and No. 7 just 5.8 miles downstream near Greensboro in Fayette are the only two single-channel locks remaining on the Mon. Like the half-operable No. 3 closer to Pittsburgh, they are persistent bottlenecks stalling the flow of river traffic, even though the traffic is much lighter in that coal-mining area.

No. 8, completed in 1926, is overburdened with coal shipped downstream from those mines and coal heading to the Fort Martin electric power plant, just upstream. In a year, it lifts or lowers (a distance of 8.2 feet) about 8 million tons, mostly coal but other necessities like gasoline and fuel oil for the Morgantown, W. Va., area.

The Corps of Engineers declared Nos. 7 and 8 outmoded in 1972, recommending complete replacement. As the use of coal increases in the 1980s, the bottleneck they created on the Mon for at least the last eight years becomes more evident and serious, not only to steel mills which burn coal, but to homeowners who use electricity from coal-powered generators.

The gates of No. 8 swing on hinges that are pulling away from their concrete and steel moorings. Even the replacement concrete of many temporary repairs has fallen away.

Corps of Engineers men who are employed at 7 and 8 say both the narrow old locks are "almost always working, and almost always being worked on."

Like any piece of machinery subject to wear and, especially, to the destructive capability of water, just delaying the effects of age and deterioration is a 24-hour-a-day job. The workmen dutifully polish the antique brass fixtures of 55-year-old dynamos and grease the unsteady hinges and gears, but they can't prevent the old concrete and steel superstructure from slowly, gradually eroding from age.

While Lock No. 3 is under reconstruction, and $6 million recently was allocated to start rebuilding the Emsworth locks and dams over the next four years, local officials are only now in the process of asking Congress for the money necessary to replace Locks 7 and 8.

Lock and Dam No. 8 were built in three years for less than $2.1 million; No. 7 cost $2.6 million to build, also in three years.

But today, while the Corps of Engineers can obtain funds for repairs or reconstruction and complete such projects in about four or five years, building an entirely new link to the chain can take more than 10 years, and the cost has more than doubled four times over. Replacing Locks 7 and 8 is expected to cost about $130 million—at today's prices. The actual price tag over the course of 10 years is incalculable.

U.S. Sen. John Heinz, after touring Locks 7 and 8 recently and declaring them "ancient," promised to push legislation to pay for replacements. It was his second tour of the locks and second call for government funds to replace them in the last 12 months. Heinz estimated it will take at least nine years after the funds are allocated to build the new facilities.

The senator said after his tour that he considered nine of the 10 locks and dams on the entire Monongahela "obsolete."

SOONER OR LATER

Unless they are completely replaced or at least temporarily rehabilitated, "then sooner or later they will become unservicable," Reed of the Corps of Engineers notes.

Only then would a substantial number of Western Pennsylvanians obtain direct insight into the importance of the locks and dams on the district's rivers.

Since just one link in the river chain can upset the progress of the entire system, just one lock broken down, beyond repair and awaiting a 10-year governmental process for relief, could upset the entire area's economy.

About 85,000 workers, mostly employees of the steel mills and the barge companies, could be directly and almost instantly affected—put out of work until the chain was reunited. Twice that many eventually could be laid off because their jobs are directly tied to the same mills, indirectly dependent on the river channel.

Of course, an extended breakdown in the chain would force Pittsburgh industry to adopt alternate methods of shipping, by rail or truck.

On the rivers, our most massive form of mass transit, one gallon of diesel fuel can transport one ton of cargo 300 miles. By rail, the same cargo could travel 180 miles; by truck, only 50 miles. Switching from barges to trucks would mean a six-fold increase in fuel costs alone.

Increased costs mean increased prices and it is here that the importance of the tucked away, seldom seen chain of locks and dams through Pittsburgh's rivers reaches a level that the average consumer can appreciate.

The river transportation system, privately operating under the publicly owned handicap of deteriorating locks and dams, is the key to Western Pennsylvania's industrial nucleus. Inexpensive transport of raw materials and finished goods still provides area mills and manufacturers with an edge over more modern plants in better, landlocked climates.

But right now that edge is crumbling.

WAR ON INFLATION REQUIRES MORE THAN RHETORICAL POP-GUNS

Mr. HEINZ. Mr. President, I rise today to express my extreme disappointment with the anti-inflation program announced by the President on Friday. If we are to win this war on inflation—which looms as the single greatest threat to our national security today—we need more than a paper draft registration; we need to call up the economic reserves and equip them with the best possible weapons to fight inflation on all fronts.

During hearings held by the Banking Committee on Monday, I outlined several ways in which a major offensive on inflation could be launched on each of the five fronts on which the President has said the war on inflation must be waged:

First, constraining Federal spending;

Second, restraining the growth of credit;

Third, disciplining the escalation of wage and price increases;

Fourth, cushioning the inflationary impact of energy price increases; and

Fifth, making basic structural changes in our economy to increase productivity, savings, and research and development.

I am not convinced that we have to accept the "Finlandization" of our economy by inflation and would like to share my battle plan for winning the war on inflation with my distinguished colleagues. I therefore ask unanimous consent that the text of my remarks before the Banking Committee be printed in full in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HEINZ. Since the Banking Committee hearings, two editorials have appeared in the Wall Street Journal which bear out two points I made in my statement: One, that the administration is "balancing" the budget by increasing taxes and juggling the books; and two, the so-called balanced budget does not control the most alarming trend in the growth of the Federal Government: Federal credit activities in the form of loans and loan guarantees. I ask unanimous consent that these editorials be printed in the RECORD.

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

[From the Wall Street Journal, Mar. 18, 1980]

ONE-DAY BUDGET CUTS

We were wrong to suggest in these columns yesterday that the Carter administration would take back its budget cuts after the November election. It has taken them back already.

We pride ourselves in a healthy measure of skepticism, but we were taken in by the administration's propaganda barrage about cuts of $2 billion this fiscal year and $13 billion in the year starting in October 1. We failed to notice that in releasing its new spending totals the White House also made "revisions" to the spending estimates it offered back in January. The March figures are the January figures, plus revisions, minus "cuts."

The sharp pencils were out along Wall Street yesterday, and Morgan Stanley's H. Erich Heinemann discovered that once you offset the revisions and the cuts and aggregate the two fiscal years, to effect on expenditures of the new crisis budget is: precisely zero.

In one of its tables, the White House is perfectly honest about this. If you take the mid-points of the ranges in the table, and add the totals for the two fiscal years, it looks like this:

OUTLAYS

[In billions of dollars, fiscal years]

	1980	1981	Total
January	564	616.0	1,180
Plus revisions	6	9.5	.....
Minus cuts	2	13.5	.....
March	568	612.0	1,180

While we were naive in not spotting Mr. Carter's budget cuts as an even bigger fraud than we suspected, we were right in identifying his program as a tax increase. Even here, however, we underestimated. The revenue table looks like this:

REVENUES

[In billions of dollars, fiscal years]

	1980	1981	Total
January	524	600.0	1,124.0
Plus revisions	5	11.5	.....
New withholding	0	3.0	.....
Oil import fee	3	10.0	.....
March	532	624.5	1,156.5

In the seven weeks between the two budgets, the government's tax take went up $32.5 billion over the two years. The increase in tax revenues from one fiscal year to the next soared to $92 billion from the $76 billion already predicted in January. With the large tax boosts already proposed in January, Mr. Heinemann calculates that you have the biggest peace-time tax boost in history; taxes will rise from 20.5 percent of GNP in calendar 1980 to 21.9 percent in calendar 1981.

Thanks to these gigantic tax increases, you can say the budget is in balance, provided (1) you ignore the government's off-budget credit activities, see below, and (2) you can persuade yourself there won't be any more spending revisions like the ones in the last seven weeks.

[From the Wall Street Journal, Mar. 15, 1980]

CONTROLLING FEDERAL CREDIT

The purpose of balancing the budget is to take some pressure off interest rates and money creation by getting the federal government out of the credit market. But balancing the budget isn't going to count for much when you consider that the bulk of federal borrowing is not even included in the budget.

In an important study of federal credit activity, the Congressional Budget Office reports that federal credit assistance in the form of direct loans and loan guarantees has been growing much more rapidly than federal spending. New direct loans by off-budget entities such as the Federal Financing Bank grew 70 percent between 1976 and 1979—twice the rate of growth in federal spending—and loan guarantees increase by 108 percent.

The size of this activity and its impact on the economy are enormous. In 1981 the federal government will be making new credit commitments of $162 billion. If you add to that $97 billion in lending by government sponsored enterprises with direct access to private credit markets, like Fannie Mae (FNMA), Sally Mae (SLMA), Freddy Mac (FHLMC) and the Farm Credit Administration, you have a 1981 economy burdened with a total of $269 billion in federal credit activity. These are gross figures. Net of loan repayments in the various programs, federal loans and guarantees will be adding $46.9 billion to credit demand in 1981, and government sponsored enterprises will add $13.8 billion.

What do these figures mean? For one thing they mean that the expenditures budget greatly understates the government's impact on the economy. In addition to outlays you have to count all the resources the government claims through its credit activities. For another thing they mean that even if the President and Congress succeed in balancing the budget in 1981, $60.7 billion in federal credit activity still has to be financed at the expense of private investment.

In other words, when you count all the lending the federal budget is 44 percent bigger than it looks, and the deficit is $60.7 billion even if the unified budget is balanced. As much anguish as Congressmen and agency heads are expressing over the President's proposal to reduce 1981 spending by $13 billion, somehow we don't see them rushing to apply the axe more than four times as hard to their favorite credit programs—especially since most are hidden off-budget.

Without any doubt the large federal credit deficit is going to complicate Fed Chairman Volcker's efforts to rein in money growth and break inflation expectations, coming as it does on top of heavier than usual corporate and budgeted Treasury credit demands in the next several months. Bob Reid of the New York firm, McCarthy, Reid, Crisanti & Maffei reports that within the next three months $40 billion of corporate tax liabilities are due, the bulk of which cannot be met internally out of corporate cash flow.

In addition the Treasury is facing a greater than usual imbalance of expenditures over receipts as a result of IRS over-withholding individuals' 1979 income taxes by $8 to $10 billion.

All of this borrowing will push short-term interest rates higher. That will do more damage to the savings & loans and housing, putting more pressure on the Fed. The clamors will increase for more controls, making it all the harder to encourage the capital formation and productivity necessary for real economic growth.

Years of uncontrolled federal spending and credit programs have brought the economy to its current perilous state. Inflation is raging, productivity is declining and a large chunk of the scant savings available for investment is drawn off by federal credit programs. In typical fashion Washington has proposed credit controls and higher taxes for the private sector in order to minimize cutting back on its own activities. If Washington takes as long to face up to the deficit in its credit budget as it has to deal with its expenditures deficit, the economy will remain in the woods for a long time to come.

EXHIBIT 1

OPENING STATEMENT OF SENATOR JOHN HEINZ

Mr. Chairman, the purpose of the hearings today would seem to be not only reauthorization of the Council on Wage and Price Stability but also the general question of what sorts of inflation policies we ought to be pursuing and whether the President's anti-inflation program which he announced on Friday represents a credible attack on an inflation rate now nearing the 20 percent mark.

We are very fortunate to have before us today two very able and expert witnesses from the Administration—Alfred Kahn and Robert Russell—whom I trust are prepared to explain more fully this latest shift in the Administration's economic policy and what results this anti-inflation program might reasonably be expected to produce, and when. Before the Committee hears from our witnesses, I would like to spend a few minutes outlining some of the concerns that I have about the President's program in the hopes that the witnesses can address some of these concerns in their testimony today.

At the outset, let me state that I basically agree with President Carter that our anti-inflation efforts need to be focused on the following five areas:

(1) Constraining Federal spending;

(2) Restraining the growth of credit;

(3) Disciplining the escalation of wages and prices;

(4) Cushioning the inflationary impact of energy price increases; and

(5) Making basic structural changes in our economy to increase productivity, savings, and research and development.

Having outlined the major fronts on which our war on inflation must be waged, the President has, however, unfortunately failed to develop a battle plan for launching a major offensive in each of these five areas. If we are to win this war on inflation—a foe which looms as the greatest threat to our national security today—we need more than draft registration; we need to call up the reserves and equip them with the best possible weapons.

In evaluating what the President has proposed, I have found invaluable a set of principles set forth by the Republican Conference for a serious, prolonged attack on inflation. These principles are:

(1) Federal outlays as a percentage of GNP must be limited, and this percentage should be 21 percent for 1981.

(2) The FY 1981 Federal budget should be balanced without tax increases, recisions should be made in spending for FY 1980, and a long-term commitment to a balanced budget must be made.

(3) Federal taxes must be reduced and tax laws changed to encourage greater individual and business savings, investment, output and productivity and thus more jobs for Americans.

(4) America's energy dependence on foreign imports must be reduced by 50 percent over the next decade through conservation and domestic energy production.

(5) An immediate program of regulatory reform must be undertaken.

(6) A real export drive must be implemented.

(7) The formation of appropriate labor-management committees to deal with the programs of worker morale and of youth and structural unemployment must be encouraged to improve the participation and productivity of the U.S. work force.

If the Chairman will indulge me for a moment, I would like to spend a few minutes describing the ways in which these seven principles could be incorporated into a major offensive against inflation on each of the five fronts which the President has outlined.

(1) CONSTRAINING FEDERAL SPENDING

First, in the area of fiscal policy, the President's belated recognition of the need for a balanced budget represents at least a step in the right direction—the direction of reining in the massive inflationary increases in the money supply and in Federal borrowing necessary to finance the Federal deficit. But although I have yet to see the specifics of the President's budget-cutting proposals, what I have seen suggests none of the fiscal discipline which all six of the former chairmen of the Council of Economic Advisers said was a necessary prerequisite for stopping inflation. Instead, the President seems to be proposing a one-time series of cuts and deferrals which may lead to higher outlays in future years. I was very distressed last week to hear Alan Greenspan's analysis of the FY 1981 budget, which though touted as model of fiscal restraint actually projects significant acceleration in Federal spending in future years.

Outlays for fiscal year 1984, for example, have been increased $165 billion since last year's budget. None of this would suggest the type of long-range budgetary discipline necessary to show that we are in fact serious

about combatting inflation. Increasingly, I am convinced that only a constitutional mandate will result in this needed discipline—which should include, as Herbert Stein has suggested, congressional budget resolutions setting budgetary targets for expenditures for the next five years.

In other aspects as well, the President's commitment to fiscal discipline is less than convincing. Speeding up the rate of tax collection as a means of balancing the budget would seem to be the budgetary equivalent of putting one's thumb on the scale. In this regard, I am also distressed by the calculations of the Congressional Budget Office that the President's original budget for FY 1981 underestimated Federal expenditures by about $15 billion—an amount roughly equal to this latest series of proposed "cuts".

All rhetoric about fiscal discipline aside, the fact remains that this year's budget does nothing to stem the alarming trend of the growth of Federal spending relative to the private sector of our economy. As Walter Heller testified before this Committee, the so-called restraint in this year's budget proposal merely reflects the fact that taxes are increasing faster than Federal spending. Without tax cuts, the 1981 budget reflects over $40 billion in net "new taxes: $12 billion of "inflation tax" as individuals are pushed into higher tax brackets; $18 billion in increased payroll taxes; and at least $10 billion in so-called windfall taxes on oil producers. These figures do not include, of course, the roughly $11 billion which would flow into the Federal coffers as a result of the new tax on imported oil which the President announced on Friday.

In short, the 1981 budget reflects an increase in the dollar amount of Federal expenditures above their current level of roughly $580 billion and an increase in the Federal share of GNP to about 22 percent. Nor do these totals reflect the massive, inflationary costs which the Federal government imposes on the private sector through intervention in the allocation of credit and through regulation of private business activity.

(2) RESTRAINING THE GROWTH BUDGET

A second area identified by the President as a target for anti-inflation efforts is restraining the growth of credit. In proposing selective credit controls on certain types of consumer borrowing, the President seems to be ducking the critical issue which emerged during last week's appearance by the former presidential economic advisers. That issue is: the Federal Reserve's policy of what I call "expensive easy money." Such a policy is clearly doomed to failure unless interest rates were to be increased above the rate of inflation. Given the devastating impact which the high interest rates of the past few months have already had on the housing industry and what remains of the domestic automobile industry, further action by the Fed to increase interest rates—a prime factor in the inflationary spiral—would not seem particularly prudent. Instead, the focus needs to be on the rate of increase of the monetary and credit aggregates.

In placing selective controls on the growth of consumer credit, the Federal Reserve has taken action which may solve part of the problem. But largely ignored is the role which Federal credit activities—both on and off budget and both direct lending and loan guarantees—have played in fueling the fires of inflation. The economic effects of Federal allocation of credit have been well documented, most recently in a study released by the Congressional Budget Office last month. Even more alarming is the rate of increase of Federal credit activity. From 1971 to the present, new commitments for Federal credit have grown from a level of under $50 billion per year to over $160 billion estimated for 1981. Between 1976 and 1979, direct Federal loans which do not appear in the budget approved by Congress each year grew by 70 percent—a rate twice that of the increase in Federal spending. At the same time, Federal loan guarantees increased even more rapidly—by 108 percent. If commitments made by the Federal Financing Bank—which handles over 90 percent of Federal off-budget credit activities—were included in the budget, the deficit for fiscal year 1981 would increase by over $16 billion.

In short, to make the fight against inflation credible Congress and the President must subject these allocations of credit to the same sort of direct scrutiny which direct outlays are supposed to receive. In his speech before the nation on Friday the President said that for the first time he had submitted to Congress a credit budget covering Federal loans and loan guarantees. What the President did not say was that his proposed Federal credit budget places limitations on only about 45 percent of total new direct loan obligations and 40 percent of total loan guarantee commitments. As the Chairman of this Committee has suggested, the Budget Committees need to include in their budget resolutions aggregate ceilings on Federal credit activity. But as the Committee with jurisdiction over most Federal loan and loan guarantee programs, we on the Banking Committee must exercise our authority to compensate for the shortcomings of the President's proposals in this area.

(3) DISCIPLINING THE ESCALATION OF WAGE AND PRICE INCREASES

A third weapon in the President's proposed arsenal to fight inflation is the system of "voluntary" wage and price standards administered by the Council on Wage and Price Stability, whose reauthorization is now being considered by this Committee. Just like the TFX fighter jet—one of the greatest Defense Department boondoggles in history—voluntary wage and price standards just will not fly.

As much as I agree with the President's stated intention not to seek authority to impose mandatory controls, I disagree with his assertion that tripling the staff of the Council of Wage and Price Stability will somehow have a meaningful impact on the rate of inflation in this country. In fact, one could argue that there is a direct relationship between the budget authorizations for the Council on Wage and Price Stability—which this Committee tripled about this same time last year—and the rate of inflation. As Barry Bosworth testified before this Committee on Friday, merely increasing the monitoring of wage and price increases does little, if anything, to stop those increases. Whatever psychological value this monitoring effort and the admonitions of COWPS might have would seem to be overshadowed by actions of the Council which merely ratify increases that have already taken place. A case in point is the latest retreat sounded from the battle against inflation: the action recommended by the Pay Advisory Council to liberalize allowable wage increases to as much as 9½ percent.

At best the monitoring and jawboning efforts of the Council would seem to be ineffective. But they may actually be detrimental in that they divert significant attention and resources away from combatting the root causes of inflation, including excessive Federal spending, lending, and regulation of the private sector and the stifling effects on investment, savings, and productivity improvements that the combination of inflation and short-sighted tax policy has worked to produce. In extending the life of the Council for another year in 1979, Congress directed COWPS to shift the emphasis of its anti-inflation efforts to focus on productivity improvements and regulatory reform. Whether the Council has in fact fulfilled its congressional mandate I do not know but would be most interested to find out from our witnesses today. It is important to note in this respect that a ten or even a twenty percent wage increase is only inflationary if it is not matched by a commensurate increase in productivity.

(4) CUSHIONING THE INFLATIONARY IMPACT ON ENERGY PRICE INCREASES

A fourth element of the President's renewed war on inflation is action to combat the inflationary impact of energy price increases, specifically, by promoting conservation. Before examining the merits of the President's proposals in this area, let me first state that I believe the President has been using the OPEC oil price increases as a cover for the failures of the Administration's economic policies. As convenient a scapegoat as the OPEC countries make, the fact is that energy prices are not the primary cause of the current inflationary spiral. According to the latest report of the President's own Council of Economic Advisers, only 2¼ percentage points of the 13 percent rise in the inflation rate last year can be attributed to energy prices.

Still the need to minimize the economic dislocations wrought by the spiraling price of imported oil is very real. How does the President propose to do this? The major thrust of his energy program—imposition of the windfall profits tax—represents a tax on new domestic production. And despite the rhetoric about conversion of oil fired power plants in the Northeast to coal—a proposal in which I am heavily involved as the representative of a state with the potential to double its annual coal production—the fact remains that the Administration has yet to make up its mind on the key element of the coal conversion program. Upon this key element—the extent to which environmental restrictions on converted plants will be eased, if at all—hinges on the success of the entire coal conversion program.

It is the final element of the President's attack on the energy component of inflation, however, which I find most troubling: the so-called energy conservation "fee" on imported oil. In fact, the likely result of this action will be to further fuel the fires of inflation by increasing taxes—in the amount of $11 billion per year—and by increasing gasoline prices. This additional increase in the price of gasoline will not, recent experience suggests, significantly reduce gasoline consumption. What it will do, however—besides increase the Federal tax bite—is result in a significant increase in the price of gasoline to consumers. This increase will be much greater than the ten cents per gallon amount of the "fee" or tax because the various middlemen involved in the distribution process—including refiners who are not subject to price controls—will mark up the amount of the tax just as they mark up any other cost of production.

(5) STRUCTURAL CHANGES TO INCREASE PRODUCTIVITY, SAVINGS, RESEARCH AND DEVELOPMENT

It is the specifics of the fifth element of the President's anti-inflation plan, however, which I find most troubling. These involve proposals to restructure our tax and other incentives to increase our alarmingly low rates of saving, investment, and productivity growth. Assuming that we are successful in our other battles against inflation—the battle against excessive Federal spending, the battle against unrestricted credit growth, the battle to end the escalation of wage and price increases, and the battle to eliminate the disruptions caused by the increased cost of imported oil—the long run success of our anti-inflation war effort will be decided on this front. So crucial is the need for immediate action on this front—even though results may not be apparent for a few years down the road—that several of the former economic advisers who testified before the Committee last week stated that stimulative tax cuts should be enacted as part of the FY 1981

budget even if this were to mean sacrificing the goal of a balanced budget. As Walter Heller suggested, Congress should avoid the short run, expedient course of income tax rebates and other stimuli to consumption and instead opt for incentive-boosting measures such as investment tax inducements and relief from payroll tax increases.

It was my sincere hope that in his message to the nation on Friday the President would demonstrate the same leadership and resolve to push for changes necessary to increase productivity that he has demonstrated in pushing for higher taxes on domestic oil producers and for loan guarantees to financially troubled and politically powerful domestic automakers. Instead, the President chose to rehash past efforts for decontrol of selected industries and to direct the Presidental Commission for a National Agenda for the Eighties to recommend ways of increasing the nation's productivity.

Whatever other worthwhile functions the Presidental Commission for a National Agenda for the Eighties might be performing, neither it nor any other presidential commission needs to spend any more time analyzing the situation and printing voluminous reports. The legislative proposals necessary to turn around the decline in the saving rate to less than three percent, to restore our productivity growth rate to its historic high levels—as compared to a current negative rate—are already on the table.

These proposals—which can be conveniently lumped under the ruberic of "supply side" politics—have gained widespread attention, are cited in the latest report of the President's own Council of Economic Advisers, and have been endorsed by the bipartisan leadership of the Joint Economic Committee of the Congress. These proposals include:

(1) Revisions in depreciation schedules for investment so that businesses are not penalized for investing in new plant and equipment; this objective is reflected in the Capital Cost Recovery Act—popularly known as "10–5–3"—now before Congress;

(2) Modifications in our tax system to encourage savings and investment by easing the tax burden on these activities;

(3) Devotion of a greater share of the Federal budget to research and development;

(4) Enactment of a comprehensive regulatory reform bill which would include sunset provisions, requirements for cost-benefit analysis and that regulations be cost-effective, and elimination of overlapping and duplicative Federal regulations. As an example of the ways in which the objectives of the various Federal regulatory agencies are frequently at odds with one another, USDA inspectors instructed the Parks Sausages plant in Baltimore to wash its floors six times daily; at the same time, OSHA was telling Parks that to prevent accidents its floors had to be kept dry;

(5) A regulatory budget to place the costs imposed on the private sector by the Federal government under a budget ceiling similar to that employed for direct Federal outlays and that proposed for Federal credit activities; and

(6) Adoption of a comprehensive export policy so that we increase sales of American products abroad at the same time that we import jobs; such a policy is crucial because every $1 billion in exports creates 50,000 jobs.

These are not "pie-in-the-sky" proposals; these are substantive pieces of legislation whose potential to simultaneously increase the nation's output of goods and services and reduce inflation have been amply demonstrated. By concentrating on these supply side policies, we can bring the rate of inflation down significantly without resorting to inducing a recession—"wringing" inflation out of the economy by throwing millions of persons out of work. In fact, a supply side model of the economy recently developed by Dr. Otto Eckstein of Data Resources Institute and the Joint Economic Committee demonstrated that such modest supply side tax cuts as a 2.7 percent increase in the investment tax credit and a reduction in the average tax lifetime of producers' durable equipment by four years would, within a decade:

Reduce the CPI by four percent;

Increase productivity by 3.3 percent;

Increase real business fixed investment by 15.6 percent; and

Increase the capital stock by 7.2 percent.

I will not be convinced that this Administration is serious about a prolonged attack on inflation until I see the same kind of effort that was mobilized to secure loan guarantees for Chrysler mobilized in support of proposals such as I have outlined.

CLOSING

To summarized, Mr. Chairman, I am not convinced that we have to accept the "Finlandization" of our economy by inflation. Our economic system and business structure remain surprisingly strong. But we need to act quickly to shore up our productive capacity and correct the various shortsighted Federal policies I have previously mentioned which are largely responsible for our current predicament. The war on inflation can and must be won; but it cannot be won with rhetorical popguns about OPEC price increases and more presidential commissions to produce more volumes of reports about the problem. It can only be won by adopting a "hard line" on inflation and by launching a major offensive on each of the five fronts I have outlined in my remarks today.

Thank you.

HALTING OF LANCE–I PRODUCTION

Mr. HELMS. Mr. President, S. 2235, a bill to authorize the Secretary of the Army to convey the Michigan Army Missile Plant to the State of Michigan is under study in the Senate Committee on Armed Services. Similar legislation is pending in the House of Representatives.

I oppose enactment of S. 2235, and I find it astonishing that following the invasion of Afghanistan the Congress would be considering a measure to close down a missile plant to enable its eventual transfer to Volkswagen of America for the production of Rabbit automobiles.

The Lance–I missile is a valuable tactical nuclear and conventional weapon of great importance to the U.S. Army. The administration has ordered termination of Lance-I production no later than September 30, 1980, presumably to clear the way for Volkswagen.

This plan is typical of an administration which terminated Minuteman production, destroyed the machinery for producing the Minuteman ICBM, ended Minuteman–II modernization, cancelled the B–1 bomber, canceled the neutron bomb, delayed the development of Trident–I, refuses to develop Trident–II, vetoed a nuclear carrier, delayed Cruise missile development by at least 2 years, cut naval shipbuilding by half, cut the size of the Army, Navy, and Air Force, withdrew troops from Korea, and relinquished the Panama Canal.

At present, Russia enjoys a seven to one advantage in tactical missiles comparable to the Lance–I system. Russia is planning the massive deployment of additional tactical nuclear missiles and is expected to produce massive numbers of the new Russian SS–21 and SS–22 weapons for large-scale European deployment.

The administration decision to subsidize the production of Volkswagen Rabbits by closing the Lance–I missile facility is the last straw in almost 3½ years of systematic dismantling of the most significant strategic and theater nuclear weapons programs required to regain our lost position of parity with Russia in the European theater and elsewhere. Enough is enough.

The national security cannot afford any further damage of this short-sighted variety.

No doubt some would argue that Lance–I has been produced in sufficient quantity to justify closing the facility. I disagree. Moreover, there are several other facts which warrant maintaining this facility even if immediate Army requirements for Lance–I have been satisfied.

First, if the Lance–I production line is closed, the administration plans to sell to the highest bidders the machinery used for making the missile. These sales would make impossible a resumption of Lance–I production once the line is dismantled and dispersed.

If a future administration elected to produce additional Lance–I missiles in a new effort to close the gap between our tactical missile forces and the overwhelming numerical superiority of comparable Russian forces, then that future administration would find the task either impossible as a practical matter or at least highly expensive in acquiring and reestablishing a missile plant from scratch.

Second, the Michigan Army missile plant is a Government-owned, contractor-operated facility containing some 2.1 million square feet of industrial plant operating space. The military production base of the United States has eroded to an alarming extent. Whatever the merit or demerit of terminating Lance–I production, there can be no justification for closing yet another industrial facility available for general defense production.

I can understand why officials of the State of Michigan would seek title to the Michigan Army missile plant for subsequent conveyance to Volkswagen. Construction of a comparable facility would be extremely expensive, and perhaps prohibitively expensive, for Volkswagen. However, the same magnitude of expense would necessarily be borne by the taxpayers of the United States in order to build a comparable defense production facility as a replacement for the Michigan Army missile plant.

I wish the very best for the State of Michigan and its citizens. I sincerely hope that Volkswagen will locate a plant for the production of Volkswagen Rabbits in Michigan. The economy of Michigan and the national economy would benefit. Certainly, I shall do all that I can to help short of harming the national security interest of the United States.

I shall oppose enactment of S. 2235.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

NATIONAL HOUSING PRODUCTION REPORT—MESSAGE FROM THE PRESIDENT—PM 186

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

I herewith transmit the 1980 National Housing Production Report as required by Section 1603 of the Housing and Urban Development Act of 1968, as amended (42 U.S.C. 1441c).

JIMMY CARTER.

THE WHITE HOUSE, *March 19, 1980.*

REPORT ON THE STATUS OF FEDERAL ADVISORY COMMITTEES—MESSAGE FROM THE PRESIDENT—PM 187

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

In accordance with the provisions of Section 6(c) of the Federal Advisory Committee Act (Public Law 92–463), I am transmitting the eighth annual report on the status of Federal advisory committees.

This report reflects a continuation of the efforts to achieve the objectives I set in 1977: to assure that unnecessary committees are terminated, and new committees are established only when they are essential to meet the responsibilities of the government. At the end of 1979:

—The total number of committees was 820;

—Although the number of committees required by statute increased (from 312 to 338), the number established under agency authority decreased (from 246 to 222); and

—Since the beginning of 1977 the total number of committees has been reduced by 339 (from 1,159).

JIMMY CARTER.

THE WHITE HOUSE, *March 19, 1980.*

PRESIDENTIAL APPROVALS

A message from the President of the United States reported that on March 17, 1980, he had approved and signed the following acts:

S. 643. An act to amend the Immigration and Nationality Act to revise the procedures for the admission of refugees, to amend the Migration and Refugee Assistance Act of 1962 to establish a more uniform basis for the provision of assistance to refugees, and for other purposes; and

S. 1792. An act to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Simon Wiesenthal.

MESSAGES FROM THE HOUSE

At 12:04 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 1682. An act to amend the act of August 9, 1955 (69 Stat. 539, 25 U.S.C. 415), as amended, to authorize a ninety-nine-year lease for the Moses Allotment Numbered 10, Chelan County, Washington.

The message also announced that the House insists upon its amendments to the bill (S. 2269) to extend the Emergency Agricultural Credit Adjustment Act of 1978, and for other purposes, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. FOLEY, Mr. JONES of Tennessee, Mr. HARKIN, Mr. HUCKABY, Mr. GLICKMAN, Mr. HANCE, Mr. BROWN of California, Mr. RICHMOND, Mr. BALDUS, Mr. BEDELL, Mr. ENGLISH, Mr. PANETTA, Mr. DASCHLE, Mr. WAMPLER, Mr. MADIGAN, Mr. JEFFORDS, Mr. KELLY, Mr. COLEMAN, Mr. MARLENEE, and Mr. HOPKINS were appointed as managers of the conference on the part of the House.

The message further announced that the House has agreed to House Resolution 611, expressing the condolences of the House on the death of Representative Slack.

The message also announced that the House has passed the following bill, with an amendment in which it requests the concurrence of the Senate:

S. 2222. An act to extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 3:47 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

S. 1682. An act to amend the act of August 9, 1955 (69 Stat. 539) (25 U.S.C. 415), as amended, to authorize a ninety-nine-year lease for the Moses Allotment Numbered 10, Chelan County, Washington;

H.R. 2782. An act for the relief of John H. R. Berg;

H.R. 4013. An act for the relief of Jozef Swiderski; and

H.J. Res. 414. Joint resolution authorizing the President to proclaim May 1, 1980, "National Bicycling Day."

The enrolled bills and joint resolution were subsequently signed by the President pro tempore (Mr. MAGNUSON).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BAYH, from the Committee on the Judiciary, without amendment:

S. 2446. An original bill to amend the patent laws, title 35 of the United States Code. Ordered placed on the calendar.

PATENT LAW AMENDMENTS ACT OF 1980

Mr. BAYH. Mr. President, the Judiciary Committee unanimously reported out the Patent Law Amendments Act on March 18, 1980. This legislation is identical to S. 1679 which the Committee also unanimously reported out on February 19, 1980, with report No. 96–617.

The present bill is different only in that it contains an effective date of October 1, 1980. S. 1679 did not contain any effective date which raised a concern in the Senate Budget Committee that it could possibly impact on the fiscal year 1980 budget. The present bill meets that objection by becoming effective in fiscal year 1981.

The committee decided in order to save printing costs not to file an identical report to that already filed on S. 1679. This report is still pertinent to the present legislation with the addition of the effective date.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LONG, from the Committee on Finance.

William J. Driver, of Virginia, to be Commissioner of Social Security.

John L. Palmer, of Virginia, to be an Assistant Secretary of Health, Education, and Welfare.

Abraham Katz, of Florida, to be an Assistant Secretary of Commerce.

(The above nominations from the Committee on Finance were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. HAYAKAWA:

S. 2437. A bill to amend section 4067 of the Revised Statutes to define further the circumstances under which certain aliens within the United States may be treated as alien enemies; to the Committee on the Judiciary.

By Mr. STEVENS:

S. 2438. A bill to provide for certain vessels to participate in transporting salmon to on-shore processing plants in Alaska; to the Committee on Commerce, Science, and Transportation.

By Mr. DOMENICI:

S. 2439. A bill to place pharmacy robberies under Federal jurisdiction; to the Committee on the Judiciary.

By Mr. NUNN (by request):

S. 2440. A bill to amend the Military Selective Service Act to allow the registration of both men and women; to the Committee on Armed Services.

By Mr. BAYH:

S. 2441. A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes; to the Committee on the Judiciary.

By Mr. BAYH (by request):

S. 2442. A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes; to the Committee on the Judiciary.

By Mr. MOYNIHAN (for himself and Mr. JAVITS):

S. 2443. A bill to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.; to the Committee on Energy and Natural Resources.

By Mr. CHURCH (by request):

S. 2444. A bill to amend the "Department of State Authorization Act, Fiscal Years 1980 and 1981" to provide additional authorization for fiscal year 1980, and for other purposes; to the Committee on Foreign Relations.

S. 2445. A bill to provide additional authorization for fiscal year 1981, to authorize appropriations for fiscal year 1982, and for other purposes; to the Committee on Foreign Relations.

By Mr. BAYH (from the Committee on the Judiciary):

S. 2446. A bill to amend the patent laws, title 35 of the United States Code. Original bill reported and ordered placed on the calendar.

By Mr. STEWART:

S. 2447. A bill for the relief of Jose P. de la Rosa, Jr., M.D.; to the Committee on the Judiciary.

By Mr. JEPSEN (for himself and Mr. HEFLIN):

S. 2448. A bill to amend the Internal Revenue Code of 1954 to provide explicitly for the exclusion of social security benefits from taxable income; to the Committee on Finance.

By Mr. PRYOR (for himself, Mr. STEVENS, Mr. RIBICOFF, and Mr. PERCY):

S. 2449. A bill to amend chapter 83 of title 5, United States Code, to improve the operation of the disability retirement program, and for other purposes; to the Committee on Governmental Affairs.

S. 2450. A bill to amend section 8340 of title 5 of the United States Code to reduce cost-of-living increases of Federal annuitants attributable to months prior to the month in which the commencing date of an annuity occurs; to the Committee on Governmental Affairs.

By Mr. LONG (for himself and Mr. DOLE):

S. 2451. A bill to amend the Internal Revenue Code of 1954 to revise the rules relating to certain installment sales; to the Committee on Finance.

By Mr. GARN (for himself and Mr. HATCH):

S. 2452. A bill to amend the Clean Air Act with respect to requirements which adversely affect employment; to the Committee on Environment and Public Works.

S. 2453. A bill to amend the Federal Water Pollution Control Act with respect to requirements which adversely affect employment; to the Committee on Environment and Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HAYAKAWA:

S. 2437. A bill to amend section 4067 of the Revised Statutes to define further the circumstances under which certain aliens within the United States may be treated as alien enemies; to the Committee on the Judiciary.

(The remarks of Mr. HAYAKAWA when he introduced the bill appear earlier in today's proceedings.)

By Mr. STEVENS:

S. 2438. A bill to provide for certain vessels to participate in transporting salmon to onshore processing plants in Alaska; to the Committee on Commerce, Science, and Transportation.

● Mr. STEVENS. Mr. President, the State of Alaska in this year's upcoming salmon season will be blessed with the greatest run in its history. It is anticipated that Bristol Bay will produce an incredible 54 million fish. Given the poor status of salmon stocks in other parts of the United States, we in Alaska are indeed fortunate.

Our newly found bounty of salmon, however, does not come without its problems. We must go to extraordinary efforts to market all of this fish and our equipment, both in terms of vessels and onshore processing plants, will be taxed to their limits.

The Governor of the State of Alaska some months ago appointed a task force to try and sort out these numerous difficult problems. Governor Hammond's task force found that we have a sufficient number of fishing vessels and onshore processing plants in Alaska to handle this year's record run. We do not, however, have enough transport ships to move that salmon from Bristol Bay to processing facilities in other parts of the State of Alaska where this year's run will not be as good. The Governor's task force has, in fact, conducted a nationwide search for transport vessels and found that there are not enough available U.S.-flag vessels to meet Alaska's needs this season.

I send to the desk legislation designed to waive the Nicholson Act for the 1980 Alaska salmon season. The Nicholson Act provides, among other things, that no fish may be transported on a foreign-flag transport or tender vessel from a U.S.-flag fishing vessel outside the territorial sea of the United States to a processing plant inside the United States. This one-time waiver would allow us to use foreign-flag transport and tender vessels for this season only. Under the provisions of this act, the Secretary of Commerce would be required to develop regulations that would insure that U.S.-flag tender and transport vessels would not be displaced by the foreign-flag vessels.

All U.S.-flag tender and transport vessels wishing to participate in this year's fishery are more than welcome by the State of Alaska. We would far prefer to use U.S.-flag vessels. Because we are dealing with a perishable product, Alaska salmon, we cannot suffer delays in shipping. If, as anticipated, U.S.-flag vessels are not available to participate in this trade, we must utilize foreign-flag vessels.

In closing, I would point out to each of my colleagues that this act is not intended to in any way modify the Jones Act. I would urge each of my colleagues here in the Senate to assist the State of Alaska and the fishermen of the Northwest by granting this one-time waiver.●

By Mr. DOMENICI:

S. 2439. A bill to place pharmacy robberies under Federal jurisdiction; to the Committee on the Judiciary.

● Mr. DOMENICI. Mr. President, each year there are more than 1,700 holdups of pharmacies nationwide. These robberies are for drugs, either by junkies for personal use or dealers for a supply to peddle on the streets. Often they are violent.

In Carlsbad, N. Mex., a pharmacist and his wife were recently shot. She is dead, he is recovering. Most other pharmacists have either hired security guards or installed security devices, to curb the crime wave. The robberies are still occurring.

Narcotics are under strict Federal control. It is time to put those who steal them under Federal jurisdiction. The problem has grown beyond the pale of a local police matter and has become a national problem.

Mr. President, it is my hope that when the Senate moves to the consideration of the codification of the criminal code, this serious problem will be likewise discussed and debated.●

By Mr. NUNN (by request):

S. 2440. A bill to amend the Military Selective Service Act to allow the registration of both men and women; to the Committee on Armed Services.

● Mr. NUNN. Mr. President, at the request of the administration, I am today introducing the President's proposal to amend the Military Selective Service Act to require the registration of young women.

My purpose in introducing this measure is to provide a specific legislative proposal to facilitate discussions on the registration of women and to inform my colleagues of the specific proposal.

By introducing this bill, I do not intend to imply my support for changing the current Military Selective Service Act requirement for registration limited to men, but merely as an administrative convenience for the Senate and the Armed Services Committee. I oppose this measure but, having been proposed by the President, it deserves the consideration of the Senate.●

By Mr. BAYH:

S. 2441. A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes; to the Committee on the Judiciary.

By Mr. BAYH (by request):

S. 2442. A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes; to the Committee on the Judiciary.

ACCOUNTABILITY, EFFICIENCY, AND VIOLENT JUVENILE CRIME CONTROL FOCUS ON BAYH JUVENILE JUSTICE REAUTHORIZATION BILL

● Mr. BAYH. Mr. President, today I am introducing the Violent Juvenile Crime Control Act of 1980, which is designed to strengthen and stabilize our 6-year congressional commitment to the Juvenile Justice and Delinquency Prevention Act of 1974, (JJDPA) while at the same time mandating that the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has final accountability and responsibility for implementing the Juvenile Justice provisions of this act. The Runaway and Homeless Youth Act is retained and administered by HEW's Youth Development Bureau, Runaway and Homeless Youth Division.

JUVENILE JUSTICE ACT HISTORY

In 1974, the Congress established juvenile crime prevention as the Federal crime priority. The 1974 act was the product of a 4-year bipartisan effort,

which I was privileged to lead, to improve the quality of juvenile justice throughout the United States and to overhaul the Federal response to juvenile delinquency. The 1974 act was passed by a vote of 88 to 1 in this body.

In 1977, the Congress, by a unanimous vote, reauthorized the Juvenile Justice Act for 3 additional years to stabilize and revitalize our juvenile crime program. The bipartisan nature of this act's support from 1970 to the present is reflected in the act's cosponsors in this body over the years—Mr. Hruska, Mr. MATHIAS, Mr. Cook, Mr. McClellan, Mr. Fong, Mr. Phillip Hart, Mr. Hugh Scott, Mr. KENNEDY, Mr. THURMOND, Mr. BURDICK, Mr. Gurney, Mr. Abourezk, Mr. Bible, Mr. Brock, Mr. Case, Mr. CHURCH, Mr. Clark, Mr. CRANSTON, Mr. GRAVEL, Mr. Hubert Humphrey, Mr. McGee, Mr. Montoya, Mr. Moss, Mr. Pastore, Mr. RANDOLPH, Mr. RIBICOFF, Mr. MONDALE, Mr. CANNON, Mr. Eastland, Mr. CULVER, Mr. DECONCINI, Mr. HATFIELD, Mr. LEAHY, Mr. MAGNUSON, Mr. MATSUNAGA, Mr. METZENBAUM, Mr. PELL, Mr. STEVENS, and Mr. HEINZ.

I originally introduced this measure as S. 3148 during the 92d Congress when it received strong support from youth-serving organizations and juvenile delinquency experts around the country. I reintroduced S. 821 on February 8, 1973, and S. 1021 on March 17, 1977.

The Senate Subcommittee to Investigate Juvenile Delinquency of which I was chairman, held extensive hearings that demonstrated the desperate need for this legislation. Expert witnesses, including State and local officials, representatives of private agencies, social workers, sociologists, criminologists, judges, and criminal justice planners testified on the terrible problems of the juvenile justice system which did not provide individual justice, effective help to juveniles, or protection for our communities. In particular, they repeatedly emphasized that large custodial institutions such as reformatories and training schools were nothing more than schools of crime, where juveniles learned the skills of the experienced criminal.

A clear consensus emerged supporting strong incentives for State and local governments to develop community-based programs and services as alternatives to training schools for many youngsters. This consensus was further expressed by the National Advisory Commission on Criminal Justice Standards and Goals which recommended that no new major institutions for juveniles should be built under any circumstances. The Commission provided additional support for the philosophy of the legislation that many delinquents, but especially noncriminal status offenders and neglected or dependent children, who had previously been institutionalized, could be helped successfully in community settings.

State officials testifying before the subcommittee stressed the need for effective, coordinated Federal funding to assist the States in carrying out their efforts to treat juveniles in the community. The former Governor of Massachusetts, the Honorable Francis Sargent and the former Governor of Ohio, the Honorable John Gilligan, were eloquent in describing the urgent need for this legislation. The deputy director of the Kentucky Department of Child Welfare, confirmed the feeling of many State administrators in urging passage of this bill:

> Quite frankly, when I first read the bill and Senator Bayh's comments in the Congressional Record, I wanted to shout "Alleluia," somebody has finally developed a comprehensive piece of legislation that makes sense. It should provide a real opportunity for all of us if we want to be serious about resolving problems facing youthful offenders. I was shocked by the flagrant maltreatment of offenders, by the brutal incarceration of noncriminal runaways and by the bureaucratic ineffectiveness which had marked the grossly inadequate Federal approach to the prevention of delinquency.

During the early 1970's the hearings and investigations in Washington and throughout the country by the Subcommittee to Investigate Juvenile Delinquency (abolished in 1979 with the juvenile jurisdiction transferred to the Subcommittee on the Constitution) led me to two important conclusions.

The first is that our past system of juvenile justice was geared primarily to react to youthful offenders rather than to prevent the youthful offense.

Second, the evidence was overwhelming that the system failed at the crucial point when a youngster first got into trouble. The juvenile who took a car for a joy ride, or vandalized school property, or viewed shoplifting as a lark, was confronted by a system of justice often completely incapable of responding in a constructive manner.

However, during the late 1980's and this new decade, we have begun to build on our past experiences with the act making substantial progress not only at the Federal level, but especially at the State and local level. We intend that the Juvenile Justice Office be an advocate for the families and youth of our States, while at the same time protecting their human, constitutional and legal rights.

THE 1980 AMENDMENTS: THE VIOLENT JUVENILE CRIME CONTROL ACT

Mr. President, the bill I am introducing today extends the Juvenile Justice and Delinquency Prevention Act of 1974 for 5 years. It also specifically delegates all final authority for juvenile justice programs to the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). I have long believed that this delegation of authority is a necessary factor in any efficient and coordinated effort to adequately confront the problems of the juvenile justice system. The individual who bears the responsibility for managing this Office and coordinating all Federal juvenile justice programs should also have the authority to carry out that responsibility. Since 1974 the Congress has stressed this fact in conference reports and debate on the floor of both Houses of Congress. In this reauthorization, we will specifically mandate this proper delegation of authority for the Administrator of OJJDP. The bill also requires the appointment of two deputies and one legal advisor to insure that the Administrator of OJJDP will be able to carry out this authority.

Mr. President, one of the primary reasons for my introduction of the original Juvenile Justice Act in 1971 was my concern with the increasing problem of juvenile crime. I have long believed that the best method of controlling violent crime is to prevent it in the first place. If we can take the first-time minor offender and prevent him or her from committing even more serious offenses we will have gone a long way toward controlling our problem with violent offenders. In the same vein, however, I firmly believe that some youthful offenders must be removed from their communities for society's sake as well as their own. The secure incarceration of youthful offenders should be reserved for those youths who commit serious, violent offenses and cannot be handled by other alternatives.

It was shocking for me to learn through our hearings over the past 10 years, that often the juvenile justice system actually incarcerates the nonviolent, noncriminal status offender as well as the neglected and abused child more often than those who are charged with or convicted of criminal offenses. Status and nonoffenders are actually more likely to be detained, more likely to be institutionalized, and once incarcerated, more likely to be held in confinement for longer periods of time than those who are charged with or convicted of criminal offenses.

One of the underlying precepts of the Juvenile Justice Act is to reorder these misplaced policies and priorities. I do believe, however, that the problem of the violent offender should be given an increased focus. These relatively few individuals cause a disproportionate amount of suffering and fear among the adult population.

A major new study by Pennsylvania State University, where 88 percent of 2,000 elderly citizens were surveyed, found that they actually cross the street or change their direction of travel just to avoid teenagers. Elderly persons living in cities are so afraid of teenagers that many remain indoors after 3 p.m. and do not go to senior citizen centers, parks and other places they would normally go.

The study found that 66 percent of the persons surveyed said fear of crime has greatly affected their use of facilities designed for the elderly.

Past surveys have shown that many older people are afraid to leave home after dark, but I was surprised to find that 3 p.m. is now the cut-off time.

About one-fifth of the elderly in the study wanted to be home, indoors, by the time school let out. Nine percent of the elderly in the study had been crime victims within the 12 months before the survey. Most had been robbed or had their homes burglarized. A total of 33 robberies, 22 assaults, and 5 other crimes had been committed against the elderly in the study while they were en route to senior citizen centers.

The amendments I am introducing today are designed to bring increased attention to the violent offender. These amendments, entitled, the "Violent Juvenile Crime Control Act of 1980," would retain the 19.15-percent maintenance of effort provision and at the same time mandate that these funds be

targeted for programs aimed to curb violent crime committed by juveniles. For those offenders who are charged with the violent crimes of murder, forcible rape, robbery, aggravated assault, or arson involving bodily harm this legislation establishes programs to identify, apprehend, speedily adjudicate, sentence, and rehabilitate these individuals in a humane fashion. In addition, this bill would require the Administrator to provide a detailed evaluation of "Scared-Straight" type programs and their potential for rehabilitating juvenile offenders.

VIOLENT JUVENILE OFFENDERS: MYTH OR REALITY?

Mr. President, we are all too familiar with the litany of violence reported daily by the press and the media. We have all heard witnesses testify of their horrible, brutal attacks by young people, including our elderly victims. Noteworthy, however, is the fact that the victims of violent juvenile crime are more likely to be juveniles themselves. The National Advisory Commission on Criminal Justice Standards and Goals reported that:

Victims of assaultive violence in the cities generally have the same characteristics as the offenders: victimization rates are generally highest for males, youths, poor persons and blacks.

Of course, these reports are of little comfort to the frightening numbers of Americans who have personally been victims of violent crimes. An ever-increasing percentage of our citizens—young and old—find their daily lives directly affected by the fear of violence in their communities. Recent polls reveal that half of our citizens are afraid to walk alone at night in their neighborhoods, nearly 20 percent do not feel safe in their own homes and nearly 33 percent of our young people are afraid in their own schools.

RUNAWAY AND HOMELESS YOUTH ACT

Mr. President, one of the key features of our efforts in the juvenile justice area has been the Runaway and Homeless Youth Act.

The Runaway and Homeless Youth Act is designed to provide assistance to States, localities, and nonprofit private agencies to operate temporary shelter care facilities in areas where runaways tend to congregate. These programs, over 167 funded by HEW last year, deal primarily with the immediate needs of runaway youth or otherwise homeless young people in a manner which is outside the traditional law enforcement structure and juvenile justice system.

When the Runaway Youth Act was first passed in 1974, it did not include assistance for homeless youth, or those who are dependent, neglected, and abused. However, the 1977 amendments to the act incorporated homeless, neglected, and abused youth in the category of those to be assisted under the act. It is my opinion, and those of us in Congress, that there are many young people who have no home from which to run, or who are so abused or neglected that leaving home is a rational alternative. The programmatic focus of the act should continue to reflect these concerns.

There are approximately 1 million runaways each year, with the average age of these youngsters being 15. In addition, in the last few years there have women running away from home. We have also discovered that a growing number of young runaways are forced from their homes by physically abusive and neglectful parents.

The runaway and homeless youth program is designed to offer necessary emergency medical care and counseling for both the young people and their families, so these young people can be helped before they end up incarcerated in juvenile institutions or even, unfortunately in many cases, adult jails.

The cornerstone of the Juvenile Justice/Runaway and Homeless Youth Act is prevention. The Runaway and Homeless Youth Act provisions are directed toward the prevention of juvenile crime, a reduction in the substantial law enforcement problem of communities inundated with runaways, and short-term placement for homeless youth.

VIOLENT JUVENILE CRIME CONTROL ACT: KEY PROVISION TO ASSIST OUR HOMELESS, NEGLECTED, ABUSED AND RUNAWAY YOUNG PEOPLE

Mr. President, a key provision of the amendments I am introducing today, requires that appropriated funds under the Juvenile Justice Act, not obligated, by the end of each fiscal year shall be transferred to programs funded under title III—the Runaway and Homeless Youth Act. Historically the juvenile justice program had a rocky beginning which resulted in its failure to properly obligate its funds, even though the necessary program applications were available to OJJDP. Fortunately, in 1978 the 3-year backlog of funds was obligated and off the Washington desk at the Office of Juvenile Justice. However, within the past year the obligation rate has diminished substantially, with the prospect of a significant carryover. In order to assure that appropriated funds obtained in these belt-tightening times are obligated in a timely manner, my bill will transfer any such carryover to the title III program which, to date, has not experienced such problems.

Mr. President, it is true that the Office of Juvenile Justice is tragically understaffed. By the Department's own survey, the Office should have at least 150 staff in order to carry out this program effectively, efficiently, and with responsibility. But, the necessary staff has not been provided to get the job done. Hopefully, we in Congress will be able to overcome this pitfall.

Violent juvenile crime must be put into perspective. Yet, in no way do I wish to minimize the tragedy and horror experienced by the victims of violent offenses.

Mr. President, the Federal Government can play an important role in delinquency prevention, but not in isolation. Solutions to youth crime cannot be provided exclusively by the Federal Government. These problems will not be solved by simply passing a bill, issuing a report, holding a hearing or signing a law in Washington. The most valuable assets in our efforts to prevent juvenile crime are the family, the church and our schools. Any successful preventive Federal juvenile justice effort must rely heavily on the commitment of interested citizens, community groups, State and local leaders, juvenile court judges, social workers, school personnel, religious leaders and, most importantly, on the family.

It is imperative to keep the legislative process and statutes in this perspective. Legislation is never a solution or cure in itself; it is a framework within which a problem can be attacked. The better the legislation, the better the chance the system will meet and respond appropriately. These amendments are one step in attacking the problem of juvenile crime in a prudent manner. Equitable resources, in relation to our current juvenile population, potential, and expertise must be committed to our juvenile offenders and nonoffenders, if we are to make any gains in addressing these problems in the 1980's.

CONCLUSION

Mr. President, in summary, this bill extends the act for 5 years at $200 million for each of fiscal years 1981 through 1983 and $225 million for each of fiscal years 1984 and 1985; delegates all final authority to the OJJDP Administrator; requires the Administrator to appoint two deputies, and one legal advisor; requires the Administrator to provide a detailed evaluation of "Scared-Straight" programs; increases citizen participation in the operation of the program; retains the 19.15 percent maintenance of effort provision, but mandates that it be spent for programs aimed at curbing violent crimes committed by juveniles; requires the Administrator to implement the maintenance of effort, formula grant, discretionary grant and other initiatives in OJJDP; provides adequate administrative support for the Office; extends the Runaway and Homeless Youth Act for 5 years at $25 million for each of fiscal years 1981 through 1983 and $30 million for each of fiscal years 1984 and 1985, and mandates that any carryover funds from the Juvenile Justice Act be transferred to the Runaway and Homeless Youth Act by January 1 of each subsequent fiscal year.

The Juvenile Justice and Delinquency Prevention Act and these 1980 amendments will provide the stability so vital to the continuation of this congressional initiative. The 5-year extension, with the adequate funding provided, when coupled with full implementation of the provisions of the 1974 and 1977 acts will help address crime's cornerstone in this country—juvenile crime and violence. Although the amounts authorized to date have been very frugal relative to the task of each of the participating States, such resources provided in a stable, continuous fashion will do wonders to achieve the mandate of the 1974 act. As we all know, $100 today is only worth $70 of 4 years ago.

Mr. President, I could not conclude without expressing a debt of gratitude to the numerous private agencies and public groups who have been most actively involved in assisting us with this act and its amendments. If there ever has been a citizen's measure, it is this one. More than 75 organizations—across-the-board philosophically, and

across-the-country knowing no geographical bounds have participated in these efforts. Without their help we could not have gotten the act passed in 1974, drafted the 1977 provisions, tested the provisions, and developed the necessary support for the 1980 provisions. I ask unanimous consent that the list of organizations endorsing the JJDPA of 1974 be printed in the RECORD.

I urge my colleagues to support this extension and I look forward to working with you and those in the House of Representatives toward our mutual goals.

Mr. President, I ask unanimous consent that the bill, section-by-section analysis, along with a partial list of those who support this act, and a portion of the annual report of the Runaway and Homeless Youth Division at HEW be printed at this point in the RECORD.

Mr. President, today I am also introducing, by request, the administration bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974. I ask unanimous consent that the Vice-President's letter, bill, and sectional analysis be printed following my materials in the RECORD.

ORGANIZATIONS ENDORSING THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974 (PUBLIC LAW 93-415, AS AMENDED IN 1977, PUBLIC LAW 95-115)

American Federation of State, County, and Municipal Employees.
American Institute of Family Relations.
American Legion, National Executive Committee.
American Parents Committee.
American Psychological Association.
B'nai B'rith Women.
Children's Defense Fund.
Child Study Association of America.
Chinese Development Council.
Christian Prison Ministries.
AFL-CIO Department of Community Services.
AFL-CIO, Department of Social Security.
American Association of Psychiatric Services for Children.
American Association of University Women.
American Camping Association.
American Federation of Teachers.
American Occupational Therapy Association.
American Optometric Association.
American Parents Committee.
American Psychological Association.
American Public Welfare Association.
American School Counselor Association.
American Society for Adolescence Psychiatry.
Association for Childhood Education International.
Association of Junior Leagues.
Emergency Task Force on Juvenile Delinquency Prevention.
John Howard Association.
Juvenile Protective Association.
National Alliance on Shaping Safer Cities.
National Association of Counties.
National Association of Social Workers.
National Association of State Juvenile Delinquency Program Administrators.
National Collaboration for Youth: Boys' Clubs of America, Boy Scouts of America, Camp Fire Girls, Inc., Future Homemakers of America, Girls' Clubs, Girl Scouts of U.S.A., National Federation of Settlements and Neighborhood Centers, Red Cross Youth Service Programs, 4-H Clubs, Federal Executive Service, National Jewish Welfare Board, National Board of YWCAs, and National Council of YMCAs.
National Commission on the Observance of International Women's Year Committee on Child Development, Audrey Rowe Colom, Chairperson Committee Jill Ruckelshaus, Presiding Officer of Commission.
National Conference of Criminal Justice Planning Administrators.
National Conference of State Legislatures.
National Council on Crime and Delinquency.
Boys' Clubs of America.
Boy Scouts of the USA.
Child Welfare League of America.
Family Impact Seminar.
Family Service Association of America.
Four-C of Bergen County.
Girls Clubs of America.
Home and School Institute.
Lutheran Council in the U.S.A.
Maryland Committee for Day Care.
Massachusetts Committee for Children and Youth.
Mental Health Film Board.
National Alliance Concerned With School-Age Parents.
National Association of Social Workers.
National Child Day Care Association.
National Conference of Christians and Jews.
National Council for Black Child Development.
National Council of Churches.
National Council of Jewish Women.
National Council of State Committees for Children and Youth.
National Jewish Welfare Board.
National Urban League.
New York State Division for Youth.
Palo Alto Community Child Care.
Philadelphia Community Coordinated Child Care Council.
The Salvation Army.
School Days, Inc.
Society of St. Vincent De Paul.
United Auto Workers.
United Cerebral Palsy Association.
United Church of Christ—Board for Homeland Ministries, Division of Health and Welfare.
United Methodist Church—Board of Global Ministries.
United Neighborhood Houses of New York, Inc.
United Presbyterian Church, USA.
Westchester Children's Association.
National Federation of State Youth Service Bureau Associations.
National Governors Conference.
National Information Center on Volunteers in Courts.
National League of Cities.
National Legal Aid and Defender Association.
National Network of Runaway and Youth Services.
National Urban Coalition.
Public Affairs Committee, National Association for Mental Health, Inc.
Robert F. Kennedy Action Corps.
U.S. Conference of Mayors.
Big Brothers/Big Sisters of America.
National Youth Workers Alliance.
National Council of Juvenile and Family Court Judges.
National Council of Criminal Justice Planners.
Youth Network Council.
American Bar Association.
American Civil Liberties Union.
National Juvenile Law Center.
National Coalition for Children's Justice.
Children's Express.
Children's Defense Fund.
Coalition for Children and Youth.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the Act shall be cited as the "Violent Juvenile Crime Control Act of 1980."

Section 101 amends Title I of the Juvenile Justice and Delinquency Prevention Act of 1974 to add an additional declaration of purpose. The new section 101(a)(8) adds a Congressional declaration of purpose that the justice system should give additional attention to the problem of violent crimes committed by juveniles, particularly to the areas of identification, apprehension, speedy adjudication, sentencing and rehabilitation.

Section 102(a) repeals paragraphs (4) and (5) of section 103 which are no longer pertinent.

Section 102(b) amends section 103(7) to list additional territories that qualify as "States" eligible for funding under the Act.

Section 102(c) amends section 103(9), a technical amendment.

Section 201 amends Title II, Part A of the Act in three ways:

(1) It delegates all final authority to the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

(2) It requires the Administrator of OJJDP to appoint the two statutory Deputies, as well as the newly created Legal Advisor.

(3) It requires the Administrator of OJJDP to provide a detailed evaluation of "Scared-Straight"-type programs to the United States Senate Committee on the Judiciary and the United States House of Representatives Committee on Education and Labor, by December 31, 1980.

Sections 202 and 203 amend Title II, technical amendments.

Sections 204 and 205 amend Title II, Part B, Subpart I related to block grant Federal Assistance for State and Local Programs, technical amendments.

Section 206 amends Title II, Part B. Subpart II related to discretionary grant Federal Assistance for Priority Juvenile Prevention and Treatment Programs, technical amendments.

Sections 207 and 208 amend sections 225 (b) (5), (6), and (8) to increase citizen participation in the operation of the program.

Sections 209 and 210 amend section 228 (g) and 241(c), technical amendments.

Section 211 amends Title II, Part D, Administrative Provisions, in four ways:

(1) It provides a five-year authorization with an appropriation level of $200 million for each of fiscal years 1981, 1982 and 1983 and $225 million for each of fiscal years 1984 and 1985, section 261(a).

(2) It requires that appropriated funds not obligated by the end of each fiscal year shall revert to programs funded under the Runaway and Homeless Youth Act, by January 1 of the next fiscal year, section 261(a).

(3) It requires that maintenance of effort funds, 19.15% of the total appropriation of Title I of the Justice System Improvement Act, shall be targeted for programs aimed to curb violent crimes committed by juveniles, namely: murder, forcible rape, robbery, aggravated assault, and arson involving bodily harm, particularly to the areas of identification, apprehension, speedy adjudication, sentencing and rehabilitation, section 261(b).

(4) It requires the Administrator of OJJDP to implement and be responsible for section 261(b).

Section 212 amends section 262, to provide adequate administrative support for the Office.

Section 213 amends section 263 to require that amendments made by the Violent Juvenile Crime Control Act of 1980 shall take effect on the date of enactment.

Sections 301, 302 and 303 amend Title III of the Act to reflect the 1977 Act's homeless youth program authority.

Section 304 amends section 311 to authorize the Secretary to make grants to link runaway and homeless youth with their families and service providers through the use of a National hot-line telephone network.

Sections 305 and 306 amend sections 312 (a), (b)(5) and section 315(1) to reflect the 1977 Act's homeless youth program authority.

Section 307 amends Title III, Part D, Authorization of Appropriations, to provide a five-year authorization with an appropriation level of $25 million for each of fiscal years 1981, 1982 and 1983 and $30 million for each of fiscal years 1984 and 1985.

Sections 401 and 402 amend Title 5 and Title 18 of the United States Code, technical amendments.

Section 403 amends section 1002 of the Justice System Improvement Act of 1979, a technical amendment.

Section 404 amends the Act to carry out the delegation of authority for the Administrator of the Office.

EXCERPTS FROM THE ANNUAL REPORT OF THE RUNAWAY AND HOMELESS YOUTH ACT/ HEW

The 1976 Annual Report addressed questions of causation with regard to the runaway youth problem in the Nation. The National Statistical Survey documented the runaway youth problem as being extensive, persistent, and a result of multiple causes which explain its nature and incidence. The Survey found that approximately 733,000 youth ages 10 to 17 leave home annually without parental permission for at least overnight. A major contributing factor to youth leaving home was that of family conflict.

In addition, the Survey presented evidence that large numbers of homeless and neglected youth often go unserved by the traditional social service agencies. Two priority areas were identified in which continued efforts were required to further strengthen the programs funded under the Runaway Youth Act.

These two objectives were (1) Service Delivery—to continue programmatic efforts designed to improve the service and administrative capability of the funded runaway youth projects to deliver effective services to runaway youth and their families; and (2) Research and Evaluation—to continue research efforts into the problems and special needs of runaway youth, the causes and complexities of runaway behaviour, and to conduct a national evaluation of the projects funded under the Runaway Youth Act.

In the 1977 Annual Report, the Department reported more fully on the characteristics of the National Runaway Youth Program and several important conclusions were reached:

The runaway youth projects are serving a greater proportion of "vulnerable youth" as defined by the variables of age, sex, and situational status;

The runaway youth projects are increasingly becoming utilized as a resource by youth and families in crisis, of which the actual event of running away from home is only one symptom of the problems that are being experienced;

Projects funded under the Runaway Youth Act are providing more comprehensive services to runaway youth and their families than in the past; and the nature of the runaway youth problem is more complex, longer term and severe than just being on the run;

The projects funded under the Runaway Youth Act are rapidly becoming legitimate and stable members of the social service system and are providing more than temporary shelter and crisis counseling within their facilities;

Runaway youth are staying closer to their home communities during the runaway episode;

There are growing needs for expanded aftercare services, (intermediate and long-term care) because many of the youth have family related and long standing unresolved problems;

There are an increasing number of homeless youth who are seeking services from the runaway youth projects.

On the basis of these findings, the Department recommended: that priority should be given to the further development of aftercare services for runaway youth; that there should be exploration into the development of expanded services in local runaway centers; that intergovernmental relations should be developed to facilitate these services; and that the network of the runaway service delivery system in local communities should be expanded.

During FY 1978 three significant events occurred. First, with reauthorization of the Runaway Youth Act, an amendment was included which called for the transfer of the National Runaway Youth Program from the Youth Development Bureau of the Department of Health, Education, and Welfare to the Office of Juvenile Justice and Delinquency Prevention within the Department of Justice or the ACTION Agency. Secondly, House of Representatives Oversight Hearings were conducted on the administration of the Runaway Youth Act by the Department of Health, Education, and Welfare; and third, the Government Accounting Office was directed to review the administration of the Runaway Youth Act with the Department. The GAO report focused on the following areas:

The general management and administration of the Runaway Youth Act by the Administration for Children, Youth and Families;

The adequacy of the program evaluation conducted by the Administration for Children, Youth and Families to determine its strengths and weaknesses;

The disposition of children sheltered by the runaway programs supported in whole or in part by program funds; and

The extent to which the program has reduced the involvement of runaways in the formal juvenile court system.

On March 7, 1978, House Oversight Hearings were conducted and the General Accounting Office report was presented. While the report revealed several problems, the administration of the National Runaway Youth Programs remained with the Department of Health, Education, and Welfare.

The 1978 Annual Report to Congress reviews the findings and conclusions of the 1976 and 1977 reports and addresses the strengths and weaknesses identified by the General Accounting Office and the House Oversight Committee. The major focus and thrust of the Annual Report is on the identification of major issues and needs which will influence the future administration of the Runaway Youth Act by the Department. However, while this Report is designed to report on the status and accomplishments of the National Runaway Youth Program, it is also intended to document the activities conducted by the Department of Health, Education, and Welfare during Fiscal Year 1978 to strengthen and to administer the overall goals of the Runaway Youth Act.

The primary accomplishments of the National Runaway Youth Program in FY 1978 include:

Funding of 166 runaway youth programs which have provided services to over 32,000 runaway youth and their families located in 48 States, Puerto Rico, the District of Columbia and Guam;

Awarding of seven demonstration grants to Runaway Youth Act funded programs to enable them to more comprehensively address the needs of youth and families in crisis by expanding the range of services provided and the types of clients served;

Strengthening of the administrative structure within the Department of Health, Education, and Welfare to increase the capability for providing better services under the Runaway Youth Program;

Implementation of a Management Information System which is based on the Intake and Service Summary Forms within the Department designed to provide a data base of empirical information on runaway youth served by the programs;

Funding of the National Toll-Free Communications System to serve runaway, other homeless youth and their families;

Development of Intra- and Inter-Agency agreements for the purpose of expanding services under the National Runaway Program;

Development of model regulations, consistent with the Secretary's "Operation Common Sense," which eliminates inefficient and unnecessary reporting requirements, rules, and regulations within the Department; and

Identification of the National Runaway Youth Program as one of the foci for the Secretary's Major Initiative Tracking System which requires a quarterly review.

Based upon the data submitted by the programs on the clients served, and the results of program development and research efforts conducted by the Department, several conclusions can be drawn about the implementation of the Act. These conclusions are summarized below and discussed more completely in the overall report.

Most of the runaway youth programs have developed multiple service components addressing emerging needs of young people in the local community.

The runaway youth programs are serving a greater portion of vulnerable youth with long standing, unresolved family problems. The number of homeless or abandoned youth seeking services has increased.

The runaway youth programs are increasingly being utilized as a resource by both youth and families in crisis.

The runaway youth programs are becoming viewed as legitimate members of the community social service network and are being utilized by social service agencies and the law enforcement/juvenile justice system as a resource for youth and families.

Leaving home without parental permission continues to be a major problem for youth in this country. The National Statistical Survey on Runaway Youth conducted in 1975 found that approximately 733,000 youth leave home annually without parental permission. In addition, there has been increasing evidence of large numbers of homeless, neglected, and abused youth going unserved by traditional social service agencies. In order to more effectively meet the needs of these youth, the Runaway Youth Act authorizes the Secretary of the Department of Health, Education, and Welfare to make grants to local communities for the purpose of developing programs which deal primarily with the immediate needs of runaway and otherwise homeless youth in a manner which is outside the law enforcement structure and juvenile justice system. Services provided must include temporary shelter, counseling, and aftercare services. The legislative goals of these grant programs are:

(1) to alleviate the problems of runaway youth;

(2) to reunite youth with their families and to encourage the resolution of intra-family problems through counseling and other services;

(3) to strengthen family relationships and to encourage stable living conditions for youth; and

(4) to help youth decide upon a future course of action.

Through the implementation of these four legislative goals, the National Runaway Youth Program is impacting significantly on the lives of many vulnerable runaway and homeless youth and their families. Through its community-based projects the Runaway Youth Program served 32,000 youth and their families during FY 1978.

Through the National Runaway Youth Program, youth and families now have ac-

cess to a network of community-based service programs designed to address youth needs while they are away from home and to provide services for youth and their families on an aftercare bases as required. Further, the National Toll-Free communication system which is designed to provide a neutral channel of communications between, and a vehicle for reuniting runaway youth with their families, served 135,880 youth.

The Youth Development Bureau also has a responsibility to improve the administrative and organizational capabilities of runaway youth programs to plan and deliver services to runaway and otherwise homeless youth. To this end, YDB has developed a technical operations manual which presents 13 program performance standards integral to a program of services to effectively deal with the crisis needs of runaway and otherwise homeless youth.

YDB also provides, through a contract, technical assistance to local programs in the area of organizational development as well as short-term training to increase the information and skills of youth workers to deliver services within their programs. Additionally, YDB has responsibility to develop models for dissemination on the provision of specific services such as prevention, aftercare, and health services.

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

S. 2441

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act shall be cited as the "Violent Juvenile Crime Control Act of 1980".

TITLE I—AMENDMENTS TO TITLE I OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

SEC. 101. Section 101(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 is amended—

(1) by striking out "and" immediately after the semicolon in paragraph (6);

(2) by striking out the period at the end of paragraph (7) and inserting a semicolon and "and"; and

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

"(8) the justice system should give additional attention to violent crimes committed by juveniles, particularly to the areas of identification, apprehension, speedy adjudication, sentencing, and rehabilitation.".

SEC. 102. (a) Paragraphs (4) and (5) of section 102 of that Act are repealed.

(b) Section 103(7) of that Act is amended by inserting after "Pacific Islands" the following: "the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands,".

(c) Section 103(9) of that Act is amended by striking out "law enforcement" and inserting "juvenile justice".

TITLE II—AMENDMENTS TO TITLE II OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

SEC. 201. (a) Section 201 of the Juvenile Justice and Delinquency Prevention Act of 1974 is amended to read as follows:

"SEC. 201. (a) There is hereby established within the Department of Justice under the general authority of the Administrator of the Law Enforcement Assistance Administration, the Office of Juvenile Justice and Delinquency Prevention (referred to in this Act as the 'Office'). The Office shall be under the direction of an Administrator, who shall be nominated by the President by and with the advice and consent of the Senate. The Administrator shall administer the provisions of this Act through the Office. The Administrator shall have final authority to award, administer, modify, extend, terminate, monitor, evaluate, reject, or deny all grants, cooperative agreements and contracts from, and applications for, funds made available under this title.

"(b) The Administrator may prescribe, in accordance with section 553 of title 5, United States Code, such rules and regulations as are necessary or appropriate to carry out the purposes of this title."

(b) Section "201(e)" of that Act is renumbered "201(c)" and amended by striking out "of the Law Enforcement Assistance Administration".

(c) Section "201(f)" of that Act is renumbered "201(d)".

(d) A new subsection "(e)" is added to read as follows:

"(e) There shall be established in the Office a Legal Advisor who shall be appointed by the Administrator whose function shall be to supervise and direct the Legal Advisor Unit whose responsibilities shall include legal policy development, implementation, and dissemination and the coordination of such matters with all relevant departmental units. The Legal Advisor, when appropriate, shall consult with the Lew Enforcement Assistance Administration and the Office of Justice Assistance, Research, and Statistics on legal nonpolicy matters relating to the provisions of this Act.".

(e) Section "201(g)" of that Act is renumbered "201(f)" and amended by striking out "-five" and inserting "-six".

(f) A new subsection "(g)" is added to read as follows:

"(g) The Administrator shall provide the United States Senate Committee on the Judiciary and the United States House of Representatives Committee on Education and Labor with a detailed evaluation of the Rahway Juvenile Awareness Project, the so-called 'Scared-Straight' program or other similar programs, no later than December 31, 1980.".

SEC. 202. (a) Section 204(b) of that Act is amended by striking out ", with the assistance of Associate Administrator,".

(b) Section 204(g) of that Act is amended by striking out "Administration" and inserting "Office".

SEC. 203. Section 208(d) of that Act is amended by striking out "Corrections" and inserting "Justice".

SEC. 204. (a) Section 222(a) of that Act is amended by striking the last "and" and inserting immediately after "Pacific Islands" the following: ", the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States,".

(b) Section 222(b) of that Act is amended by striking out "the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands" and inserting "as defined in section 103(7),".

SEC. 205. (a) Section 223(a) of that Act is amended to read as follows:

"(a) In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes in accordance with regulations established under this title, such plan must—".

(b) Section 223(a)(3)(iii) of that Act is amended by striking out "established pursuant to section 203(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended".

(c) Section 223(a)(3)(iv) of that Act is amended by striking out "section 520(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended," and inserting "section 1002 of the Justice System Improvement Act of 1979,".

(d) Section 223(a) of that Act is amended by striking out the last sentence.

(e) Section 223(c) of that Act is amended by striking out ", with the concurrence of the Associate Administrator,".

(f) Section 223(d) of that Act is amended by striking out ", in accordance with sections 509, 510, and 511 of title I of the Omnibus Crime Control and Safe Streets Act of 1968,".

SEC. 206. The Juvenile Justice and Delinquency Prevention Act of 1974 is amended by substituting "Priority Juvenile" for "Special Emphasis" each time it appears.

SEC. 207. Section 225(b)(5) and (6) of that Act is amended by striking out "planning agency" and inserting "advisory group".

SEC. 208. Section 225(b)(8) of that Act is amended by striking out "agency" the first time it appears and inserting "advisory group".

SEC. 209. (a) Section 228(b) of that Act is amended by striking out "not funded by the Law Enforcement Assistance Administration,".

(b) Section 228(g) of that Act is amended—

(1) by striking out "part" and inserting "title"; and

(2) by striking out "or will become available by virtue of the application of the provisions of section 509 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended".

SEC. 210. Section 241(c) of that Act is amended by striking out "Law Enforcement and Criminal".

SEC. 211. (a) Section 261(a) of that Act is amended to read as follows:

"(a) To carry out the purposes of this title there is authorized to be appropriated $200,000,000 for each of the fiscal years ending September 30, 1981, 1982, and 1983, and $225,000,000 for each of the fiscal years ending September 30, 1984, and 1985. Appropriated funds not obligated by the end of each fiscal year, shall revert to the Secretary for the purposes of Title III, no later than January 1, of the subsequent fiscal year.".

(b) Section 261(b) of that Act as amended by section 1002 of the Justice System Improvement Act of 1979 is amended by striking all after the last "appropriations" and inserting, "under the Justice System Improvement Act of 1979, for programs aimed to curb violent crimes committed by juveniles, namely, murder, forcible rape, robbery, aggravated assault, and arson involving bodily harm, particularly to the areas of identification, apprehension, speedy adjudication, sentencing, and rehabilitation. Implementation, including guidelines, of this subsection shall be the responsibility of the Administrator of the Office.".

SEC. 212. Section 262 of that Act is amended to read as follows:

"SEC. 262. Of the appropriation for the Office under this Act, there shall be allocated an adequate amount for administrative expenses other than those support services performed for the Office by the Office of Justice Assistance, Research, and Statistics.".

SEC. 213. Section 263 (a), (b), and (c) of that Act are amended to read as follows:

"SEC. 263. The amendments made by the Violent Juvenile Crime Control Act of 1980 shall take effect upon enactment.".

TITLE III—AMENDMENTS TO THE RUNAWAY YOUTH ACT

SEC. 301. Amend the caption "TITLE III—RUNAWAY YOUTH" by inserting "AND HOMELESS" immediately after "RUNAWAY".

SEC. 302. (a) Section 301 of the Juvenile Justice and Delinquency Prevention Act of 1974 is amended by inserting "and Homeless" immediately after "Runaway,".

SEC. 303. (a) Section 302(1) of that Act is amended by adding "or who are otherwise homeless" after "permission".

(b) Section 302(2) of that Act is amended by adding "and homeless" after "runaway".

SEC. 304. (a) Section 311 of that Act is amended by inserting "(a)" immediately after "SEC. 311.".

(b) Section 311 of that Act is amended by adding at the end thereof the following:

"(b) The Secretary is authorized to make grants for the purposes of providing a national telephone communications system to link runaway and homeless youths with their families and with service providers.".

SEC. 305. (a) Section 312(a) of that Act is amended by striking the period and inserting "or who are otherwise homeless.".

(b) Section 312(b)(5) of that Act is amended by inserting "and homeless" after "runaway" the first time it appears.

SEC. 306. Section 315(1) of that Act is amended by adding "and homeless" after "runaway".

SEC. 307. (a) Section 341(a) of that Act is amended to read as follows:

"(a) To carry out the purposes of part A of this title there is authorized to be appropriated $25,000,000 for each of the fiscal years ending September 30, 1981, 1982, and 1983, and $30,000,000 for each of the fiscal years ending September 30, 1984 and 1985.".

(b) Section 341(b) is amended by striking "Omnibus Crime Control and Safe Streets Act of 1968, as amended." and inserting "Justice System Improvement Act of 1979.".

TITLE IV—MISCELLANEOUS CONFORMING AMENDMENTS

SEC. 401. Section 5316 of title 5, United States Code, is amended by striking out "Associate Administrator, Office of Juvenile Justice and Delinquency Prevention" and inserting "Administrator, Office of Juvenile Justice and Delinquency Prevention,".

SEC. 402. Section 4351(b) of title 18, United States Code, is amended by striking out "Associate".

SEC. 403. Section 1002 of the Justice System Improvement Act of 1979 is amended by striking out all that appears after "title" and inserting the following: "for programs aimed to curb violent crimes committed by juveniles, namely, murder, forcible rape, robbery, aggravated assault, and arson involving bodily harm, particularly to the areas of identification, apprehension, speedy adjudication, sentencing and rehabilitation.".

SEC. 404. (a) The Juvenile Justice and Delinquency Prevention Act of 1974 is amended by striking out "Associate" each time it appears.

OFFICE OF THE DEPUTY
ATTORNEY GENERAL,
Washington, D.C., May 15, 1979.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: It is my pleasure to forward for your consideration a legislative proposal entitled the "Juvenile Justice Amendments of 1980."

This proposed bill would amend the Juvenile Justice and Delinquency Prevention Act of 1974 and extend the authority of the Law Enforcement Assistance Administration to administer the Act, through its Office of Juvenile Justice and Delinquency Prevention, for an additional four years. The bill would provide continued funding to the Law Enforcement Assistance Administration to coordinate Federal juvenile delinquency programs and activities and to assist States, units of general local government, and private non-profit agencies, organizations and institutions in their efforts to combat juvenile delinquency and improve the juvenile justice system.

The amendments proposed are few in number and are directed toward making improvements in the existing program. The amendments were drafted in anticipation of the enactment of the Justice System Improvement Act (S. 241 and H.R. 2061) during the current session of Congress. Because that Act would thoroughly restructure the existing program under the Omnibus Crime Control and Safe Streets Act, it is possible that a modification of this bill would be necessary after the enactment of the Justice System Improvement Act. The Justice System Improvement Act establishes the Office of Justice Assistance, Research and Statistics as the coordinating mechanism for the Federal justice system improvement program. The Office will be made up of three separate organizational entities responsible for the three major functional areas of financial assistance, research, and statistics. Under the new structure, the Juvenile Justice Act program will remain a part of the financial assistance program administered by the Law Enforcement Assistance Administration.

The legislative proposal would target additional attention and resources on the problem of the serious, violent, and chronic repeat delinquent offender. The bill begins with a finding that the juvenile justice system should give additional attention to this type of offender from apprehension through rehabilitation. New formula and Special Emphasis program authority is added through a series of amendments proposed in the bill that authorize a broad range of programmatic efforts directed toward this significant, but neglected, juvenile offender population.

The legislative proposal includes a number of amendments designed to strengthen activities to coordinate Federal juvenile delinquency efforts. The Federal Coordinating Council would be given staff capability to assist in carrying out its statutory duties. The Council would be responsible for reviewing and making recommendations on all joint funding efforts undertaken by the Office of Juvenile Justice and Delinquency Prevention with member agencies.

In order to increase representation of State advisory groups on the 21 member National Advisory Committee for Juvenile Justice and Delinquency Prevention, the proposal would require that the President appoint at least two State advisory group members to the Committee in each group of seven appointments.

The proposal would clarify the important Section 223(a)(12)(A) deinstitutionalization requirement of the Act through a definition of the term "juvenile detention or correctional facilities." The definition would prohibit the placement of juveniles who have not been charged with or adjudicated for offenses that would be criminal if committed by an adult in facilities that are secure or that are used for the lawful custody of adult offenders. This change, coupled with the Act's emphasis on the establishment of small community-based alternatives, should permit States to continue their progress toward full deinstitutionalization of noncriminal juveniles while at the same time freeing additional resources for the accomplishment of other important objectives of the Act.

The proposed bill continues the National Institute for Juvenile Justice and Delinquency Prevention. However, the Institute's authority in the area of basic research into the causes of juvenile delinquency would be removed. The basic research function would be performed by the National Institute of Justice under the Justice System Improvement Act.

Finally, the proposal would provide authorization of such sums as are necessary for Juvenile Justice Act programs in each of fiscal years 1981, 1982, 1983, and 1984. The submission of this bill underscores the Administration's continuing commitment to juvenile justice and delinquency prevention programming at the Federal level.

I recommend the prompt and favorable consideration of the proposed "Juvenile Justice Amendments of 1980." In addition to the bill, there is enclosed a section-by-section analysis.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this legislation to the Congress and that its enactment would be consistent with the Administration's objectives.

Sincerely,

BENJAMIN R. CIVILETTI,
Deputy Attorney General.

AMENDMENT

Mr. BAYH (by request) introduced the following bill, which was read twice and referred to the Committee on the Judiciary.

A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Juvenile Justice Amendments of 1980."

SEC. 2. Title I of the Juvenile Justice and Delinquency Prevention Act of 1974 is amended as follows:

(1) Section 101(a)(4) is amended by inserting the words "alcohol and" after the word "abuse" and before the word "drugs".

(2) Section 101(a) is further amended by striking out the word "and" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting "; and" in lieu thereof, and by adding at the end thereof the following new paragraph:

"(8) the juvenile justice system should give additional attention to the problem of the serious juvenile offender, particularly in the areas of apprehension, identification, speedy adjudication, sentencing and rehabilitation."

(3) Section 103(7) is amended to read as follows:

"(7) the term "state" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands;"

(4) Section 103(12) is amended to read as follows:

"(12) the term "juvenile detention or correctional facilities" means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders or any public or private facility, secure or non-secure, which is also used for the lawful custody of accused or convicted adult criminal offenders; and".

PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

SEC. 3. Title II, Part A of such Act is amended as follows:

(1) Section 206(c) is amended by inserting at the end thereof the following new sentence: "The Council shall review and make recommendations on all joint funding efforts undertaken by the Office of Juvenile Justice and Delinquency Prevention with member agencies of the Council."

(2) Section 206(e) is amended to read as follows:

"(e) The Chairman of the Council shall, with the approval of the Council, appoint a staff director, an assistant staff director, and such additional staff support as the Chairman considers necessary to carry out the functions of the Council."

(3) Section 207(d) is amended by inserting after the second sentence thereof the following new sentence: "Each group of appointments for four year terms shall include at least two appointees who are members of a State advisory group established pursuant to section 223(a)(3) of this Act."

PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

SEC. 4. Title II, Part B of such Act is amended as follows:

(1) Section 223(a)(10) is amended by striking the word "and" before the words "to establish and adopt", and by inserting

after "juvenile justice standards" the following words: ", and to identify, adjudicate, and provide effective institutional and community-based treatment alternatives for the serious, violent, or chronic repeat juvenile offender".

(2) Section 223(a)(10)(A) is amended by inserting after "rehabilitative service" the following: "including programs and services targeted to the treatment and rehabilitation of serious, violent, or chronic repeat juvenile offenders".

(3) Section 223(a)(10) is further amended by adding at the end thereof the following new subparagraphs:

"(J) projects designed to identify and work with criminally involved juvenile gangs in order to channel their energy to constructive and lawful outlets;

"(K) programs designed to identify and focus resources upon the serious violent, or chronic repeat juvenile offender;

"(L) special institutional units or programs to provide intensive supervision and treatment for violent juvenile delinquent offenders;"

(4) Section 224(a)(10) is amended by striking the word "and" at the end thereof.

(5) Section 224(a)(11) is amended by striking the period at the end and inserting "; and" in lieu thereof.

(6) Section 224(a) is further amended by adding at the end thereof the following new paragraph:

"(12) develop and implement programs designed to increase the ability of the juvenile justice system to gather information on violent or serious juvenile crime, to assure due process in adjudication, and to provide resources necessary for informed dispositions of juvenile offenders."

PART C—NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SEC. 5. Title II, Part C of such Act is amended as follows:

(1) Section 243(1) is amended by inserting the word "applied" after the word "coordinate".

(2) Section 243(5) is amended by inserting the word "applied" after the words "private agencies, such".

(3) Section 245 is amended by striking the words "Associate Administrator" and inserting the words "Deputy Associate Administrator for the National Institute for Juvenile Justice and Delinquency Prevention" in lieu thereof.

PART D—ADMINISTRATIVE PROVISIONS

SEC. 6. Title II, Part D of such Act is amended as follows:

(1) The first sentence of Section 261(a) is amended to read as follows:

"To carry out the purposes of this title there is authorized to be appropriated such sums as are necessary for each of the fiscal years ending September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984."

(2) Section 261(b) is amended to read as follows:

"(b) In addition to the funds appropriated under Section 261(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, the Administration shall maintain from the appropriation for the Law Enforcement Assistance Administration, other than funds earmarked for research, evaluation and statistics activities, each fiscal year, at least 20 percent of the total appropriations for the Administration, for juvenile delinquency programs. The Administration shall provide an adequate share of research, evaluation and statistics funding for juvenile delinquency programs and activities and is encouraged to provide funding for juvenile delinquency programs over and above the 20 percent maintenance of effort minimum. The Associate Administrator of the Office of Juvenile Justice and Delinquency Prevention, subject to the review and approval of the Administration, shall publish guidelines for the implementation of this subsection."

(3) Section 261 is further amended by adding at the end thereof the following new subsection:

"(c) A reasonable amount of the total annual appropriation under this title shall be allocated and expended by the Administration for the purpose of planning and implementing joint interagency programs and projects authorized under Part A."

SECTIONAL ANALYSIS

Section 1 provides that the Act may be cited as the "Juvenile Justice Amendments of 1980."

Section 2 amends Title I of the Juvenile Justice and Delinquency Prevention Act of 1974 to add additional findings and to modify two definitions.

(1) Section 101(6)(4) is amended to recognize that alcohol abuse is an increasing problem among juveniles.

(2) Section 101(a) is further amended to add a congressional finding that the juvenile justice system should give additional attention to the problem of the serious juvenile offender.

(3) Section 103(7) is amended to list the jurisdictions that qualify as "States" eligible for funding under the Act.

(4) Section 103(12) is amended to define the term "juvenile detention or correctional facilities," as this term is used in Section 223(a)(12)(A), in order to specify that juveniles who have not been charged with or adjudicated for offenses that would be criminal if committed by an adult may not be placed in facilities that are secure or, whether secure or non-secure, are used for the lawful custody of accused or convicted adult criminal offenders.

Section 3 amends Title II, Part A of the Juvenile Justice and Delinquency Prevention Act of 1974 in three ways:

(1) Section 206(c) is amended to provide that the Coordinating Council review and make recommendations on all joint funding proposals undertaken by the Office of Juvenile Justice and Delinquency Prevention with member agencies of the Council.

(2) Section 206(e) is amended to require that the Chairman of the Council, with the approval of the Council, appoint a staff director, an assistant staff director, and such additional staff support as the Chairman considers necessary to carry out the Council's statutory functions.

(3) Section 207(d) is amended to specify that at least two appointees out of each group of seven appointees to the National Advisory Committee for Juvenile Justice and Delinquency Prevention shall be current members of a State advisory group established under the Act.

Section 4 amends Title II, Part B of the Act through six separate provisions related to Federal assistance programs.

(1) Section 223(a)(10) is amended to add to the list of advanced technique program areas under the formula grant program those that identify, adjudicate, and provide effective institutional and community-based treatment alternatives for the serious, violent, or chronic repeat juvenile offender.

(2) Section 223(a)(10)(A) is amended to include programs and services targeted to the treatment and rehabilitation of serious violent, or chronic repeat juvenile offenders to the listing of examples of advanced technique community-based programs and services.

(3) Section 223(a)(10) is further amended by adding three new subparagraphs that give further examples of advanced technique project activities related to serious juvenile offenders.

Subparagraph (J) authorizes projects designed to identify and work with criminally involved juvenile gangs in order to channel their energy to constructive and lawful outlets.

Subparagraph (K) authorizes programs that are designed to identify and focus resources on the serious, violent, or chronic repeat juvenile offender.

Subparagraph (L) authorizes the funding of special institutional units or programs to provide intensive supervision and treatment for violent juvenile delinquent offenders.

(4) Section 224(a)(10) is the subject of a technical amendment.

(5) Section 224(a)(11) is the subject of a technical amendment.

(6) Section 224(a) is further amended by adding a new paragraph that authorizes Special Emphasis prevention and treatment funding for programs designed to increase the ability of the juvenile justice system to gather information on violent or serious juvenile crime, to assure due process in adjudication, and to provide additional resources necessary to make informed dispositions of juvenile offenders.

Section 5 amends Title II, Part C of the Act through three amendments related to the National Institute for Juvenile Justice and Delinquency Prevention.

(1) Section 243(1) is amended to limit the scope of the Institute's research authority to applied research into all aspects of juvenile delinquency. Basic research into the causes of crime and delinquency will be conducted by the National Institute for Law Enforcement and Criminal Justice or its successor.

(2) Section 243(5) is also amended to specify that studies prepared by the Institute with respect to the prevention and treatment of juvenile delinquency shall be applied studies related to the development of effective programs and projects.

(3) Section 245 is amended to provide that the Institute Advisory Committee directly advise the Deputy Associate Administrator for the Institute.

Section 6 amends Title II, Part D of the Act, Administrative Provisions, through three amendments to Section 261.

(1) Section 261(a) is amended to provide a four-year authorization with an appropriation level of such sums as are necessary for each of fiscal years 1981, 1982, 1983, and 1984.

(2) Section 261(b) is amended to provide for changes in the required maintenance of effort of Crime Control Act funds for juvenile delinquency programs. The requirement is made applicable to all such funds except funds earmarked for research, evaluation and statistics activities. These latter activities must receive an adequate share of available funds. The maintenance of effort level is set at 20 percent and language added to encourage the Administration to provide funding for juvenile delinquency programs over and above the minimum 20 percent level. Guidelines for implementation of maintenance of effort shall be formulated by the Associate Administrator of OJJDP and, following review and approval by the LEAA Administrator, published in the Federal Register.

(3) A new section 261(c) is added to require that a reasonable amount of the total annual appropriation under Title II shall be allocated and expended for the purpose of planning and implementing jointly funded interagency programs and projects in accordance with the joint funding authority provided under the Part A Concentration of Federal Efforts program.●

By Mr. MOYNIHAN (for himself and Mr. JAVITS):

S. 2443. A bill to authorize the Department of Energy to carry out a high-level

liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.; to the Committee on Energy and Natural Resources.

WEST VALLEY DEMONSTRATION PROJECT

● Mr. MOYNIHAN. Mr. President, I rise today, joined by my distinguished colleague from New York, to introduce a bill authorizing the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.

West Valley is the site of this Nation's only commercial nuclear fuel reprocessing plant. Over 75 percent of the high-level waste at West Valley is from Federal facilities or commercial reactors under contract with the former Atomic Energy Commission. The high level wastes at West Valley are the only such wastes in the United States that are not managed by the Federal Government. New York State does not belong in the nuclear waste business. It is important that the facility be under the care and management of the Department of Energy which possesses the necessary technical resources to oversee the solidification and safe removal of the wastes.

The need for a strong Federal role at West Valley has already been established. On March 8, 1977, the GAO recommended that the Nuclear Regulatory Commission develop criteria for handling the waste and decommissioning the site. The GAO report also recommended that the NRC and the Department of Energy develop a policy of Federal assistance to New York for the site. On March 15, 1978, the DOE Task Force for Review of Nuclear Waste Management stated that "DOE should accept responsibility for the high level waste at West Valley."

Over a year later, Secretary James Schlesinger wrote to Gov. Hugh Carey expressing DOE's willingness to accept overall management responsibility and bear a portion of the costs of a program of high-level liquid waste solidification, storage, transfer to a Federal repository for solidified wastes, and decommissioning of all facilities associated with these activities. As recently as September 21, 1979, Secretary Duncan wrote to Governor Carey expressing his desire to reach a final agreement on arrangements for beginning the waste solidification project at West Valley. However, the Department of Energy cannot proceed on the project without the proper authorizing language. That is the intention of our bill.

This is not the first time Mr. JAVITS and I have introduced legislation that would initiate a nuclear waste solidification program at West Valley and bring the facility under the technical management of the Department of Energy. Indeed, the West Valley demonstration project passed the Senate on June 18, 1979 as an amendment to the 1980 DOE military authorization bill only then to be rejected in conference because the House considered it to be a civilian program. We then introduced the demonstration project as an amendment to the 1980 DOE civilian authorization bill. However, at this late date, the likelihood of the DOE bill coming to the Senate floor appears to be dim.

Therefore, in the interest of public health and safety, Mr. JAVITS and I have decided that we should make every effort to move the West Valley project as a separate bill. Congressman STANLEY LUNDINE is offering the identical bill in the House of Representatives today. We look forward to working with our colleagues on the Energy Committee to produce a piece of legislation that will be beneficial to the nuclear waste management program in this country and at the some time address the most pressing need to safely dispose of the high-level nuclear waste at West Valley.

Mr. President, I ask unanimous consent that a chronology on West Valley be printed in the RECORD, together with the text of the bill.

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

S. 2443

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 "West Valley Demonstration Project".

SEC. 2. (a) The Secretary of Energy (hereinafter in this Act referred to as the 'Secretary') shall carry out, in accordance with the provisions of this Act, a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York (hereinafter referred to as 'the project'). The Secretary shall carry out the project by vitrifying the high-level liquid nuclear wastes located at such Center or by employing the most effective technology for solidification available. The Secretary shall, as part of the project, also (1) as soon as feasible transport such solidified wastes, in accordance with applicable provisions of law, to an appropriate Federal repository for long term burial, and (2) decontaminate and decommission facilities, materials, and hardware used in connection with the project.

(b) During the fiscal year ending September 30, 1980, the Secretary shall:

(1) prepare a plan for safe removal of such wastes from tank numbered 8D-2 and any other storage tank at the Center containing such wastes, including safely breaching the tanks, operating waste removal equipment, and sluicing techniques,

(2) determine the feasibility of immobilization and waste handling techniques required by the unique situation of such wastes at the Center, including initiation of detailed engineering and cost estimates as well as safety analyses and environmental impact analyses, and

(3) Title to the high level liquid wastes at the Center shall be transferred to the United States upon payment by the State of New York and other appropriate persons of an appropriate fee, as determined by the Secretary, for the perpetual care and maintenance of such wastes.

SEC. 3. There is authorized to be appropriated to the Secretary not more than $5,000,000 for the fiscal year ending September 30, 1980, for the project. Funds authorized and appropriated in subsequent fiscal years for the project shall not be used by the Secretary for such purpose until the Secretary, the State of New York, and other appropriate persons enter into such contracts and agreements as may be required—

(a) to provide for the transfer of title of such wastes and the payment therefor,

(b) to enable the Secretary to utilize property and facilities at the Center for the project,

(c) to share the costs of the project, except that the non-Federal share of such costs shall be limited to no more than 10 per centum thereof and in determining such share the Secretary shall consider the utilization of such Center by the Secretary for the project, the amount of money in the existing perpetual care fund originally designated to provide, for ultimate disposition of the high-level liquid nuclear waste at the Center, and such other factors as the Secretary deems appropriate, and

(d) to otherwise provide for the conduct of the project in a timely manner.

SEC. 4. In carrying out the project, the Secretary shall consult with the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the Geological Survey, the State of New York, and the commercial operator of the Center.

SEC. 5. Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Committee on Science and Technology, the Committee on Interior and Insular Affairs, and the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an up-to-date report containing a detailed description of the activities of the Secretary in carrying out the project, including the costs incurred, and the activities to be taken in the next fiscal year and the costs thereof. Any contract or agreement executed under Sec. 3 of this Act, together with summaries thereof, shall be promptly transmitted to such committees for their information and review.

SEC. 6. Other than the costs and responsibilities established by this Act for the project, nothing in this Act shall be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Center, the State of New York, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 or under any other law, contract, or agreement for the operation, maintenance, or decontamination of any facilities or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirements of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974. The provisions of this Act shall not apply or be extended to any facility or property at the Center which is not used in conducting the project.

WEST VALLEY CHRONOLOGY

1954: Atomic Energy Act. Stated purpose: "widespread participation in the development and utilization of atomic energy for peaceful purposes." The AEC (Atomic Energy Commission) actively encouraged private industry to enter the field of nuclear power.

1959: New York's interest in attracting atomic development led to the creation of the Office of Atomic Development (OAD), an independent agency responsible for coordination of atomic regulatory and development functions within the state. To encourage nuclear development, OAD required the creation of the West Valley site in 1961. This came to be designated WNYNSC (Western New York Nuclear Service Center). The Center's purpose was to store nuclear fuels and radioactive wastes and to be available for related industrial development.

1966–1972: Nuclear Fuel Services (NFS) reprocessed fuel at WNYNSC (the plant is currently maintained in a shutdown condition). Approximately 640 metric tons of nuclear fuel were processed at WNYNSC.

April 1976: NFS notified New York State Energy Research and Development Authority

of its intention to exercise its right, under the Waste Storage Agreement, to surrender responsibility for all wastes at WNYNSC to the New York State Energy Research and Development Agency.

March 8, 1977: GAO report (EMD–77–27) recommended that the NRC develop criteria for handling the waste and decommissioning the site. Also the report recommended that NRC and DOE develop a policy of federal assistance to New York for the site.

Feb. 25, 1978: Effective date for DOE FY 1978 Authorization. Act instructed DOE to carry out a study of options for the future of WNYNSC at West Valley. DOE was also directed to recommend allocation of existing and future responsibilities of the Center for the federal government, New York State, and the present industrial participants. Report was to be submitted to the Senate Subcommittee on Energy Research and Development one year after enactment of act.

Mar. 29, 1978: Senator Moynihan wrote Secretary of Energy Schlesinger. Moynihan supported the statement in the Report of the DOE Task Force for Review of Nuclear Waste Management (March 15, 1978): "DOE should accept responsibility for the high level waste at West Valley." But Moynihan also stated that for DOE to bargain for a waste repository is unacceptable.

June 20, 1978: Secretary Schlesinger wrote to Senator Moynihan stating that the Report of the Task Force for Review of Nuclear Waste Management is not necessarily administration policy regarding the federal responsibility at West Valley.

June 7, 1979: Secretary Schlesinger wrote to Governor Carey expressing DOE's willingness to accept overall management responsibility and bear a portion of the costs of a program of high-level liquid waste solidification, storage, transfer to a Federal repository for solidified wastes, and decommissioning of all facilities associated with these activities.

June 18, 1979: Moynihan Amendment to the DOE Military Authorization bill passed the Senate.

June 26, 1979: Senate Energy Committee reported out the DOE Civilian Authorization bill (S. 688) with no authorization included for West Valley.

August 17, 1979: Governor Carey responded to Secretary Schlesinger's letter of June 7, 1979. The Governor reiterated New York's concern that the West Valley issue not be linked with DOE's consideration of West Valley or any other place in New York as a site for future storage of spent nuclear fuel.

September 21, 1979: Secretary Duncan wrote to Governor Carey expressing his desire to reach a final agreement on arrangements for beginning the waste solidification project at West Valley.

September 25, 1979: Energy and Water Development Appropriation Bill of 1980, containing a $5 million appropriation for West Valley, was signed by the President.

October 24, 1979: House passed the DOE Civilian Authorization Bill with the Lundine amendment for the West Valley authorization.

November 30, 1979: Conference on DOE Military Authorization Bill convened. House refused to accept the Senate language on the West Valley authorization.

December 7, 1979: Senator Moynihan met with Dr. John Sawhill and agreed that DOE would work with the Senate Energy Committee to draft language for a Moynihan-Javits floor amendment to the DOE Civilian Authorization bill. Senator Jackson agreed to accept a floor amendment.

January 22, 1980: Moynihan and Javits introduce their amendment to the DOE Civilian Authorization bill.

As of March 19, 1980: It appears that the Senate will not bring the 1980 DOE bill to the floor. Nuclear waste management bills also appear to be stalled.●

By Mr. CHURCH (by request):

S. 2444. A bill to amend the "Department of State Authorization Act, Fiscal Years 1980 and 1981" to provide additional authorization for fiscal year 1980, and for other purposes; to the Committee on Foreign Relations.

● Mr. CHURCH. Mr. President, I introduce, by request, a bill to amend the Department of State Authorization Act for fiscal years 1980 and 1981 to provide additional authorization for fiscal year 1980 and for other purposes.

The bill has been requested by the Assistant Secretary of State for Congressional Relations and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the section-by-section analysis and the letter from the Assistant Secretary of State to the President of the Senate dated February 8, 1980.

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

S. 2444

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—ADDITIONAL AUTHORIZATION FOR FISCAL YEAR 1980

SEC. 101. This Act may be cited as the "Department of State Additional Authorization Act of 1980".

SEC. 102. (a) Section 102(a) of the "Department of State Authorization Act, Fiscal Years 1980 and 1981" is amended in paragraph (2) by striking out "$502,945,000" and inserting in lieu thereof "$530,234,000".

(b) The same Act is amended by striking out in its entirety subsection (b) of Section 102.

(c) The same Act is amended by striking out in its entirety subsection (c) of Section 102.

TITLE II—EX GRATIA PAYMENT

SEC. 201. Of the amount appropriated under paragraph (1) of Section 102(a) of the "Department of State Authorization Act, Fiscal Years 1980 and 1981", $81,000 shall be available for payment *ex gratia* to the government of Yugoslavia as an expression of concern by the United States Government for the injuries sustained by a Yugoslav national as a result of an attack on him in New York City.

SECTION-BY-SECTION ANALYSIS

Sec. 101. Short Title.

This title may be cited as the "Department of State Additional Authorization Act of 1980".

Sec. 102. Additional Authorization for Fiscal Year 1980.

Subsection (a)—This subsection authorizes additional appropriations for fiscal year 1980 under the heading "International Organizations and Conferences". This authorization will provide funds sufficient to meet prior year U.S. arrearages to three particular international organizations and to meet the anticipated shortfall in the United States assessed contributions to various other international organizations in calendar year 1980.

Subsection (b)—This amendment would remove the ceilings imposed on the Department's authorization levels for both fiscal years 1980 and 1981. The amended aggregate amount appropriated under paragraphs (1), (2), and (3) of subsection (a) in P.L. 96–60 will exceed the ceiling of $1,369,401,000 in fiscal year 1980 and $1,547,778,000 in fiscal year 1981. In order to meet supplemental requirements in fiscal year 1980 and insure that sufficient resources are available in fiscal year 1981, the Department must exceed the legislated ceilings for fiscal years 1980 and 1981.

Subsection (c)—This amendment would remove the provision which prohibits payment by the United States of its assessed contributions for two U.N. units pertaining to Palestinians. If the prohibitive provision continued to remain in force, it would cause the United States to fall into arrears in its assessed contribution to the United Nations. Such an action is contrary to Article 17 of the United Nations Charter. Moreover, the Congress in the United Nations Participation Act (22 U.S.C. 287e) specifically authorized annual appropriations to the Department of State for such sums as may be necessary for payment by the United States of its share of the expenses of the United Nations as apportioned by the General Assembly in accordance with Article 17 of the Charter. The treaty obligation, therefore, has the full support of statute.

Sec. 201. Ex Gratia Payment.

This section provides an *ex gratia* payment to the Yugoslav Government on behalf of a foreign national of Yugoslavia who was injured as the result of an attack while on assignment at the Yugoslav mission to the U.N. in New York City.

DEPARTMENT OF STATE,
Washington, D.C., February 8, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
U.S. Senate.

DEAR MR. PRESIDENT: There is transmitted herewith a proposed amendment for fiscal year 1980 to Public Law 96–60, the "Department of State Authorization Act, Fiscal Years 1980 and 1981", which authorized appropriations for fiscal years 1980 and 1981 for the Department of State to carry out its authorities and responsibilities in the conduct of the foreign affairs of the United States and for other purposes authorized by law.

The prime purpose of the amendment is to provide additional authorization of $27,289,000 in fiscal year 1980 to cover the costs associated with our supplemental request for the Contributions to International Organizations Appropriation. An analysis further explaining the proposed legislation is enclosed.

The Department has been informed by the Office of Management and Budget that there is no objection to the presentation of this proposed legislation to the Congress and that its enactment would be in accord with the program of the President.

Sincerely,

J. BRIAN ATWOOD,
Assistant Secretary for Congressional Relations.●

By Mr. CHURCH (by request):

S. 2445. A bill to provide additional authorization for fiscal year 1981, to authorize appropriations for fiscal year 1982, and for other purposes; to the Committee on Foreign Relations.

● Mr. CHURCH. Mr. President, I introduce, by request, a bill to amend the Foreign Relations Authorization Act of 1981, and to authorize appropriations for fiscal year 1982 and for other purposes.

The bill has been requested by the Assistant Secretary of State for congres-

sional relations and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the section-by-section analysis and the letter from the Assistant Secretary of State to the President of the Senate dated February 8, 1980.

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

S. 2445

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—DEPARTMENT OF STATE

ADDITIONAL AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1981

SEC. 101. (a) Section 102 of the "Department of State Authorization Act, Fiscal Years 1980 and 1981", as amended, in subsection (a) is amended—

(1) by striking out "$1,009,815,000" and inserting in lieu thereof "$1,029,815,000",

(2) by striking out "$525,082,000" and inserting in lieu thereof "549,978,000"; and,

(3) by striking out "$457,798,000" and inserting in lieu thereof "$552,209,000".

(b) The same Act is amended by striking out in its entirety subsection (b) of Section 102.

AMERICAN INSTITUTE IN TAIWAN

SEC. 102. (a) Section 16 of the Act entitled "Taiwan Relations Act", approved April 10, 1979, is amended by striking out "1980" and inserting in lieu thereof "1981".

(b) Of the amounts authorized to be appropriated by section 102(a)(1) of this Act for the fiscal year 1981, $6,582,000 shall be available only for the necessary expenses to carry out the Taiwan Relations Act, Public Law 96-8 (93 Stat. 14).

ASSESSED CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

SEC. 103. Section 24(a) of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956, as amended (22 U.S.C. 2696), is amended by inserting immediately after "law"—"and U.S. assessed contributions to international organizations".

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1982

SEC. 104. There are authorized to be appropriated to the Department of State for fiscal year 1982 such sums as may be necessary to carry out the authorities, functions, duties, and responsibilities of the United States in the conduct of foreign affairs and for other purposes authorized by law.

PAN AMERICAN INSTITUTE OF GEOGRAPHY AND HISTORY

SEC. 105. Paragraph (1) of Public Resolution 42, 74th Congress, approved August 2, 1935, as amended (22 U.S.C. 273), is amended by deleting ", not to exceed $200,000 annually.".

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW AND HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

SEC. 106. Section 2 of Public Law 88-244 approved December 30, 1963, as amended (22 U.S.C. 269g-1), is amended—

(1) by inserting "after 1978" immediately after the words "any year"; and

(2) by striking out "7" immediately following the word "exceed," and inserting in lieu thereof "10".

BUYING POWER MAINTENANCE

SEC. 107. There is hereby authorized to be appropriated to the Department of State for transfer by the Secretary of State to appropriations available for the overseas operations of the Department of State for any fiscal year when necessary to maintain the approved level of operations and to eliminate substantial losses to appropriations caused by fluctuations in foreign currency exchange rates or overseas wage and price changes: $20,000,000, to be available without fiscal year limitation. In order to eliminate substantial gains to approved levels of overseas operations, the Secretary may be authorized through appropriation acts to transfer to the "Buying power maintenance" account amounts in other accounts which are determined by the Secretary to be excessive to the needs of an approved level of operations due to foreign currency exchange rates or overseas wage and price changes.

TITLE II—INTERNATIONAL COMMUNICATION AGENCY

ADDITIONAL AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1982

SEC. 201. There are authorized to be appropriated to the International Communication Agency for the fiscal year 1982 such sums as may be necessary to carry out international communication, educational, cultural and exchange programs under the United States Information and Educational Exchange Act of 1948, the Mutual Educational and Cultural Exchange Act of 1961, and Reorganization Plan Numbered 2 of 1977, and other purposes authorized by law.

TITLE III—BOARD FOR INTERNATIONAL BROADCASTING

ADDITIONAL AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1981

SEC. 301. Subsection (A) of Section 8(a)(1) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2877(a)) is amended to read as follows:

"(A) $81,917,000 for the fiscal year 1980 and $98,835,000 for the fiscal year 1981, of which $4,500,000 shall be available only for the purpose of transferring RFE/RL positions to the United States in accordance with recommendations of the Board for International Broadcasting; and"

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1982

SEC. 302. There are authorized to be appropriated to the Board for International Broadcasting for the fiscal year 1982 such sums as may be necessary to carry out the purposes of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2877(a)), as amended.

SECTION-BY-SECTION ANALYSIS

Sec. 101. Department of State—Additional Authorization for Fiscal Year 1981.

Subsection (a)—This subsection provides additional authorization to cover the Department's revised budget estimates for fiscal year 1981. These revised estimates reflect the impact of our fiscal year 1980 supplemental appropriations and new requirements which were unforeseen at the time of preparation of our 1981 authorization request.

Subsection (b)—This amendment would remove the ceilings imposed on the Department's authorization levels for both fiscal years 1980 and 1981. The amended aggregate amount appropriated under paragraphs (1), (2), and (3) of subsection (a) of P.L. 96-60 will exceed the ceiling of $1,369,401,000 in fiscal year 1980 and $1,547,000 in fiscal year 1981. In order to provide for unforeseen 1980 supplemental appropriation requests, the effect of these supplemental requirements in 1981, and to meet new program needs for 1981, the Department must exceed the legislated ceilings.

Sec. 102. American Institute in Taiwan.

Subsection (a)—This provision would amend P.L. 96-8 (Taiwan Relations Act) to authorize funds for fiscal year 1981. The Act presently authorizes funds for 1980 only.

Subsection (b)—This provision authorizes appropriation of $6,582,000 in fiscal year 1981 to cover the costs associated with the expenses of the American Institute in Taiwan.

Sec. 103. Assessed Contributions to International Organizations.

This section provides authorization of such sums as may be necessary for mandatory increases resulting from adjustments in U.S. assessed contributions to international organizations. These mandatory adjustments only become evident as budgets for international organizations are refined and have a material impact on the fiscal resources of the Contributions to International Organizations Appropriation. Without this authority, the Department would be required to seek additional authorization each fiscal year to cover any supplemental appropriations necessary to fulfill obligations for assessed contributions.

Sec. 104. Department of State—Authorization of Appropriations for Fiscal Year 1982.

This section provides a generic authorization of appropriations for the Department of State in accordance with the provisions of Section 407(b) of the Foreign Assistance Act of 1971 and Section 607 of P.L. 93-344, the Congressional Budget Act of 1974.

Sec. 105. Pan American Institute of Geography and History (PAIGH).

This section would delete the limitation on the United States contribution to the PAIGH which is $200,000 annually. The U.S. contribution has been assessed at $274,005 since 1979. This amendment would permit the U.S. to pay the difference between past assessments ($148,010 cumulative arrearage for 1979 and 1980) and the $200,000 limitation.

The U.S. first participated in the Institute of Geography and History in 1935 and has been a member in good standing ever since. In order to meet the assessments applied to the U.S. as a member, the Department of State has had to request periodically an increase in the ceiling on annual contributions. To end such adjustments, it is requested that the ceiling be lifted completely, especially in view of the fact that the PAIGH General Assembly only meets once every four years and determines budget levels for the four ensuing years.

Sec. 106. International Institute for the Unification of Private Law and Hague Conference on Private International Law.

This amendment would provide legal authority for the United States to pay arrearages in its assessments for 1979 and 1980 and to meet fully the anticipated assessments in 1981 and beyond.

Sec. 107. Buying Power Maintenance.

This section would authorize an appropriation to offset losses in other appropriations due to fluctuations in foreign currency exchange rates or overseas wage and price changes unanticipated in annual Department budget requests. Any gains in other appropriations due to favorable exchange rate and overseas wage and price fluctuations would be transferred to the new appropriation to offset future losses.

Management of the Department would be enhanced by the availability of funds to meet unbudgeted overseas inflation and foreign currency exchange rate losses. Under present arrangements, rapidly fluctuating foreign exchange rates and rampant overseas inflation are seriously disruptive to operations. Supplemental appropriations are

often required and timely responses to ongoing mandatory fund requirements cannot be made. The new appropriation would provide the means for the Secretary to maintain necessary and approved levels of activities.

Sec. 201. International Communication Agency—Authorization of Appropriations for Fiscal Year 1982.

This section provides a generic authorization of appropriations for the International Communication Agency in accordance with the provisions of Section 607 of P.L. 93–344, the Congressional Budget Act of 1974.

Sec. 301. Board for International Broadcasting—Additional Authorization of Appropriations for Fiscal Year 1981.

This section provides additional authorization to cover the Board's revised budget estimates for fiscal year 1981. These revised estimates reflect the impact of increased general operating costs, principally employee compensation and electric power. The sum of $4,500,000 has been provided to reduce by $3,000,000 the annual level of RFE/RL personnel costs by selective transfers of personnel from the Federal Republic of Germany to the United States and a limited reduction in force, as recommended by the Board's report to the Congress.

Sec. 302. Board for International Broadcasting—Authorization of Appropriations for Fiscal Year 1982.

This section provides a generic authorization of appropriations for the Board for International Broadcasting in accordance with the provisions of Section 607 of P.L. 93–344, the Congressional Budget Act of 1974.

DEPARTMENT OF STATE,
Washington, D.C., February 8, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
U.S. Senate.

DEAR MR. PRESIDENT: There is transmitted herewith for the Department of State and at the request of the Director of the International Communication Agency and the Chairman of the Board for International Broadcasting, a proposed amendment to Public Law 96–60 requesting additional appropriations authorization for fiscal years 1980 and 1981 and appropriations authorization for fiscal year 1982 as required by Section 607 of P.L. 93–344, the Congressional Budget Act of 1974.

The prime purpose of this amendment is to provide in fiscal year 1981 additional authorization of $139,307,000 for the Department of State and $12,048,000 for the Board for International Broadcasting.

For the Department of State, this authorization will cover the costs associated with: 1) additional requirements totalling $24,896,000 for the Contributions to International Organizations Appropriation; 2) a $20,000,000 appropriation necessary for establishing a buying power maintenance fund; and 3) $94,411,000 for additional requirements in the Migration and Refugee Assistance Appropriation. The $12,048,000 additional authorization requested for the Board for International Broadcasting will cover increased general operating costs, principally employee compensation and electric power.

Finally, there is contained in this amendment a request on behalf of all three agencies for new authorization of such sums as may be necessary for fiscal year 1982. A section-by-section analysis further explaining all of the proposed legislation is enclosed.

The Department has been informed by the Office of Management and Budget that there is no objection to the presentation of this proposed legislation to the Congress and that its enactment would be in accord with the program of the President.

Sincerely,

J. BRIAN ATWOOD,
Assistant Secretary for Congressional Relations.●

By Mr. JEPSEN (for himself and Mr. HEFLIN):

S. 2448. A bill to amend the Internal Revenue Code of 1954 to provide explicitly for the exclusion of social security benefits from taxable income; to the Committee on Finance.

● Mr. JEPSEN. Mr. President, contrary to popular belief, social security benefits are not subject to tax as a matter of law, but because of a 1951 IRS revenue ruling. Recently, the Advisory Council on Social Security argued that this revenue ruling was incorrect and that half of social security benefits should be subject to tax. A recent book, "The Tax Treatment of Social Security" by Mickey Levy, also recommended that social security benefits be made taxable. Indeed, certain liberal economists, such as Henry Aaron, Joseph Pechman, and Gardner Ackley, dissented from the Advisory Commission report, in this respect, on the grounds that 83 percent of social security benefits should be made taxable, rather than only half.

It is difficult for me to see the rationale for such action, except that the insatiable appetite of Government for more revenue does not even exclude those on social security—some of the poorest members of our society. Taxing of social security benefits would mean an increase in taxation on our elderly population of $6.9 billion. This works out to close to $300 per year for every person over 65 in the United States.

Such a massive increase in taxation on those people who can least afford it is indefensible. This is why I am introducing legislation today to explicitly make social security benefits free of taxation as a matter of law. I am aware that there is no sentiment in the Congress for the taxation of social security benefits, but many of my constituents fear that the IRS might reverse its revenue ruling without the necessity of legislation. In order to make it perfectly clear to them that taxes will not be imposed on their benefits, I feel that the best thing to do is simply spell it out in law. Since there is obviously no revenue impact from this bill, since it merely confirms current practice, I would hope that my colleagues will support me and help get this legislation passed as quickly as possible.

Mr. President, 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. 2448

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCLUSION PROVIDED.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by redesignating section 128 as section 129 and by inserting after section 127 the following new section:

"SEC. 128. SOCIAL SECURITY BENEFITS.

"Gross income does not include benefits paid under title II of the Social Security Act.".

(b) CLERICAL AMENDMENT.—The table of sections for such part is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 128. Social security benefits.

"Sec. 129. Cross reference to other Acts.".

SEC. 2. EFFECTIVE DATE.

The amendments made by the first section of this Act shall apply to all taxable years to which the Internal Revenue Code of 1954 applies.●

By Mr. PRYOR (for himself, Mr. STEVENS, Mr. RIBICOFF, and Mr. PERCY):

S. 2449. A bill to amend chapter 83 of title 5, United States Code, to improve the operation of the disability retirement program, and for other purposes; to the Committee on Governmental Affairs.

Mr. PRYOR. Mr. President, today I am introducing legislation to make certain needed changes in the civil service disability retirement program. This legislation, in my opinion, is long overdue and its enactment will save taxpayers a substantial amount of money by eliminating waste and abuses which are tolerated under the present law. Such legislation is also needed to redefine the goals and objectives of the Federal disability retirement program, which has been neglected by the Congress for more than 2 decades.

On July 12, 1979, the Subcommittee on Civil Service and General Services, which I chair, held an oversight hearing on the operation of the civil service retirement system. The civil service retirement system covers more than 2.7 million Federal employees and provides pension coverage for more than 1.4 million annuitants and survivors. Currently the liabilities of the retirement system exceed $100 billion and its reserves amount to approximately $50 billion. This system is important to this country, not only because of its size, but also because it has an impact on the development of policies that affect current Federal employees and many older Americans.

During the hearing I was appalled to learn from the General Accounting Office that 32 percent of all those employees who retired in fiscal year 1978 qualified for disability benefits. In fact, at the end of fiscal year 1978, there were approximately 323,000 disabled retirees who collect annuities totaling more than $2.2 billion annually.

Based upon the findings of the July 12 hearing and the recommendations of the September 1979 Office of Personnel Management (OPM) Staff Paper on the Civil Service Disability Retirement Program, which was released to me in response to my hearing request, I have developed legislation which addresses a number of serious deficiencies in the disability system.

The original civil service retirement act, enacted in 1920, provided for the retirement of any employee who, before reaching mandatory retirement age, had served at least 15 years and had become totally disabled for useful and efficient service in his or her position. Major modifications of the disability retirement program were adopted by the Congress in 1930, 1942, and 1949. The last significant revision of the disability retirement program, however, occurred in

1956, more than 20 years ago. Since then, virtually no congressional action has taken place, despite major changes in demographics, retirement perceptions, and economics, in general.

According to OPM, total disabilities under the civil service retirement in recent years have included 5,000 to 12,000 each year who could be properly classified as voluntary retirees. Many such employees choose the disability benefit because of its tax advantages and when such advantages are removed or curtailed, the retirees have requested to be removed from the disability rolls. In order to curb such abuses this bill will prohibit employees who are eligible for voluntary retirement from applying for disabiilty retirement benefits.

I am also concerned with the determination of when, under the current law, an employee is considered to be economically recovered. The law now provides that a disability annuitant is considered restored to earning capacity if, in each of 2 successive calendar years his earnings from wages, and/or self-employment, exceed 80 percent of the current salary of the position from which he retired. According to the OPM staff paper on disability, the program is flawed because annuitants on the disability roll can manipulate the earnings limitation for disability annuitants. No other income, including interest, dividends, bonds, pensions, or annuity is considered for purposes of restoration to earning capacity. However, if the restored annuitant's earnings subsequently fall below the 80-percent limitation during a calendar year, he can have his annuity restored (provided that he is still suffering from the same disability for which he retired).

While the majority of disability retirees report no income from wages or self-employment, some manipulate the system. The GAO reported examples of annuitants who earned from $17,000 to $42,000 more in 2 years than their Government job would have paid but were continued on the disability rolls because they did not exceed the 80-percent maximum in each of the 2 years. For example, GAO found one retiree who was determined to be disabled for a job paying $22,000 a year and who earned $16,777 and $47,480 in other employment in 2 consecutive years. The annuitant continued to receive his disability annuity, because he was not economically recovered under the law.

This bill changes the test period for earning-capacity restoration from 2 years to 1 year and will make manipulation more difficult, while still protecting the interests of annuitants who are able to work for short periods or who derive windfall earnings over the short term, but are unable to sustain them.

This bill would also grant OPM limited authority to verify disability retirees' income through indexed wage credits reported to the Social Security Administration. Authority to conclusively confirm income reported by disability annuitants would greatly improve OPM's capacity to police the annuity roll. The policing aspects would also be expanded by the provision permitting the office access to military retired pay and Office of Workers' Compensation Program pay records in order to detect cases of dual payments.

Today, many individuals are concerned that civil service disability standards are loosely administered and too permissive. According to a General Accounting Office study, ("Civil Service Disability Retirement," FPCD-76-61), approximately 15,000 annuitants receiving disability benefits in 1975 were probably capable of performing other types of work at the time of retirement. Moreover, according to the Congressional Budget Office (CBO) in their December 1978 report entitled "Options for Federal Civil Service Retirement: An Analysis of Costs and Benefit Provisions," under existing civil service disability criteria nearly 98 percent of disability applications are eventually approved in a process that relies almost entirely on certification from the applicant's employer and doctor.

Stricter eligibility standards are used for determining eligibility for disability in the private sector, generally following social security criteria, and denying disability benefits if the employee is able to work at another job assignment. Although civil servants are much more likely to receive disability benefits than employees in the private sector because of the differences in the eligibility standards, the level of benefits received by the civil servant is noticeably lower than in the private sector. Once again, according to the CBO study, the probability of civil service males, ages 30 through 50, receiving disability is at least 50 percent greater than if private standards were used. That table, No. 3, page 12, of the report follows:

TABLE 3.—PROBABILITY OF MALES RECEIVING DISABILITY BENEFITS UNDER CURRENT CIVIL SERVICE ELIGIBILITY STANDARDS AND UNDER THOSE USED IN PRIVATE SECTOR

	Rate of disability per 100 employees		Percentage by which CSC rate is greater than private rate
	CSC standard [1]	Private standards [2]	
Attained ages:			
30	0.0014	0.0009	55.6
40	0.0056	0.0037	51.4
50	0.0137	0.0091	50.5
55	0.0231	0.0159	45.3
58	0.0302	0.0232	30.2
60	0.0342	0.0285	20.0
63	0.0452	0.0377	19.9
65	0.0564	0.0470	20.0

[1] Disability rates are based on actual tables obtained by Hay Associates from Civil Service Commission data. The actual number of new beneficiaries will vary at any given time from the actuarial rates.

[2] Rates of disability under private standards are taken from CSC experience when eligibility provisions were administered consistent with private sector standards, which do not accept disability as "total and permanent" if the individual can accept another job.

In comparison a civil servant earning $25,200 and disabled in 1979 after 23 years of service would receive disability benefits amounting to 40 percent of final pay, while his or her private sector counterpart would receive disability benefits amounting to 56 percent of final pay. That table, No. 4, page 15, of the CBO report, follows:

TABLE 4.—COMPARATIVE EXAMPLES OF CIVIL SERVICE AND PRIVATE SECTOR BENEFITS AND DEDUCTIONS FOR AN EMPLOYEE DISABLED IN 1979 AT A FINAL SALARY OF $25,200, BEFORE AND AFTER TAXES

[In dollars [1]]

	Civil Service		Private insurance and social security	
	Single	With 2 additional dependents	Single	With 2 additional dependents
Final salary	25,200	25,200	25,200	25,200
Disability income	[2] 10,000	[2] 10,000	14,000	18,300
Disability income as a percent of final salary:				
Before taxes	(39.7)	(39.7)	(55.6)	(72.6)
After taxes	(59.1)	(55.0)	(84.0)	(99.5)

	Civil Service		Private insurance and social security	
	Single	With 2 additional dependents	Single	With 2 additional dependents
Deductions while employed:				
Final salary	25,200	25,200	25,200	25,200
Withholding for retirement	−1,800	−1,800	−1,400	−1,400
Income taxes [3]	−7,500	−5,600	−7,500	−5,600
Final salary after taxes	15,900	17,800	16,300	18,200
Tax deductions while disabled:				
Disability income	10,000	10,000	14,000	18,300
Income taxes [3]	−600	−200	−300	−200
Disability income, after taxes	9,400	9,800	13,700	18,100

[1] Estimates have been rounded to the nearest $100.

[2] Benefits assume 23 years of federal service.

[3] Combined federal and representative state income taxes. State income taxes based on rate for the State of Colorado, July 1, 1976.

This legislation makes a number of necessary changes in the disability retirement system. However, additional changes should be considered. As pointed out in OPM's staff report, serious consideration needs to be given to revising the antiquated 1926 definition of disability so that more employees, who may be disabled for their particular job, but who have the ability to succeed in other assignments, can be retained.

As chairman of the Governmental Affairs Subcommittee on Civil Service and General Services, I intend to give careful consideration to all issues affecting disability retirement. In my opinion the Federal disability retirement system has been neglected by the Congress and the executive branch for too long. I believe that this legislation will go a long way toward improving many of the serious deficiencies in the disability system and restore public confidence in the effective operation of the Federal Government. I invite the support of my colleagues in joining me in this effort. I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 2449

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8337 of title 5, United States Code, is amended—

(1) by inserting before the period at the end of the first sentence of subsection (a) the following: ", except that an employee shall not be retired under this section if the employee, as of the date he becomes eligible to receive a disability retirement annuity, is entitled to receive an annuity under subsections (a) through (f) of section 8336 of this title";

(2) by striking out "each of 2 succeeding calendar years" in the last sentence of subsection (d) and inserting "any calendar year"; and

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

"(h) Notwithstanding any other provision of law, the Director of the Office of Personnel Management shall, for the purpose of insuring the accuracy of information utilized in the administration of this section, be entitled upon request to receive from—

"(1) the Secretary of Health, Education, and Welfare or his delegate, information contained in the records of the Social Security Administration;

"(2) the Secretary of Labor or his delegate, information on benefits paid under subchapter I of chapter 81 of this title; or

"(3) the Secretary of Defense or his delegate, information on retired pay benefits under title 10.

The Director shall request only such information he determines is necessary to carry out his functions under this section. The Director, in consultation with each Secretary, shall establish such safeguards as are necessary to insure that any information made available under the provisions of this subsection is used only for the purposes authorized.".

Mr. STEVENS. Mr. President, as ranking member of the Subcommittee on Civil Service and General Services, I join in support of the bill introduced by the distinguished chairman, DAVID PRYOR.

Realizing that we have an obligation to reduce the cost of Government, this bill concerning disability retirement is an effort to achieve savings in a responsible and equitable manner. Instead of jeopardizing the financial security of retired Federal employees, our aim is to cut waste.

In recent years the civil service disability plan has been criticized as a "giveaway" program conducted by the Government. This is a gross overstatement. But there are some basic problems with the present law.

The first section of the proposed bill would permit only those employees who are not eligible for optional retirement to apply for disability retirement. The present law allows an annuitant to float between the optional or disability retirement program depending upon which was most convenient or advantageous at that time.

The second section of this bill would allow a closer policing of an annuitant's earnings. The test is changed from a 2-year period to a 1-year period to determine whether an employee is restored to full-earning capacity. This would alleviate the loophole of annuitants making widely varying amounts on alternate years.

Mr. President, there have been specific recommendations by some to reduce benefits for all retirees. Upon such a recommendation last year our subcommittee carefully weighed the different alternatives open to us that would save money and yet protect the interests of those concerned. At a hearing last summer, the testimony we received revealed the danger of making sweeping cuts into retirees' incomes. Hence, the changes that this bill and the proration bill attempt to make carefully balance the needs of the taxpayer versus the needs of Federal retirees.

The passage of these two bills enables the civil service to better serve the public interest while still protecting the system's honor.

By Mr. PRYOR (for himself, Mr. STEVENS, Mr. RIBICOFF, and Mr. PERCY):

S. 2450. A bill to amend section 8340 of title 5 of the United States Code to reduce cost-of-living increases of Federal annuitants attributable to months prior to the month in which the commencing date of an annuity occurs; to the Committee on Governmental Affairs.

Mr. PRYOR. Mr. President, today I am introducing legislation to correct what I believe to be an unintended oversight in current retirement law, which is wasting millions of taxpayer dollars each year.

On November 17, 1977, the U.S. General Accounting Office (GAO) recommended that the Congress enact legislation to make the cost-of-living adjustment process for Federal retirees more rational and less costly by repealing the provisions of existing law which permit retiring employees and new retirees to receive higher starting annuities because of changes in the Consumer Price Index (CPI) which occur before their retirement. In order to correct this apparent oversight, this legislation will provide that new retirees' cost-of-living adjustments be prorated to reflect only CPI increases which occur after the date of their retirement.

This problem takes on new meaning today due to the pay compression problems experienced by a number of high-level civil servants, as stated by the Comptroller General in a January 30, 1980, letter to Senator RIBICOFF, a copy of which I ask unanimous consent to be inserted in the RECORD following my remarks. Although this legislation will not end salary compression, this bill should encourage continued service and save the American taxpayer millions of dollars in windfall annuity benefits which would otherwise be received by retiring executives.

I firmly believe that it is the responsibility of a pension plan, particularly the civil service retirement system to maintain the benefits of former workers. All Americans have been hard hit by rapidly rising inflation and retirees who have worked many years for the Federal Government deserve to have their purchasing power maintained. As a result, the annuities of those under civil service retirement and other Federal retirement systems are automatically adjusted each March 1 and September 1 for the respective increase in the CPI during the preceding 6-month period ending December 31 and June 30.

Under this law, which was enacted in 1976, cost-of-living adjustments are applicable to all annuities payable on the effective date of the increase. However, this statute allows currently retiring Federal employees to benefit from increases in the CPI which occur while they are still employed. As a result of this oversight, new Federal retirees receive higher starting annuities which reflect the preceding annuity cost-of-living adjustment and, depending on timing of their retirement, may be eligible for an additional adjustment immediately. These increases escalate the already high cost of Federal retirement by inflating the basic annuity upon which succeeding adjustments are applied and encourage valuable, experienced employees to retire at an earlier date.

This problem can perhaps best be illustrated by the following example: If an employee retired on August 31, 1979, he would have included in his basic annuity calculation the March 1, 1979—3.9 percent—increase which represented the percentage rise in the CPI from June 1978 through December 1978. For such an employee the resulting starting annuity was greater than an annuity based solely on salary and service. Additionally, the new retiree would also have received the full 6.9-percent annuity increase for September 1, 1979, which was based on the percentage change in the CPI for the 6-month period which ended June 30, 1979.

This legislation corrects this oversight in the law by providing that the cost-of-living increases be reduced by the percentage change in the CPI for those months prior to the month in which the annuity starts. As a result new retirees will have their initial cost-of-living increase reduced by that portion of such percent change, adjusted to the nearest one-tenth of 1 percent, which is attrib-

utable to any month prior to the month in which the commencing date of such annuity occurs.

This bill should instill greater confidence in the civil service retirement system by insuring that all future retirees receive only those cost-of-living increases which they earn. Although I personally support the retention of the twice-a-year cost-of-living adjustment formula, I believe it is an inequity that certain Federal employees who retire shortly before the date of a cost-of-living adjustment are eligible to receive the full amount of an increase, even though they were not retired for the full 6-month preceding period. My legislation, by simply providing that new retirees receive only a prorated adjustment based upon the percentage of the adjustment actually granted while an employee is retired will save the American taxpayer money and insure that all new retirees receive an equitable cost-of-living adjustment based strictly on their retirement time.

According to the GAO, this inequity has acted to overcompensate newly retired Federal employees, while unfairly adding to the overall cost of financing the retirement system. According to GAO estimates, proration of the annuity adjustments of new retirees would save over $800 million in annuity payments over the remaining lifespans of approximately 230,000 Federal employees now eligible to retire.

Enactment of this proposal will encourage valuable employees who are considering retirement to remain in the Federal service and also serve to increase the public's confidence in the retirement program. I encourage my colleagues to support enactment of this legislation.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 2450

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of section 8340(c) of title 5, United States Code, is amended to read as follows:

"(1) In the case of an annuity which is payable from the Fund to an employee or Member, or the widow or widower of a deceased employee or Member, the percent change by which such annuity is increased under subsection (b) shall be reduced by that portion of such percent change, adjusted to the nearest 1/10 of 1 percent, which is attributable to any month prior to the month in which the commencing date of such annuity occurs.".

SEC. 2. The amendment made by the first section of this Act shall apply with respect to annuities commencing on or after the date of the enactment of this Act.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., January 30, 1980.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Governmental Affairs, U.S. Senate.

DEAR MR. CHAIRMAN: Recent publicity on the number of high-level civil servants who are expected to retire next month concerns me greatly. These officials have deduced, correctly I might add, that their retirement benefits will be much greater if they retire now rather than waiting until some future date. This anomaly is symptomatic of the long-standing concerns we have had over the unrealistically low salary levels paid to top Federal officials and the unnecessarily costly cost-of-living adjustment mechanism that is used to maintain retirees' purchasing power.

This problem can only worsen if executive pay levels are not adjusted soon. I realize this has been a difficult goal to attain. In the interim, I urge that the incentive to retire be minimized by prorating new retirees' annuity cost-of-living adjustments to eliminate any portion of those adjustments representing increases in the cost of living that occurred while they were still employed.

Last October, top officials' pay was increased by 5.5 percent (their first raise since March 1977) while other Federal employees received 7 percent raises. Moreover, Federal retirees received two increases totaling 10.8 percent in 1979 and are scheduled to get another 6 percent increase on March 1. Thus, it is not hard for an employee whose pay has been adjusted infrequently, and in smaller amounts than others, to realize that he or she is better off to retire as soon as eligible and begin to receive the cost-of-living increases that are granted to Federal retirees every 6 months.

I should point out that the imminent retirements of many top-level employees represent only a small part of an overall problem that is being caused by the retirement systems' cost-of-living adjustment mechanism. Correction of this problem along the lines we have recommended, and are hereby calling for again, would greatly alleviate the situation.

As you know, we have long been concerned about the inequities, illogical and inconsistent benefits, and the affordability of Federal staff retirement systems. The method by which the first cost-of-living adjustment for a new Federal retiree is determined is one of several unnecessarily costly and generous special features which raise serious questions about the continued viability of those systems. It inflates the basic annuity upon which succeeding adjustments are applied and can encourage valuable, experienced employees to retire.

As explained in our November 17, 1977 report ("Cost-of-Living Adjustments For New Federal Retirees: More Rational and Less Costly Processes Are Needed," FPCD-78-2), cost-of-living adjustments are intended to protect the purchasing power of Federal annuitants, but existing law permits new retirees to benefit from cost-of-living increases that occurred while they were still employed. They can receive a higher starting annuity which reflects the preceeding annuity cost-of-living adjustment and, depending on the timing of their retirement, may be eligible for another adjustment immediately.

Cost-of-living adjustments are applicable to all annuities payable on the effective dates of an increase, March 1 and September 1. Also, retiring employees are guaranteed a basic annuity at least equal to the annuity they would have received if they had retired as of the effective date of the last cost-of-living adjustment. Employees who retire before March 1, 1980, will have the September 1, 1979, annuity increase of 6.9 percent, which represented the percentage rise in the Consumer Price Index (CPI) from December 1978 through June 1979, considered in their basic annuity calculation. Additionally, they will receive the March 1, 1980, adjustment of 6 percent which represents the percentage change in the CPI for the 6-month period ended December 31, 1979. Thus, they will benefit from CPI increases that occurred while they were still working.

But this has not always been the case. Before 1965, retirees had to be on the retirement roll for a year to be eligible for a cost-of-living adjustment. A 1965 law (Public Law 89-205) removed that requirement and provided that cost-of-living adjustments were to be applicable to all annuities payable on the effective date of the increase. This led to large numbers of employees, particularly those whose pay rates were frozen, retiring immediately before scheduled annuity adjustments. In an attempt to correct this anomaly, the law was changed in 1973 (Public Law 93-136) to provide retiring employees the higher of (1) an annuity based on their average salary and length of service at retirement or (2) an annuity based on their salary and service at the time of the preceding annuity cost-of-living adjustment, plus that adjustment which they would have received if they had retired at that time. Although the 1973 amendment may have moderated the number of retirements occurring immediately before a scheduled annuity cost-of-living adjustment, it has not eliminated the financial incentive for retirement-eligible employees, particularly executives who have received relatively small, infrequent pay raises, to retire rather than to continue working.

Our November 1977 report recommended that the Congress enact legislation making the cost-of-living process more rational and less costly by:

Repealing the provisions of existing law which permit new retirees to receive higher starting annuities because of changes in the CPI before their retirement.

Providing that new retirees' cost-of-living adjustments be prorated to reflect only CPI increases after their retirement.

Such a policy would insure higher basic retirement annuities for continued Federal service and should encourage valuable employees who are considering retirement to remain. A similar policy exists for the Federal workers' compensation program—to be eligible for a cost-of-living adjustment a beneficiary's work-related disability must have occurred more than 1 year before the effective date of the adjustment.

At the time the November 1977 report was prepared, we estimated that prorating new retirees adjustments would save the retirement fund over $800 million in annuity payments over the expected remaining lifespans of the civil service employees who were expected to retire in 1978. With double-digit inflation, today's estimates would be even higher.

According to available information, about 230,000 Federal employees are now eligible to retire, including many top officials who, because of the unrealistic salary levels in effect, will have special financial incentives to retire before March 1. Those executives who do not retire before that time stand to lose hundreds of dollars a year in their eventual retirement annuities.

Correction of the cost-of-living adjustment problem is not the entire answer, but it should go a long way toward its resolution. Time is of the essence. I would be happy to discuss this important issue further.

This letter is also being sent today to the Chairman, House Committee on Post Office and Civil Service. Copies are being sent to the Senate Subcommittee on Civil Service and General Services and the House Subcommittee on Compensation and Employee Benefits.

Sincerely yours,

JAMES B. STAATS,
Comptroller General.

Mr. STEVENS. Mr. President, as ranking member of the Subcommittee on Civil Service and General Services, I join in support of the bill introduced by the distinguished chairman, DAVID PRYOR. In recent years, the civil service retirement system has been under a state of siege. With the advent of popular calls to reduce Federal employee benefits during

this period of inflation, proposals to cut Federal retirement benefits are being seriously considered. Many of them, however, have not been subject to sufficient review to enable the proponents to know what their impact will be.

In contrast, this bill seeks to close a loophole in the retirement system without injuring those retirees who are economically dependent upon their annuities. Presently, Federal employees can retire just days before a cost-of-living adjustment takes effect on Federal annuities and benefit by collecting the full increase. The inequity is that the increase accrued during the period in which the employee was employed, not retired.

This bill will reduce an annuitant's first cost-of-living increase by the number of months he or she was a Federal employee during the period in which the cost-of-living adjustment accrued. Although seemingly small, this change is expected to save the Government millions of dollars annually, while protecting the needs of present annuitants.

By Mr. LONG (for himself and Mr. DOLE):

S. 2451. A bill to amend the Internal Revenue Code of 1954 to revise the rules relating to certain installment sales; to the Committee on Finance.

INSTALLMENT SALES

Mr. LONG. Mr. President, last spring I described a program for the review of our tax laws from the standpoint of simplification and technical clarification. We introduced two bills on the subject, one of which dealt with relatively minor points of tax administration and the other with installment sales.

The bill which simplified the administrative provisions was enacted last December as part of Public Law 96-167 and has been well, if rather quietly, received.

The bill on installment sales proved more controversial. At the House and Senate hearings the general concept of the bill was vigorously applauded, but one specific provision was generally conceded to be mistaken, and there were many proposals for expanding the coverage of the bill.

Since the hearings many hours of staff and Treasury time have been spent on this subject, and we have received many hours of assistance from bar association groups and from the American Institute of Certified Public Accountants.

The result of all of this effort has been a revised bill covering the general subject of sales for deferred payments which I am introducing today in the Senate. An identical bill is being introduced in the House of Representatives.

Because the revised bill is so changed from the original, new hearings on it are to be held. The public will be given an opportunity to comment on the changes, and it may be that still further revisions will be needed, given the difficulty of the subject matter. It is clear, however, that a tremendous amount of work has been done in response to the comments received last year and that the bill as ultimately enacted will represent the end product of a cooperative process between Congress, the Treasury, and the private tax community, in which we can all take pride.

Mr. DOLE. Mr. President, I am pleased to join the distinguished chairman of the Finance Committee in introducing revised legislation to simplify the tax treatment of installment sales. This bill is one more step in the continuing process of tax simplification that we undertook last year.

The revised bill incorporates an important revision, resulting from legitimate concern raised by witnesses last year at both House and Senate hearings. Specifically, a new paragraph of the bill provides that, as long as tax avoidance is not a principal purpose, the installment sales accounting method will not be adversely affected when a related purchaser subsequently disposes of property.

The provision will allow a farmer or another small businessman to sell the family business to his son, for example, and not lose installment sales treatment if the son decides to change the focus of the business by selling some property and replacing it with other business property. It would also protect a father's installment sales treatment if the son were soon forced to sell the business because of economic reversal.

I believe that the addition of this provision makes this bill a sound addition to our ongoing effort to bring fairness and certainty to the tax system. While I am sure we will learn much from public comments on the bill, I believe this bill provides a worthy starting point for further discussion. I particularly invite the comments of farmers and small businessmen.

Mr. GARN (for himself and Mr. HATCH):

S. 2452. A bill to amend the Clean Air Act with respect to requirements which adversely affect employment; to the Committee on Environment and Public Works.

S. 2453. A bill to amend the Federal Water Pollution Control Act with respect to requirements which adversely affect employment; to the Committee on Environment and Public Works.

● Mr. GARN. Mr. President, today Senator HATCH and I, together with Congressmen GUNN MCKAY and DAN MARRIOTT on the House side, are introducing legislation to provide a small measure of relief from overly strict provisions of clean air and clean water legislation.

Over the years, Mr. President, I have many times stood on this floor to argue that a set of national standards could not possibly take into account the many particular circumstances that occur in local situations. I have consistently argued that locally-elected officials should have the power to make adjustments in the national standards, to take those local circumstances into account.

Never have I asked that any standard be relaxed to the point that it would endanger human health, and I do not make that request today. The bills we are introducing very clearly state that no facility can be permitted to endanger human health and safety. That principle must be kept intact.

However, there are facilities which are only marginally economic, only marginally profitable, which will lose that margin of profitability if they are required to meet a very strict national emission standard. In general, the companies operating such facilities are willing to make an investment to clean these plants up. But they are not willing to make an investment that will have the effect of closing them down.

Mr. President, we live in times of rising prices. The President is tearing out his hair, to know what to do about inflation. Our balance of payments is out of control as foreign steel floods the U.S. market. This is not the time we want to impose on marginal steel producers an environmental cleanup burden beyond what is required to protect the health and safety of our people.

As it happens, there is such a marginal facility in my State: Geneva Steel, located in Orem, Utah. Geneva is located far from its markets not because of bad management decisions but because it was originally built by the Government during World War II, and it needed to be removed from vulnerable coastal areas. Nevertheless, it is a marginal facility, in fact, kept even marginal only because of the dedication and restraint of its 7,000 employees. U.S. Steel, the parent company of Geneva, has made an enormous investment in pollution control equipment, and is prepared to do even more. But again, there is no point in requiring such a cleanup as to take the facility beyond the margin of profitability. To do so would cost the Nation jobs, would cost the Nation steel, would worsen a balance-of-payments problem, and contribute substantially to inflation in the long run.

These amendments are relatively simple. They do not gut the clean air and water acts now on the books. They simply provide that, where health and safety can be protected with an investment in pollution control equipment somewhat less than that required by the absolute national standards, the Governor of the State be empowered to reduce that absolute requirement somewhat. There is no question of an absolute exemption; there is no question of a danger to health and safety; this is not a gift to the company, which will already have made substantial expenditures. This is simply a recognition of commonsense, of weighing in the balance two conflicting societal needs.

Now it is true that Utah does have a facility that might well be affected by these amendments, but certainly Utah is not the only State. We learn from the specific experiences of our constituents, and I am confident that others of my colleagues will have brought to their attention similar situations, where this kind of relief is needed on a case-by-case basis. At the proper time, Senator HATCH and I will be seeking cosponsors for this legislation, and I hope Senators will look to their States, and to the States around them for examples of this need.

Mr. President, the Nation has made enormous strides in cleaning up the environment. There is no need to halt the process, or worse yet, reverse it. But it is important to recognize the limits of reality, and not to afflict our productive industry with more regulation than it

can bear. This legislation will preserve the right balance of environmental and productive factors.

Mr. President, I ask unanimous consent that the two bills referred to be printed at this point in the RECORD.

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

S. 2452

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 321 of the Clean Air Act is amended by striking out subsection (d) and inserting in lieu thereof the following new subsections:

"(d) In the case of any finding under subsection (b) of an adverse effect on employment, the Administrator, the States or political subdivisions thereof, shall implement the recommendations of the Administrator made under subsection (b) by modifying or withdrawing any requirement imposed or proposed to be imposed under this Act.

"(e) If the Governor of any State advises the Administrator that the State has determined that an existing source in either an attainment or a nonattainment area will be adversely affected by the requirements imposed under this Act to an extent that a closing of the source is threatened, and the Governor advises the Administrator that an exception to the requirements of this Act must be made for such source, and the Governor proposes a State Implementation Plan revision which establishes less stringent emission limitations applicable to that source and also, in the case of a nonattainment area, demonstrates reasonable further progress toward attainment and maintenance of ambient air quality standards, the Administrator shall approve the revision. If the Administrator has not acted on the proposed revision within ninety days from receipt, the revision shall be deemed approved.".

S. 2453

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 507(e) of the Federal Water Pollution Act is amended by striking out the last sentence and inserting in lieu thereof the following: "In the case of any finding of an adverse effect on employment, the Administrator shall implement his recommendations by modifying or withdrawing any effluent limitation or order issued under this Act.".

(b) Section 507 of such Act is further amended by adding at the end thereof the following new subsection:

"(f) If the Governor of any State advises the Administrator that the State has determined that employment at a plant or facility will be adversely affected by any effluent limitations or any order issued under this Act to an extent that a closing of the plant or facility is threatened and the Governor advises the Administrator of the extent of the exception that must be made for such plant or facility, the Administrator shall modify or withdraw such effluent limitation or order accordingly. If the Administrator has not acted to grant the requested modification or withdrawal within ninety days from receipt, the requested modification or withdrawal shall be deemed granted.".●

ADDITIONAL COSPONSORS

S. 1631

At the request of Mr. RANDOLPH, the Senator from Alabama (Mr. HEFLIN), and the Senator from Alaska (Mr. GRAVEL) were added as cosponsors of S. 1631, a bill to provide additional funds for certain projects relating to fish restoration, and for other purposes.

S. 1794

At the request of Mr. MELCHER, the Senator from North Dakota (Mr. YOUNG), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 1794, a bill to amend the Public Health Service Act to provide for research concerning Reyes' Syndrome, and for other purposes.

S. 1858

At the request of Mr. BAYH, the Senator from Texas (Mr. BENTSEN), and the Senator from Minnesota (Mr. DURENBERGER) were added as cosponsors of S. 1858, a bill to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities, and for other purposes.

S. 2071

At the request of Mr. COHEN, the Senator from Oklahoma (Mr. BELLMON) was added as a cosponsor of S. 2071, a bill to provide cancellation of student loans made or guaranteed under the Higher Education Act of 1965 for military service, and for other purposse.

S. 2080

At the request of Mr. RANDOLPH, the Senator from Washington (Mr. JACKSON) was added as a cosponsor of S. 2080, a bill to establish public buildings policies for the Federal Government, to establish the Public Buildings Services in the General Services Administration, and for other purposes.

S. 2221

At the request of Mr. WEICKER, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 2221, a bill to amend the Internal Revenue Code of 1954 to increase from 60 percent to 80 percent the deduction allowed to individuals with respect to net capital gain from investment in small business.

S. 2374

At the request of Mr. BAUCUS, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 2374, a bill to amend the Congressional Budget Act to limit the growth of Federal taxation and spending and to achieve balanced budgets, and for other purposes.

SENATE CONCURRENT RESOLUTION 60

At the request of Mr. JEPSEN, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of Senate Concurrent Resolution 60, a concurrent resolution expressing the sense of the Congress with respect to the treatment of Christians by the Union of Soviet Socialist Republics, and for other purposes.

SENATE CONCURRENT RESOLUTION 61

At the request of Mr. JEPSEN, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of Senate Concurrent Resolution 61, a concurrent resolution expressing the sense of the Congress with respect to the treatment of Christians by the Union of Soviet Socialist Republics, and for other purposes.

AMENDMENT NO. 1649

At the request of Mr. HATCH, the Senator from Utah (Mr. GARN) was added as a cosponsor of amendment No. 1649 intended to be proposed to S. 688, a bill to authorize appropriations to the Department of Energy for civilian programs for fiscal year 1980 and fiscal year 1981, and for other purposes.

NOTICES OF HEARINGS

SUBCOMMITTEE ON INTERNATIONAL FINANCE

● Mr. STEVENSON. Mr. President, the Subcommittee on International Finance of the Committee on Banking, Housing, and Urban Affairs will hold hearings on March 31 and April 16 on proposed legislation to: First, increase the U.S. quota in the IMF (S. 2271); second, authorize appropriations to meet the international affairs expenses of the Department of the Treasury; and third, control Government purchases and sales of gold (S. 1963). Hearings will begin at 10 a.m. each day in room 5302 of the Dirksen Senate Office Building.

Among the subjects to be addressed in the hearings are the following: The proposed IMF quota increase; the IMF's conditionality policies; proposals to create an IMF substitution account; the impact of the OPEC oil price increase upon the developing countries; the ability of commercial banks to continue to provide the bulk of the developing countries' financing; and, alternative methods of providing such financing.

Persons interested in testifying or desiring further information may contact Robert W. Russell, Counsel to the International Finance Subcommittee (224–0819), or Paul Freedenberg, minority professional staff member (224–0891).●

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

● Mr. CHURCH. Mr. President, I wish to announce that the East Asian and Pacific Affairs Subcommittee, of the Committee on Foreign Relations, will hold hearings on Southeast Asia, focusing on the Kampuchean conflict and its implications, and on Southeast Asian refugee issues.

The hearings will be held on Monday, March 24 at 10 a.m., and on Tuesday, March 25, at 2 p.m., in room 4221 of the Dirksen Senate Office Building. Administration witnesses will testify on March 24, and representatives of voluntary agencies working with refugees will testify on March 25. Anyone interested in testifying should contact Mr. William Barnds (224–5481), or Miss Dee Dee Kenworthy (224–1439) of the committee staff.●

SUBCOMMITTEE ON RURAL HOUSING AND DEVELOPMENT

● Mr. MORGAN. Mr. President, I wish to announce that the Subcommittee on Rural Housing and Development, of the Committee on Banking, Housing and Urban Affairs, will hold a hearing on rural housing authorizations for fiscal year 1981.

The hearing will be held on Tuesday, April 1, 1980, beginning at 10 a.m., in room 5302, Dirksen Senate Office Building.

Anyone wishing further information concerning this hearing should contact Mr. Robert Malakoff, of the subcommittee staff at 202–224–7391.●

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

● Mr. HARRY F. BYRD, JR. Mr. President, the Subcommittee on Taxation and Debt Management of the Senate Finance Committee will hold a series of hearings centering on various tax pro-

posals recommended by the White House Conference on Small Business.

The hearings will be held on Monday, March 24, Friday, March 28, and Tuesday, April 1.

The hearings will be held in room 2221 of the Dirksen Senate Office Building, and will begin at 10 a.m. on March 24 and 9 a.m. on March 28 and April 1.

The first hearing on Monday, March 24, will center on the Federal estate tax and its impact on the American family.

Although a number of other bills amending various estate and gift tax provisions have been introduced, the scheduled hearing will concentrate primarily on S. 1825, S. 1984 and S. 2220.

S. 1984, introduced by Senator WALLOP, would also remove the limitation on the marital deduction and raise the annual gift tax exclusion from $3,000 to $6,000.

Senator NELSON, together with Senators BAUCUS, HEINZ, and STEWART, have introduced S. 2220, the Family Business Protection Act of 1980, which is designed to aid the continuation of family businesses during the transition period following the death of a key family member. Senator NELSON, along with Senators PELL, ROTH, CRANSTON, PACKWOOD, MELCHER, THURMOND, and JEPSEN have also introduced S. 1825 which would increase the unified estate tax credit to $70,700, thereby increasing the estate tax exemption to $250,000.

The following witnesses have been scheduled to testify at the hearing:

The Honorable Donald Lubick, Assistant Secretary for Tax Policy, Department of the Treasury.

A panel consisting of: James Powell, chairman, tax committee of the National Cattlemen's Association; Steven Wolf of the National Family Business Council; Frank S. Berall, cochairman, estate and gift tax committee, American College of Probate Counsel; Dave L. Cornfeld, vice chairman for publications of the American Bar Association's tax section; J. Thomas Eubank, last retiring chairman of the American Bar Association's real property, probate, and trust law section; and Edward C. Halbach, Jr., chairman-elect of the American Bar Association's real property, probate, and trust law section.

It is expected that the panel of witnesses will appear on behalf of themselves rather than as representatives of their organizations. If public interest in this area of law is sufficiently great, the subcommittee may consider an additional morning of hearings.

The subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be mailed with five copies by Monday, April 1, 1980, to Michael Stern, staff director, Committee on Finance, room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. BUMPERS. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate today to consider legislation to provide grain embargo relief to the American farmer.

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

SUBCOMMITTEE ON MANPOWER AND PERSONNEL

Mr. BUMPERS. Mr. President, I ask unanimous consent that the Subcommittee on Manpower and Personnel of the Committee on Armed Services be authorized to meet during the session of the Senate today to hold hearings on the President's proposal to require the registration of women under the Military Selective Service Act.

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

ADDITIONAL STATEMENTS

HAVE ANOTHER ARSENIC

● Mr. HUMPHREY. Mr. President, the Wall Street Journal recently analyzed the President's so-called anti-inflation initiatives and found his program to propose little more than further increased taxes. As the Journal correctly points out, this Nation's fiscal policy must stop the drain of our resources from the private to the public sector. Until this essential policy is followed, our economy will struggle under the double burden of inflation and slowed growth.

I submit the article for the RECORD. The article follows:

HAVE ANOTHER ARSENIC

Predictably enough, we suppose, inflation reaching a "crisis stage" has become the latest excuse for raising taxes.

To be sure, President Carter proposes, all the while talking of "pain," to trim the fingernails of the federal budget. But consider the context of this budget-cutting rhetoric: Mr. Carter wants to cut a budget he billed as "prudent and responsible" when he announced it less than seven weeks ago. The change is necessary, he explained, because of "rapid changes in world events and economic prospects." Translation: The voters looked again at Chappaquiddick.

The details of the cuts, while already discussed with congressional leaders, will be made public "by the end of the month," which is to say, after the Illinois and New York primaries. In any event, the proposed cuts come to $13 billion, little more than a third of the *overrun* in the current year's budget. The administration rejected the one big-ticket item it considered, a recalculation of the consumer price index that would slow the growth rate of government transfer payments. The budget director explained that the change could not be legislated in time for the Social Security benefit increase for July; so forget it, though most of the other proposals affect the fiscal year starting in September.

In fact, only $2 billion will be cut from the current year's budget, which covers the time period in which the Volcker attack on money creation and inflation will succeed or fail. The $13 billion will be cut in the next fiscal year, which is to say, after the November election. Yes, we're told, the first three Carter anti-inflation programs faded away, but this time he's really serious.

The new tariff on oil, meanwhile, was effective at midnight last Friday. The administration that has been telling us for three years that inflation is caused by high oil prices now proposes to fight inflation by raising oil prices. One hopes, without much confidence, that at least we won't have to listen again to the oil-price theory of inflation. The $10 billion in revenues from this tax will be "held in reserve" for unforeseen contingencies, such as the administration changing its mind about the spending cuts after the election.

In addition to the oil tariff, the administration proposes to raise perhaps $3 billion in revenues through the nuisance of withholding taxes on interest and dividends. Also, the new reserve requirements on credit cards, money market funds and so on are a tax on financial institutions. Like other taxes, these will be passed along to customers. Like the other taxes, they will raise costs, diminish standards of living and add to the political constituency for more inflation.

All of which leaves the real battle against inflation back where it was a week ago: with the Federal Reserve and Chairman Volcker. The efforts to restrain money creation seem to have met with some success these past few weeks, at least so to judge by the strength of the dollar in the foreign exchange markets and the fall in the price of gold. But because this credit restraint has been accompanied by the additional credit demands of a large federal deficit, the price in high interest rates has been considerable.

The soaring interest rates threaten to destroy some of our financial institutions, in particular the thrift institutions and small banks. This is the reason for the split discount rate, 13 percent for small banks and 16 percent for large ones. While we sympathize with the Fed's plight, both the split discount rate and new reserve requirements are gimmicks, at best temporarily useful. What the Fed needs is a supportive fiscal policy to ease government demand in the credit markets. The crisis is now, and the relief is promised, if you choose to believe, after September.

Now, we hope Mr. Volcker can stay the course, and if he succeeds in moderating the inflation rate as the year progresses, no doubt Mr. Carter will rush to claim credit for his new program. But even if monetary policy single-handedly does start to curb inflation, fiscal policy will be draining resources from the private sector and imposing new disincentives on production and investment. If the price is not paid in inflation, it will be paid in slower growth in the years ahead.

So laying aside the transparent political expediency, the most distressing part of the Carter program is the knee-jerk tax impulse. The taxes in Mr. Carter's new budget come atop some $40 billion in tax increases already built into his old budget. Our economy's biggest problem is high and increasing rates of taxation to support runaway government expenditures. Yet for each symptom, the prescription is the same: An energy problem, increase taxes. A Social Security problem, increase taxes. An inflation problem, increase taxes. Falling hair, shortness of breath, internal bleeding, Have another arsenic.●

TRANSPORTATION FORECASTS AND THE 1980s

● Mr. BAUCUS. Mr. President, I would like to submit for the RECORD a recent article on transportation that appeared in the Milling and Baking News. The article describes one expert's view of what the transportation network of this country will look like in the 1980's. I found the article informative, especially in light of my State's transportation needs.

Although the article offers no panacea for revitalizing our transportation system, it does reflect a great deal

of thought—thought that provokes as well as begets new thoughts.

The article follows:

A FORECAST FOR THE 1980'S

NEW YORK, January 28.—In an analysis of "Transportation in the '80's," John V. Pincavage, a research authority at Paine Webber Mitchell Hutchins Inc., declared, "Intermodalism will be key to future success in the freight business, as flexibility of the truck is married to the more energy-efficient, longer haul railroads, allowing the cost of service to reflect the efficiencies." He noted, "Capital will develop as an ever more important competitive force because big multimodal transportation conglomerates will need to be created."

From Mr. Pincavage's point of view, the U.S. transportation distribution system by 1990 "will look very different than it does as we begin the decade." He said, "The pre-1980 system was founded on cheap and abundant liquid energy and tightly regulated transportation subgroups. These fundamental conditions have, or are, changing radically, creating a new competitive environment with opportunities for some and problems, perhaps extinction, for others."

CLIMBING FUEL A MAJOR FORCE

He listed the following as the "main differences" between the old transportation/distribution environment and what will unfold in the new decade just begun:

Fuel prices are certain to be unstable and increase at a pace faster than general rate of inflation. By the mid 1980's, diesel fuel is likely to be triple the current 80 cents a gal as the price per barrel of crude moves toward $50 a barrel from $26.

Fuel availability will be more uncertain given our inability to control the OPEC producers. This tight supply/demand relationship, which may be managed by OPEC, will keep spot prices headed higher and put more oil in the spot market and less under contract.

Transportation regulation will be less, as more legislation is passed. The barriers to competition between modes will crumble before the absolute need to create a more energy efficient distribution system. Intermodalism is the key description of the trend of transportation in the 1980's.

Capital will be an increasingly important competitive factor as larger units are put together to achieve the desired efficiencies.

Learning to work with a labor force that is older and more job-security conscious in a society with lower expectations.

A real economic growth rate of 2-3 percent annually in the U.S. compared to approximately 3-3.5 percent in the 1970's. The 1980's will be a period where inefficiencies in all areas of business become too costly to continue and will be terminated. There will be a tremendous amount of corporate restructuring with many traditional industries in contraction. New industries based on new energy saving and information processing and communications technologies will be emerging with different distribution needs. This argues that growth of shipments that are highly valued and smaller should accelerate faster than the overall growth rate.

REDESIGN FOR CURRENT SYSTEMS

As a result of that environment, Mr. Pincavage presents the following overall view of both opportunities and risks:

Transportation is going to cost more and the rate of increase may outpace overall rate of inflation because of ever-increasing energy costs.

Current sophisticated shipper distribution systems will have to be redesigned with more emphasis on reducing rate of acceleration of transportation costs. Transportation costs are likely to advance faster than the cost of money used as working capital to finance inventories. The current distribution systems of sophisticated shippers have been designed to reduce the amount of working capital tied up in inventories because the cost of money has been greater than the cost of transportation. Thus, a high service level, while more expensive than slower modes, kept inventories lower than a slower system (i.e. truck vs. rail).

Intermodal operations offer a method to hold the short haul (under 400 miles) flexibility of the truck with the long haul efficiencies of the railroads. The railroads appear to be the most energy efficient mode, meaning that their relative advantage grows each time fuel prices increase.

The breaking down of artificial barriers to intermodal competition and ownership is beginning, which should allow railroads to enter the trucking industry, facilitating intermodal development.

Ability to raise capital to finance acquisitions and equipment purchases to allow intermodal expansion or to achieve optimum energy efficiencies is becoming critical competitive factor. It will be even more critical as larger units are aggregated which have the capital resources compared to smaller competitors that do not.

MORE COAL, GRAIN MOVES BY RAIL

Following up on this analysis, Mr. Pincavage said he expects many railroad to show above-average (two to three times the 2 to 3% real rate) real growth and to regain some market share in the 1980's for several reasons. Among the major ones of these is the following:

"Increased carriage of commodities like coal and grain over long distances to utilities or ports. Coal has to play an important part in reaching less dependence on outside energy sources. Grain or foodstuffs will be important to help reduce our balance of payments deficits."

Other elements of changes in rail transportation envisioned by Mr. Pincavage include an increased share of general merchandise traffic, including full truckload lots of general commodities, via piggy-backing; increased share of market from railroads entering the trucking business with use of trucking as an extension of the railroads to serve new areas beyond truckage rights where connecting service is poor; increased efficiencies because of the elimination or abandonment of many miles of underutilized track and absorption by healthy railroads of profitable operations of weaker railroads.

SLOW FOR MERGER OF RAILROADS

"Large mergers within the railroad industry may or may not take place," he said. "At least for the first half of the decade, absorption of midwest bankrupts and perhaps a small merger are the most likely outcomes. The latter half of the decade may see some larger railroad mergers, as the need to control larger geographic regions, more traffic and more capital becomes more apparent."

He predicted that railroads "should become the operating core of the emerging transportation conglomerates because of their possession of the most energy efficient means to move large traffic quantities to inter-city lanes."

RAILROADS TO OWN LESS EQUIPMENT

Another Pincavage forecast included the following:

"The railroad of the future may not own much of its equipment, perhaps only locomotives and cabooses. Flat cars are supplied by Trailertrain, tank cars by lessors, coal cars are shipper or utility owned or leased, hopper cars shipper owned or leased, and the box cars are likely to find diminishing need as intermodal operations develop."

Along that line, he said transportation companies will have to spend $200 billion to $300 billion during the 1980's for new and replacement equipment, assuming a 2-3% real GNP growth rate and an average 7-8% rate of inflation for the period. "There is little question that most transportation subgroups will be unable to generate this much capital from internal sources, assuming past returns on investment continue, and thus will have to boost debt and/or lease equipment," he said. He broke down the expected capital spending in the decade as $65 billion to $75 billion for railroads, $60 billion to $70 billion for trucks, and $70 billion to $90 billion by airlines.

CONGLOMERATE TO HANDLE TOTAL NEEDS

He concluded by setting out the following characteristics as being likely for the "supermodal transportation conglomerate" of 1990:

The ability to handle the total transportation needs of a shipper allowing the shipper to choose the service level and to pay the value of that service. Next day service equals a high price, one week a lower price, and quantity discounts for larger volume regular movements.

The ability to cover a market area extensively and to control pickup and delivery operations tightly so that many small shipments can be efficiently consolidated into full trailerloads for inter-city rail movements where feasible.

The ability to control large complex operations with computerized management information systems.

The ability to raise large amounts of capital to finance the newest equipment. Minute improvements in energy efficiency and productivity will yield big returns.●

THE AMERICAN WOMEN'S 1980 EXPEDITION TO DHAULAGIRI

● Mr. WALLOP. Mr. President, the State of Wyoming has always been proud of the leadership and courage its women have displayed throughout history. The partnership role of ranch and farm wives in settling the West laid the foundation for Wyoming to become the first Territory and State to give women the right to vote. Wyoming was also the first State to elect a woman Governor, Nellie Tayloe Ross.

The women of Wyoming continue to take a leadership role in this country as witnessed by the two Wyoming climbers who will join six other women to form the American Women's 1980 Expedition to Dhaulagiri. Lucy Smith and Cyndy Simer of Lander, Wyo., will travel to Nepal this October in an attempt to climb the sixth highest peak in the world. If they reach the summit of Dhaulagiri, it will be the highest peak any American woman has ever climbed. They hope to take a route to the summit that has never been successfully climbed, even though several attempts have been made in the past.

The State of Wyoming is widely known for the beauty of its splendid peaks. For these young women, the mountains of our State have provided the training ground for the skills that will take them to the heights of the Himalayas. Cyndy Simer and Lucy Smith have not only learned their mountaineering skills in Wyoming, but for several years they have taught mountaineering at the National Outdoor Leadership School.

Mr. President, the American Women's Expedition to Dhaulagiri will soon approach a peak and challenge that has never been attemoted by women. Over the duration of their summit attempt, they will face physical difficulties that people formerly believed were to be met

only by men. But the awesome dangers and hardships involved with this expedition transcend issues of sex or experience. The courage and resolve demanded of the members of this expedition provides an example of leadership for men and women alike. I am sure my colleagues in the Senate will join me in commending these Wyoming women and the other members of the American 1980 Expedition to Dhaulagiri. Our prayers will be with them for a successful climb and a safe return.●

PAUL CRAIG ROBERTS ON FOREIGN POLICY—1

● Mr. HATCH. Mr. President, the debacle in Iran has made it indisputable that in the last few years the United States has suffered a geopolitical defeat of staggering magnitude—what the Russian writer Alexander Solzhenitsyn has described as our loss of the Third World war.

Aspects of this defeat have been explored recently in an incisive series of related articles by Dr. Paul Craig Roberts, associate editor of the Wall Street Journal.

In the article I am presenting today, Dr. Roberts examines the current situation in Iran, points out the direction that the Russians' long-term strategy and military doctrine of massive force implies they will go, and concludes that our neglect of military forces and our irresponsible foreign policy has left us with "no good options."

I ask that Dr. Roberts' article entitled "Iran, Afghanistan, and Soviet Military Doctrine," be printed in the RECORD.

The article follows:

[From the Wall Street Journal, Jan. 16, 1980]

IRAN, AFGHANISTAN AND SOVIET MILITARY DOCTRINE

(By Paul Craig Roberts)

The Soviet invasion of Afghanistan clearly surprised U.S. policymakers. Why would the Soviets risk so much—grain and technology, their favorable relations with the "Third World," and the lull of detente that was gradually eroding alliances against them—for the sake of a land-locked mountain kingdom of troubles?

This puzzle has led to all sorts of speculations. Some State Department officials, embarrassed by the event, concluded that this could not have been the work of Soviet leader Leonid Brezhnev, a man committed to detente and SALT. Therefore, he must have lost control to younger hawks who took advantage of his age and illness. Others less gullible concluded that the Soviets, misled by signals of weakness from President Carter, miscalculated and seriously misjudged the response to such naked aggression.

That is certainly a possibility. But on the other hand it may be that it is the U.S. that has miscalculated.

Key elements of the Afghan roadways were built by the Soviets, who some years ago took care to literally pave the way for their recent invasion. Other roads lead west into Iran, and it is only 300 miles across almost empty country from the Afghan border to the strategic Strait of Hormuz through which most of the West's imported oil flows. In contrast, from the Soviet's northern border with Iran it is a much longer distance to the strait through more heavily populated and more difficult terrain.

The Soviets have another opportunity in the Baluchi dissidents whom they have sponsored. Baluchistan overlaps areas of Afghanistan, Iran and Pakistan, and a separatist movement could invite the Soviets in.

If the Soviets were to seize Iran, the Persian Gulf would become, de facto, Soviet territorial waters and no oil could flow unless the Soviets permitted it. Under such conditions the Soviet Union could reasonably expect Western Europe and Japan to accommodate its foreign policy, and they could make it very uncomfortable for any President who tried to put teeth into a U.S.-Chinese military alliance. They would have achieved a long-sought goal: "to lay down the direction of international politics," as Soviet Foreign Minister Andrei Gromyko has put it.

When you look at their opportunity in terms of Soviet military doctrine, it makes you wonder what the Soviets might do next. Unlike our doctrine which emphasizes deterrence and the controlled use of military moves for political signaling purposes, Soviet doctrine emphasizes the primacy of the offensive, stunning surprise and lightning attack, which has as its major aim the prevention of an effective response by opponents. As Jeffrey Record, defense aid to Senator Sam Nunn, has said in a Brookings Institution study, "Sizing Up The Soviet Army," "the Soviet army appears eminently capable of responding to the demands of its doctrine."

Even against NATO forces Soviet doctrine postulates its armored and motorized rifle divisions to reach the Rhine in less than 48 hours. Against disintegrated Iranian forces, tied down in rebellions by non-Persian nationalities, Soviet forces could reach the Strait of Hormuz before the U.S. could react.

Last Friday The New York Times reported that "Soviet military units appear to be concentrating their efforts on securing newly established bases and staging areas, and clearing highways and other land routes west toward Iran." More recent UPI reports say that Soviet forces are assembling in Afghanistan near the Iranian border. According to a UPI dispatch from Kabul, Western correspondents have been given suspicious reasons for repeated cancellations of flights to Herat, and have been unable to reach the site to confirm the suspected activities.

If these reports are accurate, they explain why the Afghan guerrillas are having such an easy time in the northeast regions. The guerrillas are simply not the focus of the Soviet invasion.

The reports also cast some speculative light on why the Soviet Union is positioning itself as Iran's protector and on the possible reasons for the takeover of the U.S. embassy in Tehran. If the hostages were to be tried or killed, the President would have to move, if only verbally, toward a military reprisal or be booed out of office, and the Soviets could enter Iran on the pretext of protecting the country from an American invasion.

If events in days ahead lend any credence to these speculations, it could mean that an American policy of even greater restraint toward Iran is necessary whatever the provocations. The President has lost the option of any decisive action against Iran in the name of the hostages. By dilly-dallying in the UN, President Carter gave the Soviets two months to position themselves in Afghanistan to seize Iran once any belligerent act on our part provides a pretext.

Of course the Iranians and the Carter administration could figure out what's going on before the Soviets have a chance to pull it off, and work together to defuse the situation. But at this point prospects for such cooperation don't look good. It has been a year since the shah departed, a long time for the KGB to do its work. It's not clear whose hands the hostages are in, or how Khomeini could reverse the anti-American basis of his revolution.

Another cardinal rule of Soviet doctrine is not to stand by and lose the advantage after you have gained it. Poised on the West's jugular, the Soviets may not let go. On Nov. 30, The Jerusalem Post reported extensive Soviet military maneuvers "in which some 10,000 airborne soldiers were transferred from Soviet territory via the Middle East to Ethiopia and back, quickly and successfully." If such a maneuver took place, it obviously was a test of timing and strike capability beyond what it would take to seize Afghanistan.

If we should come out of this crisis whole and these ominous prospects turn out to be only possibilities on paper, there is nevertheless a lesson to be learned. Our position in the world is too dangerous for us to place more trust in Soviet words than in American power. The three year drift in Carter administration foreign policy has left us dangerously exposed, and left the President with no good options.●

FIFTIETH ANNIVERSARY OF THE INAUGURATION OF HERBERT HOOVER TO BE THE 31ST PRESIDENT OF THE UNITED STATES

● Mr. HATFIELD. Mr. President, last summer, Martin L. Fausold, professor of history at the State University of New York, directed an 8-week seminar at the Hoover Presidential Library on the subject of reform and the Republican era of the 1920's. The existence of the seminar, which was sponsored by the National Endowment for the Humanities, is another example of the widespread interest among scholars in a reassessment of the policies of President Hoover.

Professor Fausold has submitted a short essay, summarizing the findings of the seminar, for publication as part of the series commemorating the 50th anniversary of the inauguration of Hoover in 1929. Running through his analysis of the individual papers is a discussion of the balance between liberty and order which were adopted by the Presidents of this era. Fausold finds that Hoover's own balance, favoring liberty, was inadequate for dealing with the Great Depression.

Mr. President, I request that Professor Fausold's essay, and a brief biographical sketch of the author, be printed in the RECORD.

The material follows:

BIOGRAPHIC SKETCH—MARTIN L. FAUSOLD

Born: November 11, 1921.

Education: A.B., Gettysburg College, 1945; D.S.S., Syracuse University, 1953.

Professional experience: State University College, Cortland, New York: from assistant professor to professor, social studies, 1952–58; State University College, Geneseo, New York: professor and chairman department, 1958–1965, professor history and government, 1965–1970, professor of history, 1970.

Memberships: American Historical Association; Organization of American Historians.

Publications: Author: Gifford Pinchot, Bull Moose Progressive, Syracuse University, 1961; J. S. Wadsworth, Sr. and the Meat Inspection Act of 1906, New York Hist., 1970; Hoover Farm Policies, Hoover Presidential Library, 1975; James W. Wadsworth, Jr., The

Gentleman from New York, Syracuse University, 1975.

Editor: The Hoover Presidency: A Reappraisal, State University, New York, 1974.

HERBERT HOOVER, THE REPUBLICAN ERA AND AMERICAN REFORM

To this date the 1920s is the Republican Era of the 20th Century. No other period saw such Republican domination of the three branches of national government and a majority of the state houses. As if to underscore that fact, Harding's 1920 popular majority of 60.2% was the largest in the nation's history; the Republican margin in the House of Representatives was the largest in its party's history; the Supreme Court would shortly be under new exclusive Republican control; and Republicans would dominate state governments in numbers not equalled in the 20th Century. Republicans, many of whom had defected to the Progressive Party in the prior decade, swarmed home in 1920. And, Democrats retreated to their southern enclave from where they would do battle in the 1920s, not just with Republicans, but often with Democrats from the urban North.

To most historians the Republican Era is not congruent with reform—even considering the long recognized impact of western insurgents in the party, and the more recent revisionists views of Harding, Coolidge, and especially Hoover. The scandals of the Harding Presidency and the association of the Depression with Hoover have been almost too much to overcome. Both seemed to make the Era the converse of reform.

The categorization of the 1920s as the converse of reform was an inclination even among twelve National Endowment for the Humanities Fellows convened in West Branch, Iowa, for Purposes of relating the Republican Era to American Reform. There, in an eight weeks Summer N.E.H. Seminar at the home, museum, and library of the best-known political figure of the Era, Herbert Hoover, the problem of relating the Era and reform was compounded by that of defining reform. In a pause from research and deliberations to define American reform a splendid chaos ensued. Some declarations about reform were: "Societal responses . . . to disequilibrium" in the form of "consensus"; reform is that which "admired historians" have so often considered—usually a manifestation of presentism; reform has been "forging a polity which has promoted the falsehood that capital and labor shared a common interest"; "twentieth century reform . . . proceeds from Cleveland's base of . . . a neutral state to increased degrees of statism"; American reform "seeks . . . to secure comparatively limited goals"; reform is multifaceted—a series of impulses: democratization, rationalization, purification, etc.; American reform is a "slight alteration of older values and institutions"; ". . . reform will not violate the interests . . . of groups and institutions which wield disproportionate economic and political power"; reform is an attempt by government to equate "labor and business"; American reforms are elitist causes; reform is the revolution from voluntarism to coercion. And, so the definitions went—reflecting the gamut of mentors and historical schools; new left, liberal, conservative, Marxist, consensus, radical. Nor, over the summer, was the confusion of the definition allayed by the superb historians who graced the many seminar sessions with their presence and conversation.

It is ironic that as the Fellows spiritedly disputed the definition of reform, their researches were in fact defining reform and relating it to the Republican Era. And, in the process, they were answering the plea of one of the Fellows that "we ought to try to develop a definition of reform that applies across time"—"a definition that provides flexibility for debate within its parameters."

The Seminar papers which focused on important domestic policies of the Republican Era manifest a search for balance between liberty and order. This, then, becomes their definition of reform, a definition broad enough to bring out long neglected continuities running through history, including the Progressive, Republican, and New Deal eras. While such an analysis of the evolving attempts to better America during its cyclical swings from liberty to order might suggest something of George Bancroft's view of the divine destiny of America, it connotes more political reality. As periods of liberty ("Critical", "Jeffersonian", "Whig", "Social Darwinist") were followed by periods of order ("Hamiltonian", "Jacksonian", "Lincolnian", "New Nationalist") they reflected political demands to draw on the goodness of the past in creation of a new society better than had existed in the past, to reform America. Of course, such analysis does not rule out other kinds of political motivation. But it emphasizes that a majority of Americans believed they were correcting wrongs and meeting modern needs with new methods of government as the nation moved back and forth from liberty to order.

The tensions in this process clearly manifested themselves within Progressivism. Wilson was elected President on a New Freedom platform, but realized that New Nationalism was the "order" of the day; and pragmatically reflecting the peoples' will, he soon returned the nation to the New Nationalist track. Then, during World War I, order prevailed—order, in this case, not only to restore America to the goodness of its past, but to save and reorder the nation and the western world.

With World War I begins the story of the Republican Era and American Reform. For the order that won the war was perceived by many leaders in the decade that followed as having been a balancing of order and liberty, a successful combination of elitist direction and voluntary cooperation. This was particularly the case with the structures that Herbert Hoover had created as wartime food administrator. And Hoover would attempt during the Republican Era to continue this balance of liberty and order, first as Secretary of Commerce and then as President. Few historians have pointed up the relationship of World War I leadership and the Republican Era as has Ellis Hawley of the University of Iowa. The Seminar had the advantage not only of his recently published monograph, "The Great War and the Search for a Modern Order," but also of his presence, with other senior historians, in the dialogue on the Republican Era and American reform.

Reform here—as it has emerged from the Seminar—is taken beyond Hoover's associational Progressivism and liberal corporatism and is defined in more universal terms of time and parameters. By transforming Hoover's perceived World War I and 1920s corporatist harmonizing of the public, capital, and labor to a balancing of liberty (the cooperation of the three segments) and order (the regulation of business and labor by government) the reform of the Republican Era can be analyzed in a broader historical perspective.

The seminar papers point up, time and again, how Hoover attempted to use the machinery of government to aid the people, usually through their various and sundry organizations, to rationalize and stabilize their conditions.

James Cebula addresses the important subject of Hoover's relation with labor, beginning with his leadership in Wilson's second Industrial Conference in 1919 and ending with his signing of the Norris-LaGuardia Anti-Injunction Act on March 23, 1932. His paper demonstrates that while Hoover's corporatist/associational approach was both sympathetic and helpful to labor's organizing efforts, including its right to strike, his efforts on behalf of capital vis-a-vis labor seemed far more strenuous. Also illustrative of Hoover's support of capital was his massive program as Secretary of Commerce to eliminate industrial waste through standardization and simplification. William Tanner, who analyzes through the first half of the decade the work of the newly formed Division of Simplified Practices, notes how the efforts faltered at the decade's midpoint, and concludes that the savings accomplished by the program probably accrued more to the advantage of capital than to that of labor and the consumer. William Robbins also focuses on a similar phenomenon. Analyzing the corporatist/associational relationship between Hoover's Commerce Department and the lumber industry, he demonstrates the ends to which government went to aid an industry irrationalizing its economy without government regulation. In the end this cooperative effort failed, Robbins concludes, because it did not bring under control "the blight, waste and exploitation" caused by an "impersonally operating market." David Lee's paper on the relationship between Hoover's Commerce Department and the fledgling aviation industry reconstructs one of the most successful examples of government-industry cooperation during the period. The success, he believes, was largely attributable to government's willingness, in this rather isolated instance, to carry its aid and regulation much further than Hoover was usually willing to go.

Carl Krog's paper, "Organizing the Consumption of Leisure," shows a successful continuity of the federal government's recreation and conservation activities from Hoover's Commerce Secretaryship to his Presidency. But, here, consistent with Hoover's approach of balance, regulation was eschewed for the government's offer of expert service. Larry Grothaus analyzes another kind of Hooverian activity, his efforts as Secretary of Commerce and President to improve the conditions of American blacks. Here the same formulas were applied, the results being that Hoover achieved little credit for some rather radical proposals and was often criticized for an "old-fashioned" and rigid approach to black problems. David Horowitz's paper is one of two examining congressional responses to Hoover's ideas and policies. It shows how Gerald P. Nye, an important western Senator who was rather representative of insurgent Republicans from the region, reluctantly accepted Hoover's solutions, largely because the President usually had the political upper hand.

The remaining papers deal with Herbert Hoover during his Presidency or post-Presidency. Roger Corley's examination of Hoover's judicial appointment procedure reveals how an apolitical "reform" effort proved naive and how Hoover was forced into a political role in which he was uncomfortable. The paper illustrates Hoover's lack of political pragmatism. Roger Lambert's paper on the drought in the mid- and south-West shows the ultimate failure of Hoover's concept of balance—his inability to carry government to the point of federal grants for the feeding of destitute humans—although he supported relief in the form of seed grants and animal feed. Bernard Klass also examines the "Corporatist" failure in agriculture in his portrayal of the Federal Farm Board. He shows, however, that the experience of the Board, with its stabilization corporations and its campaign for voluntary acreage reduction, had an important impact on the New Deal's more statist farm program.

David Porter's paper describes the Iowa Congressional delegation as a microcosm of rural America during the Hoover Presidency and the early New Deal period. He argues that the delegation was more reform minded (in a statist sense) than Herbert Hoover and

usually supported Roosevelt's New Deal reform measures. The book concludes with a paper by Nile Norton which attempts to demonstrate that Hoover's campaign posture in 1932 was closely tied to the conclusions in the Report of the Committee on Recent Social Trends—an important exception being the Committee's call for an increased "scope and role of the central government."

The papers demonstrate that in striving to balance order and liberty Hoover and his supporters were attempting to do what had not been done as strenuously before in the whole sweep of American history. Reform in the past had tended to emphasize either order or liberty, whichever seemed needed to countervail the emphasis on the other during the previous period. Post-Civil War reform was a libertarian response to Lincolnian statism. (While that liberalism was frequently perverted, the Liberal Republicans and Cleveland Democrats still defined reform in non-statist terms.) Progressivism was a search for order, mostly in reaction to the industrial chaos of the 1890s. (And, while the advocates of the New Freedom questioned the hegemony of New Nationalism, they soon became politically pragmatic and returned to the ordered approach.) When Harding was overwhelmingly elected in 1920 America wanted reform in non-statist terms ("normalcy, not political nostrums") to countervail the statism of Theodore Roosevelt and Woodrow Wilson. But, Hoover, the dominant member of the Administration, was so impressed by the ideas of harmonizing order and liberty that he administered his office and articulated his political philosophy with this harmony ever in mind. He articulated it, in 1922, in a treatise "American Individualism," which must have perplexed Warren Harding. The happiest nation, wrote Hoover, is not that which governs least but that which governs most. But, had Harding read on he would have been pleased that Hoover's purpose for "the most government" was to pursue individualism and economic freedom, albeit an economic freedom tempered by "the vigorous arm of government." In practice, Harding gave Hoover great latitude to try to effect his New Federalism, for balancing order and liberty. And for his own reasons Calvin Coolidge, though he "grunted and grumbled," was almost as lenient toward Hoover.

As the papers indicate, Hoover's New Federalism seems to be working—at least in the public perception. His large 1928 Presidential plurality was viewed almost universally as a national vote of confidence in his system. In fact, however—as noted also in the papers—Hoover's New Federalism frequently did not work. Before the Great Crash, the "vigorous arm of government" frequently meant favors for capital over labor, and after the Crash, Hoover's formulas for preserving individualism clashed with popular demands for using the state to deal with economic distress. Within certain bounds, Hoover's New Federalism allowed him to create new instruments of government—to wit, the Federal Farm Board, the stabilization conferences, the President's Emergency Committee on Employment, the President's Organization on Unemployment Relief, the Reconstruction Finance Corporation, public works administration, and the Debt Moratorium machinery. But it blocked those kinds of action that he regarded as threats to the balance of liberty and order. Franklin Roosevelt would have no such conpunction. "If we are to go forward," the new President declared on March 4, 1933, "we must move as a trained and loyal army willing to sacrifice for the good of a common discipline. . We are ready and willing to submit our lives and our property to such discipline, because it makes possible a leadership which aims at a larger good."

Taken as a whole, these papers illustrate Herbert Hoover's attempts at harmonizing the great tenets of liberty and order—at implementing a New Federalism, which revisionist historians have called associationalism or corporatism. The papers also place the Republican Era in the context of a larger historical pattern of evolving and changing reform activities. More important, while the papers recognize the depth of Hoover's reform thought and action they also recognize the limitations—first, that his conceptions of a new social harmony tended to favor large capital over small business, American labor, racial minorities, and consumer interests; and second, that when in the crisis of Depression the people demanded order to relieve their economic conditions, Hoover's concept of balancing order with liberty proved inadequate.

(Martin L. Fausold, Professor of History, State University of New York, Geneseo, New York; Director, Seminar, National Endowment for the Humanities, Herbert Hoover Presidential Library, Summer, 1979.)●

ADDRESS BY SENATOR HEINZ ON THE NEED FOR A NATIONAL EXPORT POLICY

● Mr. STEVENSON. Mr. President, my colleague from Pennsylvania, Senator HEINZ, recently addressed the Pittsburgh Chamber of Commerce on the need for a national export policy. His remarks identify a number of areas where new legislation is needed. The Senate Export Caucus, which now has 65 members, will be drawing together a number of proposals into a National Export Policy Act. As an active participant in the caucus and as ranking member of the International Finance Subcommittee of the Senate Banking Committee, Senator HEINZ is making a major contribution to U.S. export policy.

I submit the Senator's remarks for the RECORD.

The remarks follow:

REMARKS OF SENATOR JOHN HEINZ

Seventeen years ago, President John F. Kennedy called for sacrifice in his State of the Union Address. He said, "The cost of freedom is always high, but Americans have always paid it."

Tonight in his State of the Union Address, President Carter will discuss the current cost of freedom. A few days from now he will add meat to the bones of tonight's speech by submitting his budget for fiscal 1981. That budget will probably propose a deficit of around $16 billion, a reduction from this year's anticipated deficit by almost 50%.

What that budget will not tell you, however, is that last year's trade deficit is $9 billion larger than the proposed budget deficit.

What it will also not tell you is why. It will not show you that exports represent only 7% of our GNP, less than half the level of most industrialized countries.

Nor will it tell you that our export profile is even worse if you leave out agriculture, and is a complete disaster from the standpoint of small business.

These facts are important. The administration claims we have an export policy in this country. That our trade picture has improved.

In fact, our export policy is as muddled and indecisive as our foreign policy, even though our export options are clear and the resources are there. We can understand, though not approve, the President not knowing what to do in Iran. There is no effective government. There is no rational person in control. There is no excuse, though, for our lack of an export policy, a policy which makes such good economic and political sense.

Twenty-five billion dollars or a 14 percent increase in exports—would eliminate our trade deficit, strengthen the dollar, and boost our economy. Since every billion dollars of exports creates 40,000 to 50,000 jobs and since every 1 million jobs produces $22 billion in tax revenue, that 14 percent increase would give us a federal budget surplus of $8 billion and eliminate all existing cyclical unemployment.

But equally important are the political consequences. Expanding exports enhances our presence and position in the world. A presence that has been weak and uncertain for the past 3 years, as the President has practiced crisis management rather than leadership.

It is axiomatic that business needs certainty. A stable international climate—which we certainly don't have now—is essential to the expansion of trading relationships. Careening from passivity to overaction, as the President has done, sends the mixed, confused signals and creates the very uncertainty we so badly need to avoid.

In contrast, by emphasizing the continuing presence and superior quality of American products and technology in the world-marketplace, an aggressive export policy projects an image of strength and constancy.

If you need any evidence of the dramatic decline in American prestige and power in the world, just look at the price of gold in the past few months and the value of the dollar over the past 3 years.

Reversing this situation demands positive steps to promote exports. And it demands a review of the negatives. Those elements of law and policy that put our businessmen in a straitjacket. Today, I want to discuss three specific areas of concern:

Export controls.
Financing limitations.
Shortsightedness.

EXPORT CONTROLS

First and most obvious, export control problems are direct restrictions on exports for human rights or national security purposes.

I have always been a strong supporter of human rights. So are we all. But it is simply foolish and counterproductive to penalize Americans for the behavior of others. By cutting off exports we do just that. Particularly when other countries less motivated by conscience continue to sell the same products.

It makes much more sense, instead of punishing ourselves, to devise a policy that will have a real impact on the nations whose policies we are trying to affect. One such policy would restrict their products coming into our country. Without such a policy, we will continue to punish the wrong people, our own businessmen.

Recent events, however, demonstrate that the case of the Soviet Union is a special one, one where national security considerations must be paramount. The Soviet invasion of Afghanistan reminds us all that competition between superpowers is a fact of life; that threats to peace and freedom exist; and that our technology can be used against our interests by those to whom it is sold.

In these circumstances an export embargo, such as President Carter has on grain and certain high technology products, is appropriate if it meets certain criteria:

(1) It must have potential impact. The products we embargo must be important, and we must be the major producers.

(2) We must be able to protect our citizens who might be harmed by the embargo.

(3) We must have multilateral cooperation so that it is effective.

(4) We must have a goal. We must know what we want and how far we are willing to go to achieve it.

Based on hearings the Banking Committee held on January 22, this embargo has a chance of passing the first three tests. A

clearly defined goal, however, is still in doubt. The hearing showed that the administration has given little thought to the duration of the embargo; to what actions the Soviet Union might take to cause us to lift it; or to what the implications of ending it would be.

This lack of clearly articulated policy goals is typical of the Administration's foreign policy, and it reminds us that we should all be alert to the real danger of overreaction now to make up for non-action in the past. I am sorry to have to say it, but the Carter Administration has ignored every opportunity it has had for the past 3 years to take meaningful action against their attempts to disrupt international stability and gain advantage through the use of force. The Administration has even rationalized for the Soviets, and thus proceeded to unilaterally throw away many of our best defenses. The result has been a foreign policy so naive and weak that the Russians—and others—are encouraged to take risks, and we have few options remaining to us.

The Soviets must understand that aggression entails both risk and high costs, so at this time of crisis, responsibility demands that we support the President's actions. But, at the same time, we must recognize the weakness of will that has led to them, and we must insist that our government take firm control of the future.

Beyond the recent embargo, our other export control activities have been like our foreign policy: ambiguous, uncertain, and plagued with delays in important cases. Our vacillation discourages our customers, encourages our competition, and sends no reliable signal to our adversaries.

In considering controls, we must also remember that the United States no longer has a monopoly on advanced technology. In fact, other nations have been growing faster in research and development as well as in exports. This leads us to another lesson. Controls cannot be effective without multilateral cooperation—cooperation we have not been very good at obtaining.

FINANCING LIMITATIONS

Limitations on our ability to finance exports are another major restraint. Periodic reviews by ExIm Bank officials show that our competitiveness in financing rates and terms has improved, but we are still running behind some of our most aggressive competitors such as the French and Japanese.

Unfortunately, the growing fondness for government subsidies for the production and export of goods has also created a variety of predatory practices in the financing of those exports. Subsidized interest rates, exceedingly long repayment terms, and mixed credits have all contributed to repeated losses of sales by American firms.

I have been deeply troubled for some time about predatory foreign trade practices. Last spring, as many of you know, I helped write the MTN legislation, but, while the MTN tackled the subsidy problem, hopefully with some success, it made no progress at all on predatory export financing practices.

SHORTSIGHTEDNESS

In addition to these major institutional obstacles, the Congress and the Administration have also placed our exporters in a legal and moral straightjacket.

The Foreign Corrupt Practices Act, an effort to impose U.S. moral standards on the rest of the world, has not appreciably uplifted anybody else, but its vague definitions and uncertain enforcement have left American businessmen in a state of confusion.

Don Stingel, a director of the Export-Import Bank, has discussed recent efforts to impose our environmental standards on exports and pointed out that this battle may have to be fought again. As usual with this kind of law, it is not simply the concept that is necessarily at fault. Rather, it is the vague language used in law and regulation and the uncertain enforcement by bureaucrats who don't know anything about the business they seek to regulate.

We have also made it difficult for Americans to do business abroad through changes in our tax laws for Americans working overseas. One of this country's greatest assets is its people. American know-how and management skills are unparalleled, widely recognized abroad, and an important selling point for many projects. Yet as Congress has rewritten them and the IRS has interpreted them Sections 911 and 913 of the Tax Code force us to keep our people home.

Finally, we have created special handcuffs for our small businessmen. Just as small business provides the greatest potential for increased employment in this country, it also provides real potential for export growth.

But, small businessmen all too frequently lack both knowledge and resources to get into international business. Federal antitrust law discourages businesses from working together to market their products abroad. And the Federal Government provides no effective assistance to companies that want to seek out foreign markets.

The problem with all these restrictions is not just lost sales. Above all, it is the uncertainty and delays that they generate. We are sending a message to our potential customers, and that message is very simply that the United States is neither a reliable nor a serious trading partner.

This impression, which reflects ambivalence and ambiguity in our foreign policy as well as our trade policy, is growing at the very time we are facing increased threats to our competitiveness and technological superiority.

The days when American technology and workmanship were unchallenged are long gone. We now have to fight for every export dollar against competitiors who often are as good as we are and are also willing to bend and break the rules to their advantage.

These challenges require a new attitude and some new tools. And there are a number of us in the Congress ready to provide them. The Senate Export Caucus led by Senators on the appropriate committees who are concerned about exports, now has 65 members. We are now hard at work reviewing legislative options. We plan shortly to announce the introduction of an Omnibus National Export Policy Act of 1980. It will be the first comprehensive attempt to remove the straightjacket and to reshape our laws, regulations, and even attitudes about trade and exporting.

I expect this bill to include provisions dealing with each of the problems I have described.

With respect to export controls, the bill should reflect a fine tuning of the new Export Administration Act Amendments which became law late in 1979. This law reduces the number of controlled items and focuses security controls on "critical technologies" that would add to the military capabilities of our adversaries. It provides for indexing the performance levels of high technology products, so that items which become so common they can be purchased at Radio Shack (such as a $12.95 microprocessor brought to my attention at a recent hearing) would not remain on the controlled list. Unilaterally controlled items will be subject to annual review, and the license review process itself is streamlined. If these changes don't work as Senator Stevenson and I intend them, you will see additional changes proposed.

Similarly, the Export-Import Bank is taking major strides forward, as Director Stingel has mentioned. We are hopeful of increasing its FY 1980 appropriation, now in conference, from $4.1 billion to $6 billion.

The Bank's 1978 reauthorization gives it authority to offer mixed credits to meet foreign competition. The Bank has been cautious in using this, and we would like to see it used more in the future.

I have been working closely with a group organized by the National Chamber of Commerce to develop two new initiatives to broaden the Bank's authority. One will set up a special fund for higher risk countries which lack access to normal credit markets. The other will give the Bank additional resources to fight the predatory tactics of others. These measures should be part of the omnibus bill as well. They will help create a stronger Bank and a freer, healthier competitive climate.

Other legislation now being revised will permit businesses to group together for export purposes without all of the restrictions currently applied to such associations. It will provide for assistance from the government to help these new trading companies get started, so that smaller businesses will be able to market their products effectively.

The President's Export Council has strongly recommended changes in Sections 911 and 913 of the Internal Revenue Code that will make it possible once again for Americans to work overseas. I endorse those recommendations, and you can expect to see proposals embodying them. While we don't want to subsidize living abroad, neither should our law effectively prevent it.

I also anticipate the omnibus bill including changes in the Foreign Corrupt Practices Act to make it more realistic. To more clearly define the term "corrupt practice," and to clarify enforcement responsibilities. The law is uncertain and vague. As often happens, we have let our good intentions get ahead of our logic.

All these measures are signs of hope . . . That the Congress understands the importance and scope of your problems . . . That we are prepared to make export policy a matter of the highest priority . . . And that we are prepared to act on that priority . . . With the goal of giving the American businessman the resources and tools he needs to compete effectively in the world marketplace. There is no doubt in my mind that if we compete we can win. But first we must untie the straitjacket. The National Export Policy Act will represent a major step in that direction. I urge your support of it. And I assure you of my support for what you are trying to do. Together, we can and will reassert the dominance of the "Yankee Trader" in the world marketplace.●

STATE DEPARTMENT SOVIET AFFAIRS ADVISER REPORTEDLY KNOWS NOTHING ABOUT SOVIET FORGERIES

● Mr. HUMPHREY. Mr. President, Senator HELMS and I have been trying since last November to get the State Department to tell the elected representatives of the American people about Soviet forgeries which have done enormous damage to U.S. foreign policy interests around the world. We are still trying to get the briefing.

The Carter administration's reluctance to brief Senators on Soviet forgeries is contradicted by President Carter's own stated policies. In the wake of the Soviet invasion of Afghanistan, President Carter on January 3, 1980, requested that the Senate "delay consideration of the SALT II treaty on the Senate floor." The reason the President gave for this delay was to allow the President and specifically the Congress to "assess Soviet actions and intentions."

President Carter also stated that Soviet President Brezhnev had lied to him about Soviet actions in Afghanistan, and that President Carter had learned more about duplicitous Soviet intentions in the first few days after their invasion of Afghanistan than he had in the previous 3 years of his Presidency.

The American people are increasingly aware of the massive Soviet campaign of forgeries and deception directed against the United States. Because the President himself has urged the Senate to focus upon Soviet intentions and Soviet deception in all bilateral United States-Soviet relations before proceeding with the SALT II ratification debate, we are genuinely puzzled about State Department reluctance to brief Senators on Soviet forgeries.

Accordingly, Mr. President, we ask that the following letter to Secretary of State Vance, be placed in the RECORD.

The letter follows:

Washington, D.C., March 18, 1980.

Hon. CYRUS VANCE,
Secretary of State,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: Senator Helms and I have been trying for over three months to get the State Department to brief a group of Senators on Soviet forgeries designed to damage the interests of the United States. We think that your Special Advisor for Soviet Affairs, Ambassador Marshall Shulman, is the man most qualified to brief us. We therefore have requested that Ambassador Shulman brief us.

We have now been told by the State Department Congressional Affairs Office that Ambassador Shulman will be unable to brief us, on the remarkable grounds that he does not know anything about Soviet forgeries.

I have been informed, however, that about a year ago Ambassador Shulman prevented the CIA from briefing the Congress on Soviet forgeries. The reported reason he gave in disapproving the briefing was that such a briefing would adversely affect the SALT II negotiations and harm détente. Ambassador Shulman's reported disapproval of the briefing suggests at least some knowledge of Soviet forgeries on his part.

Would you please advise me about the reasons why Ambassador Shulman is unavailable to brief Senators on Soviet forgeries, and whether he blocked any previous briefing of Congress on this subject? Further, would you try to arrange a briefing for Senators on Soviet forgeries as soon as possible?

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senate.●

S. 2401—THE DEPARTMENT OF JUSTICE LITIGATION POLICY OVERSIGHT ACT

● Mr. BAUCUS. Mr. President, last week I introduced legislation which addresses an area of longstanding congressional neglect: The manner in which the Federal Government conducts litigation. As a member of the Judiciary Committee, I am concerned that Congress is becoming increasingly insensitive to the essential role of the Department of Justice in the area of Government litigation. At the same time, my experience as an attorney for an independent regulatory commission has made me sensitive to the concerns of Federal agencies in this area. In my view, a strong Department of Justice is in the best interest of the Federal Government. The growing tension between the Department and other agencies over litigation authority is counterproductive and largely attributable to inadequate oversight by Congress.

The legislation I have introduced is a first step toward improving congressional oversight of Government litigation. My bill addresses some of the current factors which have led to the fracturing of litigation authority at the Federal level.

CONGRESSIONAL DELEGATION

Congress recognized the need for the Government to speak with a single voice in legal matters when it established the Department of Justice in 1870. However, this single voice concept has never existed in practice. Exceptions have always been provided by statute, and there are presently approximately 27 agencies with some degree of independent litigation authority.

Several pieces of legislation have been introduced in the 96th Congress that would give additional litigation authority to specific agencies. The problem is that Congress examines each of these proposals within the context of the individual agency but has not examined the larger picture of Government litigation as a whole. Often the Judiciary Committees will not be aware of the impact of a bill until it reaches the floor of the Senate or House. This almost occurred when the Senate Commerce Committee recently considered legislation to increase the Interstate Commerce Commission's litigation authority. Due to the efforts of Senator HEFLIN, who is a member of both the Commerce and Judiciary Committees, this legislation was amended to retain the Commission's present authority.

S. 2401 would require the Attorney General to submit to the Senate or House Judiciary Committees a written statement on any legislation introduced which affects the litigation authority of the Department of Justice. In this way, the Judiciary Committees will be fully informed and aware of the impact of proposed legislation on the Department's authority. This would be a first step in creating a congressional structure that would more effectively review Government litigation policy.

An additional step in needed, however, which is the requirement that every piece of legislation affecting the Department's litigation authority be referred to the Senate and House Judiciary Committees prior to floor consideration by either the full House or the Senate. Two years ago, Senators Eastland, THURMOND, and KENNEDY urged the majority leader to adopt such a policy. I believe their request was a sound one; and I intend to work with Senators KENNEDY and THURMOND and the Senate leadership to revive the discussions of this proposal.

EXECUTIVE ORDERS

Most recently, President Carter has attempted to counteract the growing disorganization of Government litigation by means of an Executive order. The Executive order created the Federal Legal Council to explore a variety of issues related to problems of Federal litigation and to improve communications betwen the Attorney General and general counsels. Unfortunately, the Congress has not adequately reviewed the Executive order or monitored its implementation.

S. 2401 would require the Attorney General to report annually to Congress on efforts made to coordinate activities and resolve conflicts between the Department and other Federal agencies with respect to Government litigation. In an effort to improve oversight in this area, the Senate Judiciary Committee has scheduled a hearing for March 27 that will examine the current efforts of the Federal Legal Council.

MEMORANDUM OF UNDERSTANDING

Another important way to address the problem of Government litigation has taken the form of agreements between the Department and individual agencies. Often these memoranda of understanding determine which agency will litigate and under what circumstances. But in many instances, these memorandums of understanding tend to be ambiguous or unnecessarily complex. Consequently, a substantial degree of agency time and legal resources may be spent solely on interpretation of such memorandum. In this regard, I am aware that there are ambiguity problems with the memorandum of understanding between the Justice Department and the Department of Energy.

For the most part, Congress has had no voice in reviewing these memorandums. In some cases, specific committees have had an interest in these memorandums, but the Senate and House Judiciary Committees have not been able to insure that these memorandums are in the best interests of Government litigation policy as a whole.

S. 2401 requires the Attorney General to submit to Congress a copy of any agreement with any other agency that affects the basic litigation authority of the Department. Moreover, the bill would require that the Attorney General submit such agreements no later than 60 days prior to their effective date. This provision is not intended to provide for a congressional veto of memorandums of understanding. Rather, this provision will substantially increase congressional awareness of agreements made which affect Government litigation authority. In this way, ample opportunity will be provided for congressional consultation.

ATTORNEY GENERAL AUTHORITY

Finally, my bill provides the Attorney General with the authority to resolve all legal disputes between Federal agencies with respect to litigation authority. Curren law implicity grants the Attorney General the authority. In my view it is important to make this authority explicit. As chief legal officer of the United States, the Attorney General is best able to resolve disagreements or uncertainties about litigation authority. This provision will result in more efficient use of tax dollars and Federal legal resources by eliminating costly court battles between agencies who are trying to decide which agency has jurisdiction to litigate. The need for this statutory authority is evidenced by the findings of the President's

reorganization project study on Federal legal representation. That study found that in 1977 there were at least 150 cases filed in court where two Government agencies were litigating against each other.

I want to make clear that my bill is not offered as a panacea to Government litigation problems. Rather, this legislation represents a constructive, flexible approach to deal with an increasingly uncoordinated government litigation policy. A copy of S. 2401 follows:

S. 2401

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 "Department of Justice Litigation Policy Oversight Act".

SEC. 2. (a) Section 516 of title 28, United States Code, is amended by inserting "(a)" immediately before "Except as otherwise authorized".

(b) Section 516 of such title is amended by adding at the end thereof the following new subsections:

"(b) The Attorney General shall submit a copy of any agreement with any other agency which affects the litigation authority of the Department of Justice with respect to types or categories of cases to the Committees on the Judiciary of the Senate and the House of Representatives no later than 60 days before such agreement is effective.

"(c) Unless specific statutory authority for litigation responsibility is otherwise provided, the Attorney General shall resolve all legal disputes between two or more agencies, including which agency shall litigate an action.

"(d) No later than 60 days from the date of introduction of any bill or joint resolution which affects the litigation authority of the Department of Justice, the Attorney General shall submit written comments with respect to such bill or joint resolution to the Committees on the Judiciary of the Senate and the House of Representatives.

"(e) If, during the course of any litigation conducted by the Department of Justice, the Attorney General determines that provisions of any Act of Congress which are relevant to such litigation impede the ability of the Department of Justice to effectively represent the interests of the United States, the Attorney General shall, upon completion of the litigation, submit to the Committees on the Judiciary of the Senate and the House of Representatives a description of such provisions, an explanation of the problem, and specific legislative recommendations.

"(f) The Attorney General shall report annually to the Committees on the Judiciary of the Senate and of the House of Representatives with respect to—

"(1) the status of litigation authority in the Federal Government, including the extent to which agencies other than the Department of Justice are authorized to litigate and whether such agencies are conducting litigation by formal or informal agreement with the Department of Justice;

"(2) the efforts the Attorney General has undertaken in the preceding year and the efforts the Attorney General expects to undertake during the forthcoming year to coordinate activities and resolve conflicts between the Department of Justice and other Federal agencies, and to increase the efficient and effective operation of Federal litigation resources.".

SEC. 3. Section 515 (b) of title 28, United States Code, is amended by striking out the third sentence thereof.●

AFFIRMATIVE ACTION VERSUS EQUAL PROTECTION—IX

● Mr. HATCH. Mr. President, when the Supreme Court held that quotas were lawful in Weber, Prof. Carl Cohen, of the University of Michigan, analyzed the decision in the September 1979 issue of Commentary magazine. Since he had already exploded the majority's rationale in the June issue before the ruling came down, he adopted the technique of an exhaustive survey of the Civil Rights Act and its legislative history. The cumulative effect is devastating. It would be hard to follow Professor Cohen's argument without sharing his intellectual outrage:

To argue, as the majority does, that Congress cannot have intended to forbid all discrimination because some racial discrimination might also serve their larger purposes, does not do credit to a high appellate court . . .

Professor Cohen ends by indicating the narrowness of the Weber decision. His final words are a challenge to us all:

It may be that by egregiously misreporting the intent of Congress, and then boldly expressing their own willingness to sacrifice the interests of one race to advance the interests of another, the majority in Weber has taken those provocative steps that will lead eventually to more emphatic legislative insistence upon the equal protection of the laws.

I recommend this article to my colleagues, and ask that it be printed in the RECORD.

The article follows:

JUSTICE DEBASED: THE WEBER DECISION

(By Prof. Carl Cohen)

A racial quota in the allotment of on-the-job training opportunities among competing employees, instituted by management-union agreement, was held lawful by the Supreme Court in the recent case of Steelworkers v. Weber.[1] This was an important decision, and a very bad one. Its badness lies not only in the substantive result, upholding preference in employment by race, but also in the reasons given by the Court in defending that result, and in the abuse of judicial discretion manifested.

The precise question decided was this: does Title VII of the Civil Rights Act of 1964 forbid employers and unions in the private sector from adopting racially preferential employment programs like the one adopted by Kaiser Aluminum and the steelworkers union? The answer was no. The evaluation of that answer requires a brief description of the quota plan approved, and a brief review of the statute in question.

The plan, adopted as part of a collective bargaining agreement between Kaiser Aluminum & Chemical Corporation and the United Steelworkers of America, provides that, in filling apprentice and craft jobs, "at a minimum not less than one minority employee will enter for every non-minority employee entering" until the percentage of blacks in craft jobs equals the percentage of blacks in the local work force—about 39 percent at the Grammercy, Louisiana, plant where Brian Weber works. Seniority in the plant was the criterion on which employees competing for admission to on-the-job training vacancies were ranked. But two seniority lists were maintained pursuant to this agreement, one for whites and one for blacks; vacancies were filled alternately from the top of the two lists. Weber, a white employee with about five years' seniority in that plant at that time, was refused admission to three different training programs—although, because of the quota plan in force, some nonwhite employees having less seniority than Weber were admitted. Believing that he had been displaced only because he was white, Weber brought suit against Kaiser and the union, in behalf of himself and all white employees at that plant similarly situated. His target was the racial preference in that job-training scheme.

The law in question, Title VII of the Civil Rights Act of 1964, reads in pertinent part as follows:

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

It seems hardly possible to deny that this statute does plainly prohibit racially preferential programs of the kind described above. Thus, as one would expect, Weber won his case in the Federal District Court, and won again, on appeal, in the Federal Circuit Court.

That result has now been reversed by the Supreme Court. The opinion of the five-member majority, delivered by Justice Brennan, is devoted almost entirely to an explanation of why, in their view, Title VII does not prohibit the plan in question. This explanation cries out for response. Response is given in two dissenting opinions, one by Chief Justice Burger which is crisp and condemnatory, a second by Justice Rehnquist which is scathing and detailed. Justice Rehnquist's tightly woven, thirty-seven page treatise, to which I will be referring, utterly demolishes the majority position. Its cogency is acknowledged by the majority itself.

On what grounds does the majority reach its result? The intent of Congress, say they, in enacting Title VII, was not to forbid racial preference having the wholesome purpose this program did. The key to the problem, says the majority, is not the "literal" meaning of the statute, but its "spirit." If, by studying the history of the Act, one can discover the purposes of Congress in its adoption, and if this plan advances those purposes, the plan will be, if not "within the letter of the statute," yet still "within its spirit," "within the intentions of its makers." Now the aims of Congress in passing this legislation can be readily discovered. In a nutshell, Congress aimed to counteract black unemployment, to protect and promote the opportunities of blacks to get decent jobs. In legislative debate Senators Humphrey, Clark, and others contended that, without such a bill, discrimination against blacks would become a source of social unrest and intolerable injustice. The majority's defense of their interpretation of Title VII rests principally upon the fact that the proponents of the bill repeatedly insisted upon the importance of jobs for

[1] Decided June 27, 1979. Actually three cases were decided together: *United Steelworkers of America, AFL-CIO-CLC,* v. *Brian F. Weber et al.* (No. 78-432); *Kaiser Aluminum & Chemical Corporation* v. *Brian F. Weber et al.* (No. 78-435); and *United States et al.* v. *Brian F. Weber et al.* (No. 78-436). There are four opinions in all: that of the majority written by Justice Brennan; a concurring opinion of Justice Blackmun; a dissent by Justice Burger; and a second dissent by Justice Rehnquist with which Justice Burger joins. Because these opinions have not yet received their formal pagination, my references below will be to the printed sheets issued by the Court, identifying only the author and page number of that author's opinion.

minority groups. That having been the goal, they continue, it cannot have been the case that Congress intended to prohibit private parties "from taking effective steps to accomplish the goal that Congress designed Title VII to achieve" (Brennan, p. 8).

The argument of the majority, in effect, is this: "We know the purpose of Congress; we know the purpose of this plan; they are fully consonant. It must be, therefore, that Congress did not intend to forbid this plan. If the literal language of Congress says otherwise, we must interpret that language to mean what it did not say, while saying what it did not mean."

What Congress really did intend with this statute is a matter about which I shall have much to say. Before turning to that historical question, however, I want to say something about the logic of the majority's argument. The majority blunders seriously by confusing purpose with intent. That the purpose of Congress was to promote employment opportunities for blacks is beyond doubt. It certainly does not follow that any special scheme having that purpose was intended to be permitted. Different persons, or different pieces of legislation, may share the same aim yet differ greatly in what are believed the wise or the just steps properly taken to achieve that aim. This simple but important point is what underlies the common homily: "The end doesn't justify the means." The aphorism is imperfect, of course; ends do serve to justify means. But the moral point of the aphorism is sound: ends, even very good ones, don't justify any means that may be thought effective in achieving them. That ends are shared is no proof that there will be agreement on the justice or the desirability of particular instruments or programs for their attainment.

Consider this hypothetical example, also in the sphere of legislative action. Suppose funds were appropriated to explore alternative sources of energy, one of the major purposes of the appropriation being, in the minds of most members of Congress, to reduce dependence on foreign oil. By adopting some measures clearly having that objective Congress would not warrant the inference that every measure having the same tendency had thereby been permitted. Suppose the expenditure of the funds appropriated for the exploration of alternative energy sources, although having the larger aim of energy independence, were also restricted by the provision that these funds were not to be spent on the development of nuclear energy. It would not then have been rational to conclude that a plan to spend the funds on the development of nuclear energy was "within the intentions" of the legislature because (as Justice Brennan says of the racial quota in Weber) "the purposes of the plan mirror those of the statute" (Brennan, p. 12). To find out whether Congress intended to advance its larger purposes in that way we would have had to read the enacted statute. If they were to have said: "It shall be unlawful to expend any of these funds on the development of nuclear energy," we might or might not have thought them wise in that restriction. But it does not take great profundity to distinguish between their purpose in legislating and their intent in that law—between what they would have hoped to accomplish and what they would actually have proposed to do.

In seeking to advance employment opportunities for blacks in 1964, Congress adopted legislation forbidding all racial discrimination in employment. To argue, as the majority does, that they cannot have intended to forbid all discrimination because some racial discrimination might also serve their larger purposes, does not do credit to a high appellate court.

What opens the question of congressional intent? Under what circumstances is it appropriate for any court to inquire into the intent of a legislature in enacting the legislation being applied? When the applicability of the language of the statute is unclear, or its wording is ambiguous, that inquiry may be very much in order. Such circumstances commonly arise. New conditions, unforeseen by the legislature at the time of a law's enactment, may create issues of interpretation that cannot be resolved by its language alone. A court may then be obliged to construe what the legislative intent might most reasonably have been in order to determine fairly the bearing of the statutory language upon the new conditions. Sometimes, in a different vein, legislation may be formulated in deliberately ambiguous language for assorted political reasons. Courts may later be obliged to apply that language to cases treated equivocally in the statute, having then to construe some reasonable legislative intent to guide them.

Nothing like either of these circumstances arises in the present case. The language of Title VII, as Chief Justice Burger observes, exhibits "no lack of clarity, no ambiguity" (Burger, p. 2). The Kaiser quota plan, as all agree, discriminates against individual white employees seeking admission to on-the-job training programs simply because they are white. That under the very plain language of the statute, is "an unlawful employment practice."

Could it be, perhaps, that the operative meaning of the language of the statute is unclear because it has been sometimes construed by the Court, in past instances, to prohibit discrimination against blacks, but not discrimination against whites? No, that was put out of the question by this Supreme Court in 1976, explicitly interpreting this Title of this statute. White employees who who were dismissed after being charged with misappropriating company property brought suit under Title VII because black employees, similarly charged, had not been dismissed. This Supreme Court then concluded, from the "uncontradicted legislative history," that "Title VII prohibits racial discrimination against the white petitioners in this case upon the same standards as would be applicable were they Negroes . . ." (*McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273, at 280).

So there is no doubt that Title VII does—or did—apply equally to all races. That is what the Supreme Court has repeatedly affirmed. Title VII, they earlier insisted, "prohibits all racial discrimination in employment, with exception for any group of particular employees" (ibid., p. 283; emphasis in original). A few years earlier, in a landmark interpretation of Title VII, the Supreme Court had agreed unanimously on a definitive account of the legislative intent of Title VII: "The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunity. . . . Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed" (Griggs v. Duke Power Co., 401 U.S. 424, at 429 and 431 [1971]). And just one year before Weber the very same point was hammered home by the same Court in the context of employment ratios. "It is clear beyond cavil that the obligation imposed by Title VII is to provide an equal opportunity for each applicant regardless of race, without regard to whether members of the applicant's race are already proportionately represented in the work force" (Furnco Construction Corp. v. Waters, 438 U.S. 567 [1978]; emphasis in original).

There is no vestige, no trace of ambiguity or unclarity, either in the language of the statute or in the interpretation repeatedly given to that language, respecting the question whether Title VII protects whites as well as non-whites. There is, therefore, no justification for entering the question of legislative intent. Justice Rehnquist, understandably infuriated, calls attention to the Court's oft-repeated principle applied in another case just as Weber was being decided: "Our duty is to construe rather than rewrite legislation" (Rehnquist, p. 3).

Beyond opening the question of legislative intent where that is not proper, and beyond the muddling of congressional intent with congressional purpose, the majority has given an unbelievably obtuse reading of that legislative intent. Though it is not appropriate in this case even to ask whether Congress intended to permit some racial discrimination with Title VII, the task of answering that factual, historical question is exceedingly easy. The lengthy debates in the House and the Senate are open to us in the Congressional Record; majority and minority committee reports of the House on the proposed bill are also open to us; a lengthy, scholarly study of the legislative history of precisely this Title of this Act is available to us.[2] There can be no genuine doubt—in the mind of one who has examined these materials—about the intent of the Congress in choosing the language they did choose. Democrats and Republicans both, conservatives and liberals both, insisted repeatedly and at great length, illustrating their explanations with detailed examples, that H.R. 7152 (which eventually became the Civil Rights Act of 1964) would forbid all racial preference for any race.

In the House of Representatives the bill was amended by the Committee on the Judiciary to include Title VII because no compulsory provisions to deal with private discrimination in employment had been included in its original form. It was added, the committee noted, "to eliminate . . . discrimination in employment based on race, color, religion, or national origin" (H.R. Reports, No. 914, p. 26). That title was further amended on the floor of the House to include a Section, 703(d), which specifically addressed the prohibition against discrimination (already formulated in 703(a) quoted above) to on-the-job training! Section (d) of 703 reads as follows:

"It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, *including on-the-job training programs*, to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training" [42 U.S. Codes 2000e-2(d); emphasis added].

Included with the Report of the Judiciary

[2] The congressional debates appear in Volume 110 of the Congressional Record of 1964, extending intermittently over exactly thirteen thousand pages (p. 1,511 to p. 14,511) of ten massive tomes. The House reports appears in House of Representatives Reports, No. 914, 8th Congress, First Session, 1963. With the majority and minority reports are printed additional views of particular members of the committee, and views of groups of Representatives, on the bill being reported. The Senate having decided to take up the bill directly, it was not submitted to committee there, hence there are no Senate reports beyond the actual Senate debate, which was very long. The study referred to, used both by Justice Rehnquist and myself, is by Francis J. Vaas, "Title VII: Legislative History," in Volume 7 of the Boston College Industrial and Commercial Law Review, pp. 431-58. Vaas records the tortuous path of the Civil Rights Act through Congress with meticulous attention to detail, and makes this striking comment: "Seldom has similar legislation been debated with greater consciousness of the need for 'legislative history,' or with greater care in the making thereof, to guide the courts in interpreting and applying the law" (p. 444).

Committee were the lengthy "Additional Views on H.R. 7152" of a group of its advocates, Representative McCulloch and others, which incorporated a passage referred to by Vaas as fairly stating the consensus of the civil-rights proponents as they guided the bill toward adoption. This representative passage includes these sentences:

"Internal affairs of employers and labor organizations must not be interfered with [under Title VII] except to the limited extent that correction is required in discrimination practices. Its [the Equal Opportunity Employment Commission's] primary task is to make certain that the channels of employment are open to persons regardless of their race and that jobs in companies or membership in unions are strictly filled on the basis of qualification" [H.R. Reports, No. 914, pt. 2, p. 29; Vaas, p. 437].

The major objection faced by Title VII in the House (and again later in the Senate) was the claim that under it racial proportionality in employment might subsequently be required by some federal agency, acting under color of that law. This fear was epitomized in the Minority Report which suggested, as one serious concern, that an employer, under Title VII, *"may be forced to hire according to race,* to 'racially balance' those who work for him *in every job classification* or be in violation of Federal law" (H.R. Reports, No. 914, p. 69; emphasis in original). That fear had to be allayed; proponents of the bill strenuously and repeatedly reassured their colleagues that no such racial balancing was contemplated, and that none would be required or even permitted under this Title.

Representative Celler, one of the sponsors of the bill and chairman of the Committee on the Judiciary, at the opening gun of the debate in the House, made the intent of the language of 703(a) unmistakable. The fear that it would require or permit hiring or promotion on the basis of race resulted, he said, from a description of the bill that was "entirely wrong." He continued:

"Even . . . the court could not order that any preference be given to any particular race, religion or other group, but would be limited to ordering an end to discrimination. The statement that a Federal inspector could order the employment and promotion only of members of a specific racial or religious group is therefore patently erroneous. . . ."

The Bill would do no more than prevent a union, as it would prevent employers, from discriminating against or in favor of workers because of their race, religion, or national origin.

It is likewise not true that the Equal Employment Opportunity Commission [established by Title VII] would have power to rectify existing "racial or religious imbalance" in employment by requiring the hiring of certain people without regard to their qualifications simply because they are of a given race or religion. Only actual discrimination could be stopped [110 Cong. Rec., p. 1518].

This theme was echoed repeatedly in the course of the debate in the House of Representatives. Representative Lindsay of New York, among others, took up the defense of Title VII:

"This legislation . . . does not, as has been suggested heretofore both on and off the floor, force acceptance of people in schools, jobs, housing, or public accommodations because they are Negro. It does not impose quotas or any special privileges of seniority or acceptance. There is nothing whatever in the bill about racial balance. . . . What the bill does do is prohibit discrimination because of race . . ." [110 Cong. Rec., p. 1540].

With that clear understanding the bill passed the House, 290 to 130, on February 10, 1964.

In the Senate, the expression of legislative intent was voluminous and unequivocal. Again the fear of opponents was that some federal inspector might one day impose racial balance under color of this law. Again and again and again and again—the defenders of the bill replied with reassurance, insisting vehemently that such fears were totally unfounded. The key term, "discrimination," appearing in Sections 703(a) and 703 (d) and elsewhere in the bill, was examined minutely on the Senate floor. Could it be taken to mean (the critics asked) only numerical imbalance? Answer: definitely not. Could it have been, for the framers of the legislation, a technical term, whose hidden meaning was "discrimination against blacks" but not "discrimination against whites"? No, definitely not. Senator Humphrey put that suggestion permanently to rest: "[T]he meaning of racial or religious discrimination is perfectly clear. . . . [I]t means a distinction in treatment given to different individuals because of their different race, religion, or national origin" (110 Cong. Rec., p. 5423). The only freedom of employers that the bill limits, he emphasized, is the freedom to take action based on race, religion, sex, or national origin.

When the Senate took up the substance of the Act directly, after deciding not to submit it to committee, it again became essential for the bill's advocates to answer the complaint that the bill would lead to racial preference. Not so, they insisted. Senator Humphrey again:

"That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion."

In the same speech Senator Humphrey gives a series of examples that ". . . make clear what is implicit throughout the whole title; namely, that employers may hire and fire, promote and refuse to promote for any reason, good or bad, provided only that individuals may not be discriminated against because of race, religion, sex, or national origin." He repeats himself so that even the deaf may hear: "The truth is that this title forbids discriminating against anyone on account of race. This is the simple and complete truth about Title VII" (110 Cong. Rec., p. 6549). Humphrey was majority whip and the floor leader for the Civil Rights Act in the Senate. In his support rose Senator after Senator to give the same explanatory assurances about the intent of the legislation.

Senator Kuchel, the minority whip, emphasized that the seniority rights of workers already employed would not be affected by Title VII. He said:

"Employers and labor organizations could not discriminate in favor or against a person because of his race, his religion, or his national origin. In such matters, the Constitution, and the bill now before us drawn to conform to the Constitution, is color-blind" [110 Cong. Rec., p. 6564].

Senators Clark and Case were floor captains in the Senate for Title VII specifically. To them fell the task of explaining that Title, what it meant and did not mean, what it permitted and what it prohibited. Their chief task was to refute the charge that Title VII would result in preference for racial minorities. In a memorandum prepared for the Senate they expressed the intent of Title VII unequivocally:

"[A]ny deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of Title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race. It must be emphasized that discrimination is prohibited as to any individual" [110 Cong. Rec., p. 7213].

A different memorandum, prepared by the U.S. Department of Justice at Senator Clark's request, also makes the point that there is no need to fear employers' being required to maintain racial balance:

"No employer is required to maintain any ratio of Negroes to whites, Jews to Gentiles, Italians to English, or women to men. The same is true of labor organizations. On the contrary, any deliberate attempt to maintain a given balance would almost certainly run afoul of Title VII because it would involve a failure or refusal to hire some individual because of his race, color, religion, sex, or national origin. What Title VII seeks to accomplish, what the civil rights bill seeks to accomplish is equal treatment for all" [110 Cong. Rec., p. 7207].

Senators Smathers and Sparkman, granting that the bill did not require the use of hiring quotas, put the attack against Title VII more subtly. Under it, they suggested, employers might be coerced, by federal agencies, into giving preference by race. Would that not be permitted under this law? The answer, this time from Senator Williams, was an emphatic negative. Opponents, he replies:

". . . persist in opposing a provision which is not only not contained in the bill, but is *specifically excluded from it.* Those opposed to H.R. 7152 should realize that to hire a Negro solely because he is a Negro is racial discrimination, just as much as a "white only" employment policy. *Both forms of discrimination are prohibited by title VII of this bill.* The language of that title simply states that race is not a qualification for employment. . . . [A]ll men are to have an equal opportunity to be considered for a particular job. Some people charge that H.R. 7152 favors the Negro, at the expense of the white majority. But how can the language of equality favor one race or one religion over another? Equality can have only one meaning, and that meaning is self-evident to reasonable men. Those who say that equality means favoritism do violence to commonsense" [110 Cong. Rec., p. 8921; emphasis added].

Still the fear that racially preferential hiring would somehow be encouraged or permitted under Title VII would not down. Once again the floor leader, Humphrey, took up the battle:

"The title [Title VII] does not provide that any preferential treatment in employment shall be given to Negroes or to any other persons or groups. It does not provide that any quota systems may be established to maintain racial balance in employment. *In fact, the title would prohibit preferential treatment for any particular group, and any person, whether or not a number of any minority group,* would be permitted to file a complaint of discriminatory employment practices" [110 Cong. Rec., p. 11848; emphasis added].

How could the majority of the Supreme Court, in Weber, escape the force of this parade of unequivocal accounts marching across the printed record of the process of its adoption? Could they contend, perhaps, that although racial preference was indeed prohibited, that prohibition did not bear upon efforts to overcome the effects of past discrimination upon the seniority rights of employees? At one point, conceding that it was the intent of the Senate to forbid the maintenance of racial balance, the majority grasps at a straw: this Kaiser quota plan was not introduced to maintain racial balance, they contend, but to "eliminate a manifest racial imbalance" (Brennan, p. 11 and p. 13). Can the net of clear congressional

intent be thus eluded, by making the distinction between "maintaining" racial balance and "eliminating" racial imbalance, holding that Title VII forbids the former but not the latter?

Not a chance. Explicating Title VII, its most thorough congressional students, Senators Clark and Case, wrote in their joint memorandum:

"Title VII would have no effect on established seniority rights. *Its effect is prospective and not retrospective.* Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—*or indeed, permitted*—to fire whites in order to hire Negroes, or to *prefer Negroes for future vacancies, or once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier*" [110 Cong. Rec., p. 7213; emphasis added].

The Justice Department had earlier drawn the same conclusion: Title VII could not be used to alter seniority entitlements because of discrimination in employment before its adoption:

"Title VII would have no effect on seniority rights existing at the time it takes effect. . . . This would be true even in the case where owing to discrimination prior to the effective date of the title, white workers had more seniority than Negroes. . . . [A]ssuming that seniority rights were built up over a period of time during which Negroes were not hired, these rights would not be set aside by the taking effect of Title VII. Employers and labor organizations would simply be under a duty not to discriminate against Negroes because of their race" [110 Cong. Rec., p. 7207].

The distinction between "maintaining" and "achieving" racial balance was, manifestly, never part of the understanding of the legislature that adopted Title VII.

That distinction, moreover, would have been and is specious from the point of view both of advocates and critics of racial preference. If, after the achievement of racial balance through racial preference, craft jobs again were to become predominantly white, the advocates of racial preference would certainly not be content. Convinced that such imbalance is in itself wrong, they would, understandably, then insist that if racial preference be permitted for the achievement of racial balance, it must be permitted for its reachievement.

The claim that such instruments are only "temporary" is a fiction. It will be of little consequence to its advocates that the majority in *Weber* leaned on a tenuous distinction which it will be in their interest to ignore. And the opponents of racial preference—including the 88th Congress of 1964—may rightly insist that if preference by race is in principle wrong, it is no less wrong in the one case than in the other. Indeed, both the Justice Department and the floor captains for Title VII in the Senate very carefully pointed out that maintaining racial balance would be forbidden *"because* it would involve a failure or refusal to hire some individual because of his race . . ." (see above, p. 47; emphasis added). The reference in these arguments is to the actual words of Section 703(a) cited on page 43 above. Adverse effects upon an employee or applicant because of race would result whether the goal had been the maintenance of racial balance or the achieving of it.

The argument that the Congress intended Title VII to permit racial preference in achieving racial balance, but forbade it for maintaining racial balance, and that therefore once proportionality is achieved all such preference will increase, is unworthy of the Supreme Court; it is a sop designed to placate critics with unreliable assurances that the instrument approved will be only "temporary." In fact ethnic preference, once ensconced, is likely to be nearly impossible to eradicate. To mitigate its unfairness more and different ethnic preference will be introduced—as already they are being introduced.

Those who condemn racial favoritism condemn it both for achieving and for maintaining racial balance; those who support racial favoritism will not object to its use in either role. That distinction cannot serve to render plausible the majority's interpretation of congressional intent in enacting Title VII of the Civil Rights Act.

As debate over the Civil Rights Act continued in the Senate it became evident that the bill would have to be amended to make absolutely clear the fact that it could not later serve as the justification, by any federal agency, of the imposition of racial preference. Only thus might the repeated objections of its most implacable opponents be successfully met. A bipartisan coalition, made up of Senators Dirksen, Mansfield, Humphrey, and Kuchel, cooperating with leaders in the House of Representatives, devised the "Dirksen-Mansfield" amendment, ultimately adopted. Among the changes thus introduced was a clarifying addition, Section 708(j), very specifically addressing the critics' fears of imposed racial balancing. This section provides that nothing in the entire Title shall be interpreted to require the giving of preferential treatment to any individual because of race. It reads:

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified by any employment agency or labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area" [42 U.S.C. 2000e–2(j)].

Now, in an ironic and extraordinary turn, the Supreme Court majority in *Weber* uses the langauge of this section to infer (relying upon what Justice Burger calls a "negative pregnant") that since it bars the requirement of racial preference, but does not specifically prohibit racial preference, it must have been the intention of Congress not to prohibit it! The majority writes:

"The section does *not* state that "nothing in Title VII shall be interpreted to *permit*" voluntary affirmative efforts to correct racial imbalances. The natural inference is that Congress chose not to forbid all voluntary race-conscious affirmative action" [Brennan, p. 10; emphasis in original].

This inference is either disingenuous or obtuse. The objection this added section was designed specifically to meet was that racial preference would somehow be required. No one thought it would or could be introduced voluntarily because "voluntary" racial preference precisely had been forbidden by the plain language of the earlier key section, 703 (a), cited above on page 43. Debate in the Senate went on for almost three full months. Never in that entire period was it argued, *by either side,* that employers could, of their own accord, give preference by race. Both proponents and opponents made perfectly clear their understanding that voluntary racial preference by employers, for blacks or for whites, was entirely precluded by the flat and unambiguous wording of those earlier passages, forbidding *any* employment practice that would "discriminate against any individual" because of that individual's race. To add that prohibition yet again, in 703(j), would have been entirely redundant—and more importantly, it might have diluted the intended force of that particular passage, aimed narrowly at the objection that racial preference would otherwise someday be imposed by government.

That it was so aimed is made exquisitely clear by the difference in the phrasing of 703(j) from that of the earlier, central section of the Title. The earlier sections, prohibiting racial discrimination in employment universally, are directed specifically at the employer, and therefore begin: "It shall be an unlawful employment practice for an employer. . . ." Section 703(j) is directed specifically at *possible federal enforcement agencies,* commissions, or courts, and therefore begins with language indicating that kind of target: "Nothing contained in this subchapter shall be interpreted . . ." Now to infer, from the fact that this section does not repeat the prohibition already several times explicit in earlier sections, that it was the intention of Congress not to prohibit racial preference, is a transparently unsound defense of so grave a decision.[3]

Lest there be any doubt, however, about the intent of the Congress *after* the addition of 703 (j), we can return to the debate itself. Senator Saltonstall, defending the Dirksen-Mansfield amendment including 703(j), says of it, very plainly: "The legislation before us today provides no preferential treatment for any group of citizens. In fact, it specifically prohibits such treatment" (110 Cong. Rec., p. 12691; emphasis added).

And yet again, in defending the amended bill against Senator Ervin's criticism that it "would make the members of a particular race special favorities of the laws," Senator Clark answers: "The bill does not make anyone higher than anyone else. It establishes no quotas." Employers, labor unions, employment agencies, remain free, Clark points out, to use normal judgment in their business activity—but:

All this is subject to one qualification, and that qualification is to state: "In your activity as an employer, as a labor union, as an employment agency, you must not discriminate because of the color of a man's skin. . . ." That is all this provision does. . . . It merely says, "When you deal in interstate commerce, you must not discriminate on the basis of race. . . ."

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[3] The argument called a "negative pregnant" is technically described as one having the form *modus tollens:* if p entails q, and q is false, then p must be false. The form is valid, of course—but in this application of it the argument (in either of two possible reconstructions of it) is built upon a false premise.

Version A: "If Congress had intended to forbid all racial preference they would have said that explicity. They did not say that explicitly. Hence they did not intend that." In this version the second premise is plainly false; the congressional ban against racial preference in Section 703(a) is perfectly explicit.

Version B: "If Congress had intended to forbid all racial preference they would have expressed that intention explicitly in Section 703(j). They did not express that intention there. Hence they did not have that intention." In this version the second premise is true but the first is false. There was no need for Congress to repeat, in Section 703(j), the ban it had already made explicit earlier, and there was good reason not to do so.

Arguments relying upon false premises, even when valid in form, are not sound.

In the event this be somehow misunderstood, he repeats himself in that speech:

"All it [Title VII] does is to say that no American, individual, labor union, or corporation, has the right to deny any other American the very basic civil right of equal job opportunity" [110 Cong. Rec., pp. 13079–80].

Senator Cooper, anxious to make the force of what was soon to become law unmistakably clear, also responds to Senator Ervin's concerns, saying:

"As I understand Title VII, an employer could employ the usual standards which any employer uses in employing—in dismissing, in promoting, or in assigning those who work for him. There would be only one limitation: he could not discriminate, he could not deny a person a job, or dismiss a person from a job, or promote on the sole ground of his color, or his religion, other factors being equal" [110 Cong. Rec., p. 13078].[4]

But how one asks, can the majority not have been fully aware of all this? They must have seen the draft of Justice Rehnquist's dissent, which makes the same points vividly. Did they, perhaps, find other evidence within the record of the debates in Congress, evidence that has here been left unmentioned, which might somehow permit a reading of congressional intent to permit racial preference? No, no evidence has been suppressed here. Like Vaas and Justice Rehnquist, upon whose guidance I have relied, I have scoured the pages of the Congressional Record; like them I have registered only a fraction of the evidence against the majority's interpretation. If, in all those pages there were evidence that any Senator of Congressman had the intent that the majority ascribes to the whole Congress, we may be certain it would have been dug up and registered within the majority opinion. No such evidence appears there. Here again we may indeed rely upon a negative pregnant. In this majority opinion, in which every quotation from the congressional debates is presented that might contribute, even with arguments far-fetched or unsound, to an excessively strained interpretation of congressional intent, the absence of any passages that actually express that intent is very revealing.[5]

The plainest proof that the members of the majority in Weber cannot have been in ignorance of the actual intent of Congress, and after searching could find no evidence of contrary intent, is given by Justice Marshall himself. In a 1976 opinion, writing for the Court, he presents a careful analysis of the intent of Congress in Title VII. He quotes Representative Celler, saying Title VII was intended to "cover white men and white women and all Americans" (110 Cong. Rec., p. 2578). He cites Senator Humphrey, Senator Clark, Senator Case, and Senator Williams in passages like those quoted above. Justice Marshall concludes that "Its [Title VII's] terms are not limited to discrimination against members of any particular race." He then substantiates this judgment by extended reference to the interpretation of Title VII given by the Equal Employment Opportunity Commission:

"The EEOC, whose interpretations are entitled to great deference, . . . has consistently interpreted Title VII to proscribe racial discrimination in private employment against whites on the same terms as racial discrimination against non-whites, holding that to proceed otherwise would "constitute a derogation of the Commission's Congressional mandate to eliminate all practices which operate to disadvantage the employment opportunities of any group protected by Title VII, including Caucasians."

Justice Marshall explains, representing the Court, that the history of legislative intent in adopting Title VII is "uncontradicted" (*McDonald* v. *Santa Fe Trail Transportation Co.*, 427 U.S. 273, at 278–80, 283; emphasis added).

Members of the House and Senate are quoted by the majority, to be sure. But the quotations serve to establish matters only tenuously related to the central point at issue. Repeated citations from the debates are given to establish that it was the larger purpose of Congress, in tackling this legislation, to promote employment opportunities for blacks. That, as we have seen, is not at issue, and does not speak to the question of what prohibitions were intended. Several citations are given to show, correctly, that one major concern in the Senate when introducing Section 703(j), which precludes the requirement of racial preference by the enforcers, was to reduce the likelihood of federal interference with private business. That was an aim of many Senators; but showing that does not prove, or even tend to confirm the thesis, that Title VII as a whole was designed to permit nongovernmental racial preference.

One other citation by the majority deserves attention. To give credence to the claim that the distinction between private racial favoritism and federally required racial favoritism was before the congressional mind, the majority quotes from the House Committee report favoring the original bill. The passage says that "the enactment of Federal legislation dealing with the most troublesome problems [of social discrimination] will create an atmosphere conducive to voluntary or local resolution of other forms of discrimination." The majority fastens on this sentence, even adds emphasis to the final phrase, suggesting that it proves that a voluntary racial quota in employment is one of those "other forms" for which the Civil Rights Act had created the atmosphere (Brennan, p. 8).

Fallacious would be the gentlest way to describe this argument—in view of the failure, not likely to be accidental, to quote the lines immediately following the cited passage. An explanation is given there of the distinction between "the most serious types of discrimination" and those other varieties for which voluntary attention might be encouraged. The serious types, types this House report there suggests will be dealt with by this bill, specifically include voting, public accommodation, and employment. The omitted passage reads:

"It is, however, possible and necessary for the Congress to enact legislation which prohibits and provides the means of terminating the most serious types of discrimination. This H.R. 7152, as amended, would achieve in a number of related areas. . . . It would prohibit discrimination in employment" [H.R. Reports, No. 914, p. 18].

The forms of discrimination it was hoped might yield to voluntary action were those other than discrimination in employment, voting, and the like. Indeed, employment discrimination is mentioned repeatedly in the report as being of the most serious kind, the kind for whose prevention this legislation was specifically designed.

There is not a shred of evidence in this passage that the report actually envisaged voluntary racial preference of any kind, or that would have suggested to the House that such preference—especially in employment—was permissible under this Act.

One hates to flog a dead horse. But this horse came to life in an extraordinary opinion of a Supreme Court majority—so I report, finally, the understanding of the Civil Rights Act of 1964 as that understanding was registered in the final hours of debate on the Senate floor—after which it was returned to the House and approved as amended. The legislative decision was at hand. The advocates of the bill, now under cloture, had to give their final defenses and interpretations. On the point at issue here their remarks were unmistakably clear.

Senator Muskie:

"It has been said that the bill discriminates in favor of the Negro at the expense of the rest of us. It seeks to do nothing more than to lift the Negro from the status of inequality to one of equality of treatment" [110 Cong. Rec., p. 14328].

Senator Moss:

"The bill does not accord to any citizen advantage or preference—it does not fix quotas of employment or school population—it does not force personal association. What it does is to prohibit public officials and those who invite the public generally to patronize their businesses or to apply for employment, to utilize the offensive, humiliating, and cruel practice of discrimination on the basis of race. In short, the bill does not accord special consideration; it establishes equality" [110 Cong. Rec., p. 14484].

Very self-consciously, aware that it was making history, the Senate passed the amended Civil Rights Act on June 19, 1964, by 73 to 27, every member voting. The struggle in that body, as Vaas describes it, had been "titanic and protracted." The meaning and force of every line, every phrase in the bill had been intensely scrutinized and explained with scrupulous care. The legislators knew precisely what they were prohibiting with this legislation, and we know exactly what they understood themselves to be doing because they took care, very deliberately, to put their explanatory accounts on record.

No impartial judge, properly attentive to the abundant evidence that establishes dispositively the true intent of Congress, could honestly conclude that its intent was to permit private racial preference in employment. Yet that is what the majority has concluded, in a decision that is, taken all in all, simply shocking.

Are there no redeeming features of the majority's decision? Yes, there are several—

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[4] That Congress intended its prohibition of racial preference expressed in 703(a) to be a general, to ban preference for minorities as well as for the white majority, is strongly confirmed by the striking fact that in the one case in which they did wish to make an exception, permitting one very special kind of preference in one very special setting, they identified that exceptional case and delimited it narrowly in Section 703(i), with carefully chosen words: "Nothing contained in [Title VII] shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to any individual because he is an Indian living on or near a reservation."

From the specific inclusion of that one exception it is manifest that only by such specific language did Congress intend exceptions to be justified. No other such exceptions appear. Here is a negative pregnant—a valid modus tollens argument—worthy of respect: "Where Congress intended an exception to the general ban on racial preference it identified the excepted case explicitly. It identified no exception for private employers or unions save that regarding Indians on or near a reservation. Hence it intended no exception but this one." In this case the premises are all true and the argument is sound.

[5] Again the valid argument is in the form of modus tollens, and again its premises are true: "If Congress had intended to permit private racial preference in employment there would have been clear expression of that intention by at least some defenders of the Act in the course of lengthy debate. No such expressions appear. Hence Congress cannot be supposed to have had that intent." There is nothing wrong with modus tollens; its effectiveness in argument, however, depends upon the truth of the premises relied upon.

all respects in which the impact of the decision is explicitly limited. "We emphasize at the outset," writes the majority, "the narrowness of our inquiry" (Brennan, p. 4).

Although the impact of the decision will prove very substantial, it is, indeed, narrow in a technical sense. Its narrowness is a consequence of the explicit intention of the majority to decide the case entirely as one of statutory interpretation. What the majority decided about the Kaiser quota plan, it will be recalled, is no more than that Title VII of the Civil Rights Act does not forbid it. Restricting themselves to an interpretation of the statute was possible for the majority because, they said, "this case does not present an alleged violation of the Equal Protection Clause of the Constitution." It does not, they explain, because the racially preferential quota in question was entirely within "the private sector." The plan did not involve "state action" [ibid.].

This view of the Kaiser plan is at once reasonable and ironic. It is ironic because although this racial quota surfaced only in a labor-management agreement, it had been introduced there as a result of threats of contract cancellation by a federal enforcement agency. Threats why? Because Kaiser's work force was not racially balanced. In the language of the Office of Federal Contract Compliance, minorities were being "underutilized" by Kaiser. By devising job-training racial quotas in submission to that threat, Kaiser and the union showed how well-grounded were the fears of those who had wished to preclude not only the federal requirement of racial preference, but the federal coercion of it. The addition of Section 703(j) sought to guard against the first of these dangers. Now its very language is used to realize the second, accomplishing indirectly what that language was designed to prevent directly.

In a historical aside that would be amusing if it did not reflect upon the highest court in the land, Justice Rehnquist cites a remark by Senator Sparkman in projecting the uses to which Title VII may one day be put: "Certainly the suggestion will be made to a small business that may have a small government contract . . . that if it does not carry out the suggestion that has been made to the company by an inspector, its government contract will not be renewed" (110 Cong. Rec., p. 8618).

Yet the Court's distinction between state action and private action remains reasonable. However pernicious racial discrimination may be, it is right to distinguish between immoral acts done by private parties (even when arguably coerced) and the same acts done directly by a representative government. To accept that distinction is not to suggest that the majority is correct in holding this private racism lawful. Under any plausible reading of the Civil Rights Act, it is not. But not all private nastiness is public business, and we are wise to agree that, where state action is clearly involved in racial preference, the problem rises to a different and higher level of gravity.

Because the majority puts substantial emphasis on the distinction, introducing it at several points in its opinion, it is reasonable to conclude not only that the majority opinion does not cover public employers, but that public employers—government agencies, public universities, etc.—cannot rely in any way upon the permission here being given to a private employer.

Private employers also, as a matter of morality, might reasonably refrain from engaging in practices believed to be forbidden to public employers. There is an odious quality in conduct narrowly held lawful but which, if pursued by government, would create at least a serious question of constitutional right. Sooner or later the fundamental question will arise again in a context obligating a full-blooded constitutional response by the full Court. When that happens we may hope for a wiser result.

What is the likelihood of an eventual constitutional reversal of Weber? No one can say with confidence. The present Court is deeply divided on this cluster of issues. Weber was decided by a vote of 5 to 2. Justice Stevens, author of the opinion in support of Allan Bakke in that analogous case, excused himself because he had once served as an attorney for Kaiser. Justice Powell was kept from presence at the oral argument by illness, and also took no part in Weber. In any later constitutional resolution in which Justices Stevens and Powell participate it is exceedingly likely that both would find racial preference of every kind unacceptable. Powell has vigorously expressed his condemnation of racial preference, rejecting any "two-class" theory of the Equal Protection Clause. Justices Marshall and Brennan, the most vigorous defenders of racial preference on the present Court, are not in good health. When this matter is faced afresh, in the demand that no state "deny to any person under its jurisdiction the equal protection of the laws," the complexion of the Court may well have changed.

The majority opinion is narrow in the further sense that it gives almost no guidance to those who might wish to expand racial preference. No principles of acceptability for racial preference are advanced. The majority explicitly refrains from defining in detail "the line of demarcation between permissible and impermissible affirmative-action plans." It holds only that this plan, which gives preference to blacks over whites for job-training opportunities but not for employment itself, "falls on the permissible side of the line" (Brennan, p. 12). Any racially preferential program, therefore, that goes in any way beyond this one might immediately lose the support of one or more of the five members of the majority, thus failing on subsequent test. What is learned in Weber is that the Supreme Court now holds this precise plan not to be forbidden by Title VII of the Civil Rights Act of 1964—no more than that.

Finally, there will be political repercussions from *Weber*, partly because they have been invited by the Court, and partly because the decision of the Court is very likely to provoke them.

Political response is invited by the fact that the majority opinion hangs entirely on its interpretation of the intent of Congress. It remains open to Congress to register its true intent so clearly that even this majority could not fail to perceive it. Justice Blackmun, exhibiting troubled reluctance in his concurring opinion, and reiterating his hopes for an early end to racial preference he had himself (in his *Bakke* opinion) called "ugly," concludes his opinion with an explicit invitation to the Congress: "And if the Court has misperceived the political will, it has the assurance that because the question is statutory Congress may set a different course if it so chooses" (Blackmun, p. 8).

That the intent of Congress to forbid all racial preference in employment already appears in the unambiguous words of Title VII, Section 703(a), quoted above (p. 43) is indisputable. Yet it is possible that formal congressional reemphasis of its intent would cause the Court to desist in its efforts to rewrite the legislation to its taste. Congressional efforts to accomplish just this objective are likely to be undertaken, but the success of any such legislative shoring-up of Title VII is doubtful.

There is a provocative aspect of the majority opinion in *Weber*, however that may actually drive the Congress to underscore its earlier demand for equal treatment of the races. This is a feature of the decision which, upon reflection, appears even more insensitive than the misreading of congressional intent. I refer to the callousness, manifest in the majority opinion, toward the interests of ordinary working-class people. Allan Bakke was ordered admitted to the medical school at Davis; blatant racial discrimination against him was not tolerated. Brian Weber, a working man without skills or influence, and without the organized support of the intellectuals, can be left to bear the burden, even though his rights may be infringed upon. The majority is explicit on this point. To advance the racial balancing they think good it may be necessary, they say, to "*trammel the interests of the white employees*" (Brennan, p. 12; emphasis added).

Five members of the Supreme Court may find this a comfortable position in which to rest; most elected legislators will not. It may be that by egregiously misreporting the intent of Congress, and then boldly expressing their own willingness to sacrifice the interests of one race to advance the interests of another, the majority in *Weber* has taken those provocative steps that will lead eventually to more emphatic legislative insistence upon the equal protection of the laws.●

A SUBMINIMUM WAGE FOR YOUTH

● Mr. STEVENSON. Mr. President, among the measures that would help to control inflation is a subminimum wage for youth. I have introduced a bill, S. 1107, that would authorize employers to pay teenagers 85 percent of the minimum wage.

A youth differential would permit businesses to reduce labor costs. The minimum wage, now $3.10 per hour, makes it expensive to hire marginal workers. A subminimum wage would also create jobs for youths and stimulate business expansion, particularly expansion by small businesses.

In the past, the Government has created unemployment by such means as the minimum wage and then created employment with expensive jobs programs. If now it cuts funds for jobs programs, as the economy sinks into recession and unemployment rises, it becomes even more necessary to take structural measures to increase employment, while aiding small businesses and stabilizing prices.

Two recent articles highlight the failures of current youth policies. The first, in the New York Times, reports that an unpublished Department of Labor survey indicates youth unemployment is substantially higher than the level revealed by official data. Based on interviews of youths in the spring of 1979, the DOL survey showed that overall youth unemployment was 19.3 percent and unemployment among black youths was 38.8 percent. According to the article, a substantial number of youths said they would work at a subminimum wage. The second article, in the Washington Post, recites the litany of programs that have failed to reduce teenage unemployment to tolerable levels. The article notes that annual spending for youth employment programs has escalated over the past 3 years from $2.5 to $4 billion.

Mr. President, I ask that these articles be printed in the RECORD.

The articles follow:

[From the New York Times, Feb. 29, 1980]

U.S. STUDY HINTS AT MORE JOBLESS IN YOUTH RANKS

(By Philip Shabecoff)

WASHINGTON, February 28.—An unpublished Government report indicates that unemployment among American youth is much higher than the official figures show and that the unemployment gap between white

and black young people is even wider than had been thought.

The report, based on a long-term Labor Department survey of youths, also tends to refute the widely held opinion that unemployment among young people, particularly those from minority groups, is high because they will not accept low-paying jobs or work considered menial. A summary of the report was obtained by The New York Times.

The official data published by the Labor Department's Bureau of Labor Statistics, based on a monthly survey of a sample of households, showed a 14.1 percent jobless rate among all 16- to 21-year-old youths and a 28 percent rate among black youths of the same age in the spring of 1979.

MAGNITUDE OF PROBLEM

But the unpublished long-term survey of young people indicated that overall youth unemployment in the same period was 19.3 percent, while black youth unemployment was 38.8 percent. For young black people in school but seeking work, the official Labor Department jobless figure was 36.9 percent, while the long-term survey showed a rate of 55.4 percent.

However, the survey suggests that the problem is of even greater magnitude than these rates indicate, because it shows a higher participation rate in the labor market than the monthly Labor Department report and, therefore, a much higher absolute number of young people seeking work. According to the survey, there were 775,000 16- to 21-year-olds seeking jobs last spring, while the regular monthly report showed 478,000 young job-seekers.

The results of the survey suggest that youth unemployment in general and unemployment among minority youth in particular, already recognized as a major social and economic problem, is even more severe than generally believed.

According to a summary of the report, "Its major findings are of critical importance in the formulation of youth policies for the 1980's."

The report represents the first results of the Labor Department's National Longitudinal Survey, which is following a representative sample of 12,693 youths over an extended period, with particular attention paid to their training and employment experiences.

The results directly challenge the contention made by a number of manpower economists that the Labor Department's monthly reports overstate unemployment among black teen-agers.

The unpublished report says that the disparity between the long-term survey results and the monthly household survey used for the Bureau of Labor Statistics' regular reports on employment and unemployment stems from the fact that the youth involved in the long-term survey were interviewed rather than the head of a household.

The report states that "it has been documented" that responses differ significantly when the youth is asked directly and that the evidence suggests that the direct youth interviews are more accurate.

The survey indicates that the labor force participation rate—those who either have jobs or are looking for them—for 16- to 21-year-olds is 11 percent higher than that reported by the monthly survey and that the participation rate for blacks is 27.5 percent higher.

It also said that while the racial differentials in rates in employment and unemployment are "massive," they are "only the most visible dimensions of relative deprivation."

"In almost every aspect of their labor market experience, black and Hispanic youth are significantly worse off than white youth," it added.

OTHER IMPACTS CITED

In addition to having higher unemployment rates, the survey indicated, black and Hispanic-American youths are consigned to lower-wage, lower-skill jobs than whites. Young minority group workers must travel longer to reach their jobs and derive less satisfaction from their work. They also tend to be laid off more often than their white counterparts.

Young women workers, regardless of color, tend to be laid off more often than their white counterparts. Young women workers, regardless of color, tend to lag well behind white males in most employment categories.

The report states that contentions that youths will not take available jobs because they demand higher wages, find the nature of the work unacceptable, or simply do not like to work are often used "to gainsay the seriousness of youth labor market problems."

But such arguments are now "deflated" by the survey results, the report asserted.

The 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.

The survey suggests that the younger the worker the lower the wage and level job he or she is willing to accept. It also indicates that young minority group workers will take lower level work than young white people.

"The evidence suggests that the majority of these young people are not unsuccessful because of inflated expectations," the report states.

Finally, the survey found that "employment and training programs are an important factor in mitigating the problems of disadvantaged and minority youth."

The full report is 400 pages long. It was prepared for the Labor Department by the Center for Human Research of Ohio State University.

[From the Washington Post, Mar. 8, 1980]

WAR ON YOUTH UNEMPLOYMENT: DISPIRITING NEWS FROM THE FRONT

(By Kathy Sawyer)

Royal Johnson, 19, stood on the street with his back to Cardozo High and its sweeping view across some of the city's worst slums to the sun-touched white of the Capitol dome.

That was an alien world to him and he neither knew nor cared that, over there, Congress was debating whether to pop for another $2 billion to "motivate" and train youths like him under President Carter's only "major new domestic legislative initiative" for 1980.

Johnson dropped out of Cardozo two years ago and, most days, he does not show up for the work he got through a government jobs program—unloading boxes and carrying out trash for a Northeast auto parts dealer.

"That job ain't nothin'. Just nothin'. That job ain't worth ——," he said, throwing his shoulders restlessly. "I do that job, days I feel like it. I do better on the street, most days."

He reads at about fourth-grade level, according to a community worker who knows him. His mother, on welfare, has another child at home.

In Hartford, Conn., Calvin Philips, 21, slumped into a chair during a break from his job as a dishwasher and told what he thinks about the kids like Johnson who do not know a break when they see one.

"Their mother ain't brought 'em up right. They lazy," he said, eyes smiling faintly. Phillips had been branded a troublemaker before he went through a federally funded work program and, incidentally, took up with a community basketball team.

Now he's working and going to night classes to finish high school. He hopes to go into a construction trade. Community workers say he might actually have a shot at it.

Such are the painful increments by which "success" is often measured on the front lines of this tense and dispiriting battle.

Government officials, job specialists, teachers, employers and just plain taxpayers all say they want poor black and other minority kids to have jobs, and they've poured billions into programs for them. The kids, for their part, almost all say they want to work.

Yet between a third and half of them have grown up to be an ugly blot on the country's record of social progress.

Overall unemployment among teenagers is about 14 percent. But among Black and other minority kids, it averages about 35 percent, by government estimate and is at 50 percent or higher in some impoverished inner cities.

All through the '70s, while the federal money flowed and a growing portion of white youngsters got jobs, the line on the graph for young blacks plummeted. The battle intensified.

Now comes the Carter contingent to take another stab at it, throwing $2 billion more into a bureaucratic stew where the success rate to the extent it can be measured meaningfully at all, remains frustratingly low.

Carter officials and other supporters of the new plan argue that the alternative is to write off a whole group of kids and just "throw up our hands." Skeptics mutter that it's just another sop to conscience, or to a powerful black constituency, and that this money will follow other billions down a rathole.

Here are more dispatches from the front:

Hebert Jones, assistant personnel manager for People's Drug Stores: "We call the various community organizations and say we've got 10 or 12 vacancies. We get maybe five to seven applicants . . . They say yes, okay. Then you schedule them for training. But half of them don't show up. I grew up in this area and I don't understand it."

Mattie Taylor, D.C. Department of Labor: "Each year, this building is torn apart by kids who come here looking for jobs, but are told there are none."

James McClure, guidance director, T. C. Williams High School, Alexandria, Va.: "We're talking about the kind of a kid that NOBODY wants to fool with . . . It's a full-time job [working with them]. I get discouraged with federal programs . . . The people in these programs are very idealistic. They make a lot of promises. But you better be able to keep those promises or you've lost the kid . . . It's not money these programs need more of."

William Stewart, welding shop teacher, Phelps Vocational Training School, D.C.: "Friday a dozen [students] jimmied the door to my classroom; they were shooting craps and smoking herbs . . . One time they set [the roll sheets] on fire on top of my desk." Because of administrative squabbles, lack of supplies, unheated classrooms and students "just not showing up, 13 out of 17 of them just got their second F, which means they won't pass for the year . . . It's complete chaos here most of the time."

Vernon Johnson, an administrator of Maverick, a federally subsidized work program in Hartford: "These kids from low-income housing do not see the link between what they do today and what they'll be able to do tomorrow. They don't think that long range. They are living for today."

While the absolute number of unemployed black youngsters is relatively small—about 380,000 out of a workforce of 103 mil-

lion—the impact in terms of human pain, crime, welfare, public guilt and other costs to society have been felt disproportionately on the political Geiger counter.

In January, White House domestic affairs adviser Stuart Eisenstat unveiled the program with the warning that without it, the problem "may get worse in the 1980s."

While the number of all young people will go down with the decline in the birth rate, he said, the percentage of all youngsters who are black and Hispanic youngsters will increase significantly.

When Carter took office, the Republicans were spending $2.5 billion a year on youth programs. Since then Carter has raised the level to $4 billion and is asking Congress to raise that to $6 billion over the next two years.

The smallest, most heavily supervised and most costly of the existing programs, such as Job Corps, have shown some successes. But for the programs that most disadvantaged kids wind up in, the results have been doubtful at best.

A parade of manpower experts has urged the government to lower public expectations for these programs and to focus on improving existing ones rather than adding new ones.

There is an argument without a resolution going on. Some people say there are jobs available but that some youngsters refuse to do them, some say the jobs exist but the kids have not been equipped with the skills to do them and some say there simply aren't enough jobs.

Why haven't the alphabet soup of programs—CETA, YACC, YETP, YCCIP, YIEPP, YEDPA—had more impact on the neediest poor kids they are aimed at? Books have been written. Theories and observations about that abound:

Many employers are racists.

Teen-age boys, more than girls, are restless and rambunctious and troubled in the best of circumstances, and bound to be so when faced with rotten, dead-end jobs, on top of poverty and illiteracy. Some will grow out of this phase and become employable.

Today's black teen-agers, having had their consciousness raised, expect more and seem angrier, more hostile, and more freightening to some employers than their parents' generation.

Many employers discriminate on the basis of class, not race. Black Harvard graduates have no trouble getting jobs. In a conformist teen-age culture, all inner-city kids dress alike and a middle-class employer "can't tell whether he's interviewing a mugger or a good kid."

An underground labor economy—running numbers, selling dope, painting houses, repairing cars—employs many youngsters who appear in the unemployment statistics.

Bureaucratic screw-ups and red tape discourage employers, kids and just about everybody involved with the programs.

The schools, especially poor urban ones absorbing the brunt of one of the greatest social upheavals in our history, integration, have failed to teach the kids to read, write, add or subtract.

The kids come from a welfare background in which work habits are alien and parent(s) are too tired or ignorant to give them the instruction they need.

White kids have an informal network of relatives, friends, etc., that leads them naturally into jobs. Poor black kids don't.

And so on.

Nobody is making any dramatic promises about what the new Carter proposal will accomplish. But the alternative, its supporters say, is to do nothing more than now. Already, the tightening budget and pressure from inflation threaten to choke the plan off altogether.

Bill Spring, a White House domestic aide who is expert in the subject, acknowledges the limits of the program, especially in an economy where adults are facing layoffs.

"It is a zero sum game. We can't provide jobs through training. But we can try to equalize the weight of unemployment on various groups."

Among the improvements the program will try to make is to put great emphasis on how well the kids perform in the programs, where in the past that was avoided for fear of scaring off the less able. "You've got to have a touch of the Marines," Spring said.

A key difference in the administration's new plan is that it would target about half the money to schools in 3,000 of the country's poorest school districts for remedial teaching at the junior and senior high level, rather than directing it all to work programs. The money would be channeled through the new Department of Education as well as the Labor Department.

When he announced the proposal, Eisenstat said, "The literacy gap which we identified was absolutely staggering."

In a society where jobs increasingly demand white-collar skills such as reading and arithmetic, he pointed out, "Forty-two percent of recently surveyed black 17-year-olds are functionally illiterate."

The proposal would not merely offer busywork to keep kids off the streets, he said, but also would try to provide basic skills to those who might otherwise face a lifetime of joblessness.

The plan would call on schools and jobs programs to work together to link learning with the world of work.

On Capitol Hill, powerful competing interest groups in education and labor, jealous of their appropriations, have geared up to protect their turf and, as one education lobbyist said, "there'll be some name calling" over whose fault the youth problem is.

But supporters and opponents alike agree on the need to help the severely distressed inner-city schools. Until now, virtually all federal funds have gone to the lower elementary grades, not to junior and senior high levels where the turned-off kids drop out.

Rep. Gus Hawkins (D-Calif.) criticized the proposal for pouring money into the schools for the purpose of "doing what they've already been given money to do at a lower level." That is, teach reading, writing and arithmetic.

But his main objection, he said, is that the proposal won't be effective until 1982. "We should be doing something right now."

Rep. Parren Mitchell (D-Md.), leader of the Congressional Black Caucus, called the plan too little, too slow. "The problem is so enormous, I'd make it No. 1 priority. . . . This doesn't begin to address the real need."

Royal Johnson, meanwhile, continues to to learn the lessons of the street.●

A FAREWELL TO THE AMERICAN FAMILY FARMER?

● Mr. BAYH. Mr. President, I fear that we are on the verge of a great unintended experiment that will have very serious consequences for succeeding generations of Americans—the American family farmer is on the endangered species list. If this trend continues, it could have a tremendously adverse impact on our future ability to feed ourselves and much of the world.

America's agricultural community has been one of the most reliable sectors of our economy. Year after year the American family farmer has proven to be our most efficient producer. Yet a number of factors beyond his control are threatening the farmer's very existence. It is well to reflect on the fact that a critical element of our real wealth has been the ability of the farmer to feed not only our own population but that of the rest of the world. The small, independent farmer is also the rock around which the Founding Fathers built our democratic system of government.

Today we see the farmer facing spiraling fuel prices which cut into his narrow profit margin. Our farmers' productive capacity threatens to glut the market and reduce farm prices. The price of farmland is increasing at a tremendous rate, while farm credit is drying up. This problem is aggravated by the attractiveness of farmland as an investment for foreign speculators and large, domestic corporations who serve to keep the pressure on farm prices because our productive farmland is one of the best investments that any businessman can make. Too many well intentioned farm programs have wound up encouraging the giant farm corporations to expand while making it more and more difficult for the family farmer to compete. And this is true despite the many studies which have proven conclusively that the American family farm is the most efficient agricultural unit. Year by year we have stood idly by while our priceless farmland eroded at an ever increasing rate.

We are now facing a situation where the average age of our farmers is approximately 55 years old—the oldest age for any occupation—while young farmers are unable to choose this way of life because of the tremendous costs involved in modern farming and the limited amount of credit available to get started. Even when young farmers mortgage their futures to get started, they frequently experience a boom and bust cycle in the farm markets that is ruinous to their financial security. The recent grain embargo has turned a promising agricultural year into a time of increasing uncertainty for our farmers. This is not to imply that our farmers do not recognize the threat of Soviet aggression. They do. But they rightly insist that the farmers not shoulder this burden alone.

I fear that unless this Congress and the administration take forceful actions soon we will face a future that becomes more and more controlled by a food OPEC. These large corporations will not be willing to work the long, thankless hours for meager pay that our family farmers routinely put in. A food policy that attempts to produce cheap food at the sacrifice of our farmers is one that is doomed to fail and eventually hurt everyone far worse then the costs of helping the farmers now.

Legislation has been introduced to address many of these problems. I have introduced S. 334, the Family Farm Antitrust Act, which would prohibit foreign speculators and large, nonfarm corporations from investing in farmland in competition with our farmers. I have introduced S. 2354, the Energy Independence Grain Reserve Act, which would permit our large agricultural capacity to serve both our food and fuel needs. It would establish a grain reserve for alcohol fuel producers to guarantee our fledgling gasohol industry a dependable source of production and establish a new, dependable domestic market for our farmers so that they can get back to doing what they do best—growing crops.

I have also asked the Census Bureau to undertake another special agricultural survey of large corporate involvement in farm ownership. The 1974 special survey that was conducted in this area needs to be followed up if we are to effectively monitor current trends. I am sure that many of my colleagues hear the same kind of rumors that I hear from Hoosiers about nonfarm investors seeing farmland as an irresistible target for speculation.

Finally, I think that the Senate Agriculture Committee is to be commended for the speed with which it is seeking to address the problems attendant to the recent grain embargo. The swift action that the committee and the Senate took to extend the economic emergency loan program for another year, with an additional $2 billion in lending authority, will be of significant help in allowing our farmers to obtain much needed farm credit.

The committee last week reported out legislation which will allow all farmers to become eligible to participate in the announced USDA programs to alleviate the problems caused by the grain embargo and to allow embargoed corn to be sold much more easily for gasohol production. We are making progress in addressing the problems of the family farm, but we must not relax our efforts. Time is growing short.

Mr. President, I recently came across an excellent article on the farm situation which appeared in the March 2, 1980, edition of the Chicago Tribune entitled "Farmers: The New Hired Hands." This article portrays quite forcefully the kinds of problems that our farmers are facing right now and is important reading for all of us who are concerned about the continuation of the American family farm as the foundation of our economic wealth and of our political freedom.

I submit this article for the RECORD. The article follows:

FARMERS: THE NEW HIRED HANDS

(By R. C. Longworth)

DES MOINES, IOWA.—It is the promised land of farming—the rich area of northwestern Iowa, with its black soil and rolling hills, its bumper crops and prosperous farms. The towns are clean and quiet, the farms boast red barns, white houses, and soaring blue silos.

It all looks just as God and the painter Grant Wood intended. If a farmer can't make it here, he can't make it anywhere.

But looks deceive. Two-thirds of the farms in northwestern Iowa are owned by absentee landlords: Two-thirds of its farmers are tenants, hired hands working for somebody else.

The Roman Catholic diocese of Sioux City surveyed six counties in northwestern Iowa as the start of a project to find out who really owns the Middle West. It found 64 per cent absentee ownership—up to 76 per cent in Pocahontas County and 73 per cent in Webster County.

"This is a bad situation," a church statement concluded. "Not only for beginning farmers but for all who believe in the family farm concept. Farmers who can't own their land have very little chance of surviving.

"As a nation, we were founded on the premise that individuals should be able to own the land."

There have been warnings for years that the family farm is dying. If the situation in northwestern Iowa is a reflection of the rest of the Midwest, the family farm may be all but dead—with a permanent impact on our economy, our diet, and on the values and philosophy of the entire region.

Even many urban Midwesterners have in the past identified with the independent spirit and self-sufficient individualism of the family farmer: if the typical farmer turns out to be a sharecropper, what does that say about us?

James Rhodes, a University of Missouri economist, has noted that this process may be creating a class and a problem that the United States, almost alone among nations, has never had—a "landed aristocracy."

There has been much printed about the rape of the land in other parts of America. We know that the eight largest energy companies own 64.6 million acres of American land, that railroads hold questionable title to 23 million acres, that 80 percent of Maine is owned by absentee landlords, that the 25 biggest landowners in California (mostly corporations) hold 58 per cent of that state's land.

We also know that this concentration has severe consequences for those areas—the deaths of small towns as huge corporate farms replace smaller spreads, the creation of large numbers of unemployed in cities of the North as corporations force Southern blacks off their lands, the transformation of whole counties into the fiefdoms of powerful coal companies, and the cultivation of the square tomato and other tasteless food by corporations more interested in profit than nutrition.

The situation in the Middle West is entirely different—but, no less serious.

There is some ownership of Midwestern land by big corporations, but their total holdings appear small. Instead, the absentee owners in Iowa and other Midwestern states are often local people—rich farmers who buy neighboring farms and rent them out, or retired farmers who rent out their holdings and move into town, or local doctors and lawyers who buy farm land as a tax shelter.

Is this so terrible? It is, for reasons that are just now becoming visible.

Farm land has become another investment commodity, and a particularly valuable one. In the Midwest, crop land costs $2,000, $3,000, or more per acre. The size of the average American farm, once about 160 acres, is now 400 acres and growing fast: the number of farms under 500 acres is shrinking while the number over 500 is growing.

This means it costs $1 million or more to buy a farm. No young farmer has that kind of money, nor can he afford to borrow it at current rates of interest. Farming is still a profitable business, but speculators have bid up the price of land to three times its value in crops produced.

So the young man rents. Sometimes he is the farmer's son. Once upon a time, he would have taken over the farm from his father.

But farmers, like everybody else, are living longer: the average age of Midwestern landowners these days is an incredible 57 years. More and more, farmers are holding on to their land, even after they retire.

Farm groups report an increasing number of farmers' sons who remain in tenancy to their fathers until they are 50 or older. Often the sons, weary of such servitude, simply leave the farm and the old man rents to somebody else.

Then one day, the old farmer dies and leaves the land to his children. But inheritance taxes on $1 million worth of farm land are murderous. Even if the family has forestalled the tax problem through family corporations or other devices, most of the heirs have already left the land and want only to sell their inheritance and take the money.

At this point, a neighboring farmer, wealthy and able to borrow $1 million, steps in and buys the land. Many Iowa and Illinois farmers have spreads of 2,000 acres or more and are looking for more.

And so the neighboring farmer buys. Two family farms are incorporated into one. A farm family leaves the land.

Time passes and the wealthy farmer ages. He has farmed part of his holding, rented out the rest. When he dies, the tax burden is crushing. If he has one heir who already owns land, the farm may stay in the family. But if there are several heirs or if all the heirs have left the land, the pressure to sell is strong.

But a farm of this size costs millions. A wealthy buyer is sought—and often found among businessmen, doctors, or lawyers in town. Sometimes a syndicate of such investors buys the land, and rents it out.

Now the process is complete. Land that once was owned a century ago by some 50 families, and was consolidated over the years until it was owned by just one family, now is owned by no family at all.

"So a farmer, by wanting more and more land, is actually cutting his grandson's throat," says Curt Sorterberg, assistant to the president of the National Farmers Organization.

As the statistics on northwestern Iowa show, this process already is far advanced. The next step probably is the arrival of the really big money from corporations and conglomerates.

"These kinds of corporations, like Tenneco, are legally banned from Iowa," Sorterberg says. "But our suspicion is that there's some corporate financing behind some of the land buying here."

The ramifications resound throughout the Midwest.

One is in sheer farm production. Despite assumptions that big is bountiful, the few available studies indicate that the most productive farm on a per-acre basis is about 320 acres—or it would be if government policies were not so tilted toward big holdings.

Absentee landlords, with less thought of the future, encourage more use of chemical fertilizers and more intensive use of the land, promoting both pollution and erosion.

Studies on Midwestern towns also show that as family farms die out, so do the local businesses that support them. For every six family farms that are swallowed up, one local business expires—and Iowa alone is losing some 4,000 farms each year.

When a farm gets big enough, it finds it easier to bypass local businesses altogether. Instead of dealing with the local feed dealer, implement salesman, bank, or grain elevator, it goes directly to the head office, buying in bulk from a big supplier hundreds of miles away.

Absentee landlords skew local economies and local tax rolls. In 1968, the Department of Agriculture reported that two-thirds of the 66,000 richest persons reporting farm income claimed a net farm loss.

And money that local investors are using to speculate in farm land is money not available for other forms of more useful investment—for instance, in small-scale industry which is an increasingly important source of jobs in rural areas.

"Something is wrong," Sen. Birch Bayh (D., Ind.) has said, "when a young farmer is unable to establish himself due to skyrocketing land prices that have increased 300 percent since 1970. Something is wrong when rural communities fade away even though they are surrounded by fertile, productive agricultural land.

"Something is wrong when a farmer, who has hundreds of thousands of dollars invested and works 12 to 15 hours per day, can't earn enough to support his family and has to sell part of his farm to make ends meet."

Among experts in the field, there is no dispute at all about what is wrong. The culprit is decades of federal and state laws that have had the result—intended or not—of encouraging big farms, penalizing small or medium-sized farms, and driving family farms off the land.

On this, even Secretary of Agriculture Bob Bergland agrees.

"The truth is, we really don't have a workable policy on the structure of agriculture," Bergland admitted before the National Farmers Union convention last year.

Past policies created an American food-producing system "that is the envy of the world," Bergland said. But he said this system, for all its fecundity, seems to "have worked to the disadvantage of small and medium-sized farmers."

The pressure is on for "larger and larger and fewer and fewer farms that will increasingly dominate and control production," Bergland said.

He told of 21 farmers who came to Washington recently to lobby for higher price supports "to save the family farm." Yet 20 of these farmers had annual sales of more than $200,000 and several claimed that a farm should have sales of at least $100,000—a minimum level that would eliminate 90 percent of all U.S. farms.

Bergland quite clearly shares the view of almost all land reformers—that well-intentioned federal policies, designed to increase farm output, have inadvertently driven small farmers out of business and created a cult of bigness.

These policies include the inheritance tax laws. They include other tax policies that encourage land ownership by non-farmers as a tax shelter. They include tax laws that encourage big farmers to buy yet more land.

The policies include farm research carried out by land grant colleges that focuses on produce and machinery intended to increase profits on big farms.

They include government credit policies that favor big farmers, with a reluctance to lend to smaller, less profitable, farmers.

They include, especially, farm price supports. In 1976, 36.5 per cent of these payments went to the richest 5.5 per cent of American farmers.

There are steps being suggested to correct these policies. But the first chore is obvious—a really good investigation of who owns America's land.

According to the available literature, only two intensive land-ownership studies have been made in the United States—the one by the Sioux City diocese showing 64 percent absentee ownership, the other by the U.S. Department of Agriculture in 1974 which showed that only 14 per cent of the land in highly rural Rappahannock County, Virginia, was actually owned by farmers.

This startling result prompted the Agriculture Department to make a larger, less rigorous survey last year showing that farmers own 56 per cent of all U.S. farm land; the survey was based on voluntary questionnaires. Using similar methods, a major USDA book published in December said that about 40 per cent of Midwestern farm land was rented—an obvious underestimate that appears ridiculous in light of the Iowa survey.

Clearly, the problem exists. The government's first step should be to find out how bad it is.●

PUBLIC INTEGRITY

● Mr. HATCH. Mr. President, last year during the Department of Justice authorization and oversight hearings, I submitted various interrogatories requesting information in regard to that Department's Public Integrity Section.

One of the interrogatories asked specifically:

What analysis, if any, has been made of the effectiveness of the Public Integrity Section since its creation? What are its accomplishments and shortcomings? Has the Justice Department conducted any audits or official review of the Section's efficiency? Please cite any such efforts. What were their conclusions?

Mr. President, in response to this interrogatory, the Department in part replied that:

While no formal external evaluation of the Public Integrity Section has been conducted . . . this Section has been successful in assembling a highly trained and qualified staff of legal talent possessing an expertise in the investigation and prosecution of what are highly visible, delicate and complex and socially significant cases. Experience has demonstrated over the years that the successful prosecution of public corruption cases requires the devotion of significant amounts of attorney manpower and imaginative use of prosecutive theories.

The answers I received back from the Department of Justice, although not wholly satisfactory, persuaded me at that time that they had at least been forthright and candid in their response.

However, my belief in that assumption has waned considerably in the past year. What little credibility remained has been severely shaken by a series of articles appearing in the current edition of the Federal Times.

If the reports contained therein are true, I am very much chagrined by the attitude of the Department of Justice and appalled by the performance of the Public Integrity Section.

Apparently, their response to what they termed "highly visible, delicate and complex and socially significant cases" has been during the 4 years of its existence to maintain a highly invisible presence.

I am certain that the members of the Judiciary Committee will be anxious to scrutinize more than just answers to interrogatories during this year's current Department of Justice Authorization and oversight hearing in relation to the allegations leveled at the Public Integrity Section and its chief.

I ask that these two articles from the Federal Times be printed in the RECORD.

The articles follow:

SENSITIVE CASES LEFT HANGING

(By Inderjit Badhwar and Sheila Hershow)

Thomas H. Henderson Jr.'s controversial record at the helm of the Justice Department's Public Integrity Section has sparked concern about his future performance in the most sensitive investigative job in the federal bureaucracy—special counsel to the Merit Systems Protection Board.

As the first and only chief of Public Integrity, Henderson was assigned to crack down on white-collar crime by federal, state and local officials. As MSPB special counsel, he will be expected to enforce merit rules throughout the federal government, protect whistleblowers from energy reprisals, and punish federal officials who commit illegal personnel actions or cover up fraud and mismanagement.

President Carter nominated Henderson for the special counsel post recently. The Senate Governmental Affairs Committee has not yet scheduled a date for the confirmation hearing.

After the Henderson appointment was announced, Federal Times reviewed his handling of significant Public Integrity cases over the past four years. These cases involve allegations of criminal misconduct by federal executives, Pentagon generals, governors, federal judges and minor officials.

The records often revealed delays, little or no investigative work and a reluctance to bring cases before a jury despite considerable evidence of white-collar crime.

In a series of interviews, FBI agents, U.S. attorneys, assistant U.S. attorneys and congressional investigators complained that, under Henderson, Public Integrity was slow and slipshod in its conduct of major investigations.

"I found Henderson's shop unresponsive, unconcerned, with a curious inability to pursue cases that seemed to me obvious," a Capitol Hill investigator said. And a prominent U.S. attorney said that numerous lawyers who attended a San Diego workshop for federal prosecutors were openly critical of Public Integrity.

He said, "The general impression was that if you want a case properly prosecuted and handled, give Public Integrity a wide berth. Go it alone."

None of the sources interviewed by this newspaper suggested that Henderson is corrupt or venal. One assistant U.S. attorney described him as "polite, personable and charming."

Others with first-hand knowledge of his operation said that Public Integrity is a lightweight outfit, staffed by novice lawyers, and, in one well-respected prosecutor's words, "long on public relations and short on legal analysis."

"The trouble with that shop," he said, "is that Tom hired people with very little legal experience who know nothing about preparing for trials. And Tom has no ability to teach or train them. I think it's a question of his competence and his desire to bid up cases in order to make his numbers look good and then not take them to trial."

The following cases are often cited by Henderson's critics. They say the records illustrate Henderson's lack of judgment, lack of prosecutory zeal and willingness to back away from politically sensitive issues.

FILE LANGUISHED

On June 19, 1978 the Energy Department's inspector general asked the Justice Department to consider leveling criminal charges against William S. Heffelfinger, DoE's director of administration. The case was sent to the Public Integrity Section.

Investigations by the DoE inspector general, the House energy and power subcommittee, other congressional panels, and Federal Times had disclosed evidence that Heffelfinger falsified his job resume, lied under oath to Energy investigators, served as a Nixon administration hatchetman at the Department of Transportation, threatened Transportation contractors, condoned merit violations, ordered the shredding of government documents and bullied members of the independent National Transportation Safety Board.

The Heffelfinger file languished at Public Integrity for more than a year and a half. While awaiting the Justice Department decision, DoE took no administrative action against Heffelfinger.

On February 15 Henderson wrote a one-paragraph letter to DoE Inspector General J. Kenneth Mansfield declining prosecution of the Heffelfinger case. He said he was refusing to bring criminal charges because "no prosecutive merit exists in regard to any of those allegations."

Henderson did not explain why it took Public Integrity 19 months to reach this conclusion.

THREE-YEAR DELAY

On October 1, 1979, Henderson personally recommended that the Justice Department drop efforts to bring criminal charges against Kenneth L. Dupuy, a former Federal Energy Administration regional chief who accepted gourmet meals, rental cars, airplane trips, board for his horse and dog, a sojourn at a plush Florida beach house and the frequent use of an apartment from oil companies he was assigned to regulate.

The Dupuy case was under review at the Justice Department for three years before Henderson turned it down.

In a memo he argued that criminal charges were inadvisable because a jury might believe Dupuy "actually advanced government interests" by taking gifts from companies seeking to curry his favor "and then leaving them high and dry."

Henderson added that a jury might even view Dupuy "in a favorable light" for "teaching the oil companies a well-deserved lesson."

The Dupuy case was referred to the Justice Department by Michael F. Butler, then FEA general counsel. The referral cited evidence that Dupuy accepted gifts including the rent-free use of an Atlanta apartment from William E. Corey, a gasoline retailer. According to sworn statements, Dupuy visited the liquor-stocked flat twice a week between December 1974 and May 1975 for sexual liaisons with his administrative assistant and also with an FEA secretary.

In return for Corey's generosity, Butler wrote, Dupuy ordered revisions in FEA rules that gave Corey's company "substantial increases" in gasoline allocations during the oil-scarce period following the Arab oil embargo. Allocations for one gas station leaped from 432,000 gallons a year to three million gallons and in another case from 1.02 million gallons to three millions gallons.

The gratuity section of the federal bribery law bars a public official from accepting "anything of value . . . for, or because of, any official act performed or to be performed by him." The penalty is two years in prison, a $10,000 fine or both prison and a fne.

When Butler learned that Henderson had tossed out the Dupuy case on the grounds that a jury might approve of Dupuy's actions, he said, "You've got to be kidding." A Capitol Hill investigator who reviewed the FEA file on Dupuy called Henderson's refusal to prosecute "an outrage."

The congressional agent charged that the Justice Department "did not want to go after Dupuy because they were afraid of raking up information that would be politically damaging to President Carter." Evidence in the Dupuy file indicates that Lewis Spruill, who was appointed Georgia state energy chief by then-Governor Jimmy Carter, accepted gifts from Corey and gave preferential treatment to gas stations owned by Corey and Billy Carter, the President's brother.

Dupuy, Spruill and Billy Carter have denied any wrongdoing.

URANIUM PROBE

On March 19, 1979, the deputy inspector general at the Department of Energy asked the Justice Department to consider bringing perjury charges against Robert W. Fri, the former chief of the Energy Research and Development Administration.

The DoE referral said that Fri "may have made intentionally misleading statements" to the House energy and power subcommittee when he testified that significant quantities of bomb-grade uranium had never been diverted from a nuclear plant in the United States.

Fri gave his sworn testimony in August 1977 after at least one U.S. intelligence agency had reported that enough government-owned high-grade uranium had been taken from an Apollo, Pa., nuclear plant in the mid-1960's to fuel all the nuclear weapons believed to be in Israel's arsenal.

The Fri matter was considered politically sensitive because several members of Congress had accused ERDA, DoE and the Nuclear Regulatory Commission of downplaying U.S. vulnerability to nuclear theft by terrorists, criminals and foreign agents.

On April 27, 1979, Deputy Assistant Attorney General John C. Keeney, Henderson's boss, declined to prosecute Fri on the grounds that the DoE referral "contains insufficient evidence." The Justice Department's Public Integrity Section never interviewed Fri, never questioned subcommittee members or staff, and apparently never made any effort to add to the "insufficient evidence" forwarded by DoE.

Federal employees who "knowingly and willfully" make false statements to Congress may be punished with a $10,000 fine and five years in prison.

CSC INVOLVED

In 1976, following an exhaustive investigation of widespread merit system violation, favoritism and corrupt personnel practices within the federal bureaucracy—stemming from the Watergate investigation—the House Post Office and Civil Service Committee forwarded a report to the Justice Department for prosecution.

Among the allegations contained in that report were that high officials of the then-Civil Service Commission who had participated in illegal patronage practices had perjured themselves and destroyed documents that may have shed more light on these practices.

The Public Integrity Section under Henderson sat on the case for nearly two years without investigating despite repeated congressional prodding. It was only after a politically embarrassing story was published, a story pointing out that CSC officials whose names had been forwarded to the Justice Department were involved in writing the President's civil service reform legislation, that Public Integrity ordered an investigation.

The probe was assigned to a single FBI agent shortly before the statute of limitations ran out. The agent speedily established that thousands of files had been stripped of damaging information and took the matter before a grand jury. The agent was not allowed to testify before the grand jury. And, according to reliable sources, all chances for indictments were dashed when the Justice Department—with Henderson's concurrence apparently—persuaded the heretofore eager grand jury to drop the case.

FITZGERALD SAGA

The 10-year-old saga of A. Ernest Fitzgerald, the Air Force whistleblower who revealed a multibillion-dollar cost overrun on the C–5A aircraft, took an unexpected turn in 1978 when the FBI launched an investigation of perjury, falsification of official records, and concealment of material facts involving top Air Force officers.

In particular the inquiry focused on Gen. Hans Driessnack, who is now Air Force comptroller. New information had come to light indicating that Driessnack may have doctored an affidavit to conceal his role in leveling false and defamatory charges against Fitzgerald in 1969 in a covert campaign designed to smear Fitzgerald and drive him from his job. The Driessnack affidavit directly conflicts with the versions of events given—in some cases under oath—by at least five other Air Force officials. And the affidavit conflicts with a draft version of Driessnack's sworn statement found in the Air Force files.

According to FBI sources, the agent in charge of the investigation was told at every turn by Justice officials that the case against the general was a "hot potato." The agent was dissuaded from pursuing it, sources say. The agent persisted, interviewing Driessnack and other principals in the case. While the agent was in the process of writing his report, a senior Justice official, Donald Campbell, and the U.S. attorney for the District of Columbia, Earl Silbert, re-interviewed Driessnack and wrote an opinion exonerating him.

Sensing a cover-up, the FBI sought the help of Rep. John D. Dingell, D-Mich., to pressure Justice to reopen the matter. With Dingell's backing, the FBI made a second try and submitted a report of the investigation directly to Public Integrity hoping, a source said, "that Public Integrity would give it a good shake." But Public Integrity sat on the FBI report and recommended later that no action be taken. Shortly thereafter, Driessnack, who had been nominated for his third star, received his promotion.

BLANTON ACCUSED

The FBI successfully investigated this public corruption case despite Public Integrity's initial reluctance. In early 1979 the FBI arrested three top aides to former Tennessee Governor Ray Blanton—in a scandal that rocked the entire state—and charged them with accepting money for freeing state prisoners convicted of serious crimes. The case could have surfaced earlier had Public Integrity not dragged its feet.

The man who had begun the investigation, Charles Hill Anderson, the Republican U.S. attorney, could have obtained indictments as early as 1977 if Public Integrity had acted swiftly. Anderson, who is now adjutant general of the state's national guard, told Federal Times that he had sent a report to Public Integrity summarizing his evidence and recommending indictments shortly before he left office.

"I got no negative feedback from them," Anderson said, "but I just don't know what they did with my report. As far as I know no action was taken." The Washington Post reported last year that a grand jury looking at the evidence in that case expired without returning indictments "because the Justice Department refused to approve proposed indictments being pushed by the FBI because the evidence was not strong enough." Notwithstanding this setback, FBI agents continued their probe and were later able to make arrests on their own.

SHAPP FUNDS

The Milton J. Shapp Campaign Corruption Case allowed Public Integrity to boast of its effectiveness.

Some fund-raisers for former Pennsylvania Governor Shapp were convicted in 1978. But this newspaper's investigation indicates that Henderson—acting at the behest of then-deputy attorney general Ben Civiletti—personally interceded in the probe. This action had the effect, according to sources, of limiting the damages in the case whereby the major figures—including Shapp who was, at one point, not even subpoenaed after Civiletti's personal intervention—went free while minor functionaries were indicted.

The Shapp case was the first test of whether the criminal provisions of the new federal election campaign laws could be enforced. The investigation stemmed from charges that Shapp fraudulently entitled himself to matching federal money for his 1976 presidential campaign by issuing false reports about money collected by his fund raisers. Shapp later had to reimburse the government $300,000.

Sources close to the investigation said that the U.S. attorneys in Philadelphia and Pittsburgh—who had laid the groundwork in the case and had the best trained FBI agents and the most experienced prosecutors—were completely excluded from the case. The case was transferred to the Harrisburg-Scranton area where prosecutors, one source said, "had never done a major political corruption case before."

Washington—through Public Integrity—assumed overall jurisdiction of the investigation. "The case was just yanked," one federal prosecutor remarked.

According to this source, U.S. attorneys from Pittsburgh and Philadelphia were told by Henderson that there was to be "no interference' from them in the case. They were precluded not only from assisting but also from providing information they were willing to offer that could have helped indict more people.

"We were effectively cut off at the pass," said Blair Griffith, who was then U.S. attorney in Pittsburgh. "I suspect a political motivation. The investigation's pace was slowed down which at least afforded the potential defendants time to get their acts together

to resist it. Public Integrity is supposed to be an ongoing aid to prosecutors. In this case, it was a deterrent."

According to documents obtained by this newspaper, FBI agent Neil Welch who was then in Philadelphia and who later ran the Abscam sting operation, criticized the movement of the case to Harrisburg on the ground that his best agents would no longer be able to handle it, and he said he was frustrated by delays and lack of direction from Washington.

PLOT CHARGED

Jack Nard is a private contractor and a Pittsburgh resident. For eight years he has been trying to force the Justice Department to investigate charges that he is a victim of a criminal conspiracy involving a federal judge, a large corporation, and Pennsylvania Gov. Richard Thornburgh as well as the subject of harassment by the Internal Revenue Service. Nard and Armour and Co., meat packers—subsidiary of Greyhound bus system—had sued each other over a breach of contract involving timetables and cost overruns on construction projects Nard was handling for Armour in Pittsburgh and Sioux City, Iowa.

Pittsburgh Judge Joseph Weis found both Armour and Nard were to blame but penalized only Nard with a heavy fine. A Senate investigator for Sen. Orrin Hatch, R-Utah, found after a year-long study of that decision that the judge had ignored relevant evidence in the case. Nard charges that he is a victim of the Pennsylvania political machine created by former Sen. Hugh Scott. Scott appointed Judge Weis who, Nard says, ruled in Armour's favor because it was represented by a law firm with important Republican connections. Some of the evidence Nard presented was used by the Justice Department to prosecute Greyhound in an unrelated case.

But Nard's other charges—influence peddling with a federal judge, perjured testimony during his trial, that Thornburgh, as former U.S. attorney in Pittsburgh helped direct the IRS probe against him—were dismissed by Justice as unsupportable following what Thomas Henderson has characterized as a "thorough and exhaustive investigation."

Thornburgh later became head of Justice's Crime Division with Senator Scott and, Nard charges, pressured a U.S. attorney in Iowa to drop an investigation of Nard's case. This Iowa probe was based on charges of corruption made by Nard that stemmed from his business dealings with Armour in Sioux City.

A new U.S. attorney in Iowa, James Reynolds, is now presenting evidence in the Nard case to a grand jury in that state. According to reliable sources, Reynolds, like his predecessor, was also pressured by Justice Department officials to drop the case when he insisted on interviewing Thornburgh. Even though Henderson maintains he had nothing to do with investigating the Nard case he participated in the meeting during which this alleged pressure was put on Reynolds to back off.

The curious twist in this case, according to sources is that assurances by Henderson once given to Reynolds that the case had been exhaustively investigated before being dismissed and that the investigative files would be turned over to Reynolds Public Integrity did not have over the appropriate files. A source revealed that the investigative files cannot be found. "They were either never there or they have disappeared," he said. Also missing, according to reliable sources, are the files on Senator Scott and his government patronage-related artivities that were turned over to Justice by the Watergate prosecutor. The files are believed to be relevant to the Nard case.

Justice Department officials also apparently provided false information to the Senate Judiciary Committee in a critical area of the Nard investigation last year. They said that as part of their investigation of the case they had interviewed Thornburgh. But later, in a written response to questions from Senator Hatch, Justice officials changed their story and said they had not interviewed Thornburgh.

LOBBYIST PROBED

On May 4, 1979, the DoE deputy inspector general asked the Justice Department to investigate conflicting statements made under oath by three Energy Department employees and an American Petroleum Institute lobbyist who routinely obtained advance copies of DoE pricing rules from his agency sources.

Sen. Howard M. Metzenbaum, D-Ohio, had conducted hearings on the DoE leaks. When the DoE referral was sent to Public Integrity, Metzenbaum urged then-Attorney General Griffin Bell to give "top priority" to probing possible perjury by John Iannone, the oil industry lobbyist, and his DoE contacts.

Henderson informed the DoE inspector general's office on July 26 that "prosecution for perjury would be inappropirate due to several practical considerations." He explained that "many of the statements are not actually conflicting, those statements which do conflict involve an 'oath against oath' situation . . . and one of the sources of the inconsistencies is a letter from the API employee . . . that does not appear to have been prepared under oath."

Henderson never interviewed Iannone or his DoE contacts. He limited his investigation to reviewing documents sent to him by the inspector general's staff at DoE.

Despite this apparent lack of investigative zeal, Keeney, Henderson's boss, assured Metzenbaum that the "highest priority" had been given to the Iannone case because of the "immense importance of the issues" raised.

SALT LAKE INQUIRY

In 1977, Public Integrity was asked to supervise two investigations of Salt Lake City District Judge Wills Ritter. The first was an embezzlement case involving Judge Ritter's personal secretary who allegedly was paid a salary while absent from work. The second case, according to Justice Department documents, indicates Ritter "may have committed criminal violations" by giving preferential treatment to clients of a prominent law firm, and who had allegedly falsified the time and attendance records of his personal secretary.

Public Integrity at first dropped the embezzlement case without a comprehensive investigation but was forced to revive it after the U.S. attorney in Salt Lake City, Ramon Child, wrote a letter of complaint to Henderson that he had dropped the case without even examining all the relevant files.

Greg Rushford, a Washington writer, who investigated the situation, said that FBI agents were preparing to crack the case during the second go-around by using the technique of simultaneous interviews of court house employees, but were dissuaded from doing so by Henderson, who then quashed the case without the judge's connections with the law firm ever being investigated. No reason was given.

RECORD ALTERED

Columnist Jack Anderson revealed last year that District of Columbia federal Judge John H. Pratt had covered up an impropriety on the bench by altering an official court report and then tried to cover up the investigation by pressuring the FBI to call it off. Even though Anderson did not subsequently report this, he learned from FBI sources that a comprehensive inquiry of Pratt's alleged illegal conduct was "stalled" under direct orders from Public Integrity.

CONCEALMENT ALLEGED

An investigation by the inspector general of the Treasury Department determined last year that several highly-placed employees in the Bureau of Government Financial Operations may have violated 18 U.S.C. 1001 (2017)—criminal concealment, removal, or mutilation of records and reports—in order to dodge a Freedom of Information request filed by the National Treasury Employees Union. Treasury referred the matter to the Justice Department for prosecution.

But Henderson "declined to prosecute," a Treasury memo says, "indicating that his office had determined that the facts as developed in this matter did not warrant further criminal investigation . . ."

THE RIGHT MAN?

Much space in this newspaper this week involves an investigation of the professional qualifications of Thomas H. Henderson Jr. to head the Office of Special Counsel of the Merit Systems Protection Board. Henderson was nominated for that post recently and needs only the approval of the Senate before taking over this key federal personnel position.

We think such a lengthy study is right and proper because—as a reading of the Civil Service Reform Act of 1978 will prove—the Special Counsel has great power and his job is called the most sensitive in the federal bureaucracy. Indeed, the success of the reform act, as it pertains to merit rules and illegal personnel actions, depends to a large extent on just how the Special Counsel does his job.

A former executive director of the Civil Service Commission, who at first opposed the civil service reform bill but later found reason to support it, told us shortly after the bill was passed by Congress that whether or not the new merit promotion system would work will necessarily depend upon who has the Special Counsel post. We did not agree with him on his general support of the reform bill—this newspaper opposed it for many reasons—but we did agree with him on the importance of getting the right man as Special Counsel. An establishment, management protector, distrustful of whistleblowers, one who would willingly shy away from politically sensitive issues, simply would not do. With such a Special Counsel, merit protection would be a bad, and sad, joke. Many others familiar with the merit system—whether they were for or against the reform bill—strongly agreed.

The importance of the post is spelled out in Public Law 95-454 (the Civil Service Reform Act):

"The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken . . .

"The Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken . . . [He must rule on any case involving] disclosure of information by an employee or applicant for employment which the employee or applicant reasonably believes evidences a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety . . ."

And all that only begins to indicate the nature of the Special Counsel's job.

The first Special Counsel, H. Patrick Swygert Jr., did his job well, we thought, as we noted in an editorial late last year when he resigned "for personal reasons" after suffering a significant setback at the hands of the Merit Systems Protection Board in the U.S. Marshals case.

Swygert did not lack the will to prosecute, no matter who advised him to lay off. He did not hesitate, for example, to take on the mighty Justice Department in the marshals case. He ran his office like a law firm of prose-

cuting attorneys and always seemed to be aware of his job's potential for righting wrongs. He cared about the guy stomped on illegally by the powers-that-be. When he left, we said that he would be missed and guessed that the administration would be strongly tempted to find a "responsive, politically pliable *known* quantity, as they say in Washington, to replace Pat Swygert."

We do not now say that Tom Henderson is such a responsive, politically pliable lawyer. We must mention, too, that Swygert holds Henderson in high regard and told us so once he learned that we were investigating Henderson's performance as chief of the Justice Department's Public Integrity section.

At Justice, Henderson had the job of cracking down on white-collar crime by federal, state and local officials. As Special Counsel he will be involved with similar cases. Obviously, how he handled federal personnel cases at Justice is eminently worthy of study.

Is Tom Henderson the right man to be Special Counsel?

To help answer that question, writers Inderjit Badhwar and Sheila Hershow have taken a look at his track record. And in an interview this week, Henderson defends that record.

We make no final judgment on Henderson as Special Counsel. But we do hope that members of the Senate, who will be called upon to make such a judgment, will find time to study his record as a crime fighter before consenting to his appointment to one of the toughest jobs in federal government, one that directly or indirectly affects every federal employee.●

SACCHARIN STUDIES

● Mr. NUNN. Mr. President, a thoughtful editorial in the Atlanta Constitution of Tuesday, March 11, 1980, entitled, "New Saccharin Studies," calls on the Food and Drug Administration to reexamine its position with respect to saccharin, the artificial sweetener.

As the editorial correctly asserts, saccharin is an important health agent which has proven itself to be of invaluable assistance to those suffering from diabetes and other sugar-related problems.

I certainly understand the FDA's concern as to a possible relation between saccharin consumption and cancer. However, if the recent studies conducted by the National Cancer Institute, Harvard University's School of Public Health, and the American Health Foundation are proven valid, the FDA should begin a new and intensive study of its own into the effect of saccharin use. The results, whatever they might be, should be disseminated as widely as the original negative reports on saccharin.

Mr. President, I ask that the editorial be printed in the RECORD, and I commend it to the reading of my colleagues.

The article follows:

NEW SACCHARIN STUDIES

There is some sweet news out for diabetics and others with sugar-related health problems. Three major studies indicate that the artificial sweetener, saccharin, is responsible for little, if any, cancer of the urinary tract and bladder.

The studies were conducted by the National Cancer Institute, Harvard University's School of Public Health and the American Health Foundation.

The Food and Drug Administration has moved to restrict or ban the use of saccharin, contending that earlier studies indicate it is a cancer-causing substance. The FDA based its action, which Congress has delayed, on studies showing the high incidence of cancer in rats which consumed large quantities of saccharin.

The studies which virtually absolved saccharin as a cancer-inducing chemical involved more than 4,000 human subjects.

We do not wish to castigate the FDA for trying to follow the law and restrict or ban the use of agents that may cause cancer. We believe the FDA has done valuable work in this field.

But, at the same time, saccharin is a valuable health agent in itself. It helps diabetics and others with sugar-related problems live relatively normal lives. If the current studies are valid—and we have no reason to believe they are not—the FDA should consider abandoning its attempts to deprive the public of use of this important artificial sweetener.●

THE U.N. VOTE ON THE OCCUPIED TERRITORIES

● Mr. JEPSEN. Mr. President, I rise today to express my concern about the matter of U.S. policy in the Middle East and the status, present and future, of our relationship with Israel.

There are several issues which need to be explored in the wake of the administration's recent vote in the U.N. concerning Israeli settlements in the occupied territories. These issues include the possibility of a shift in U.S. policy, the potential losses which may have been incurred to U.S. foreign policy in general, and the timing of this grave diplomatic error in the context of instability elsewhere in the region.

As I understand it, the essence of this administration's attitude toward Israeli settlements in the occupied territories has been that they are undesirable in the context of continuing negotiations, unwarranted in general, and, in fact, illegal according to international law. Whatever disagreement I may have with this policy, it has been the policy of our Government to carry out this debate in private rather than in public. We are all aware of the administration's efforts to dissuade Israel behind the scenes from continuing their settlement policy in the occupied territories. If this remains our policy, then we are faced with a serious question of competence; for it is now apparent that the administration has been unable to carry out that policy. With the recent U.N. vote, the private protestations of this administration have become public in a highly politicized international forum.

From the administration's own point of view the belated retraction and explanation seems likely to strengthen Israel's resolve in the autonomy talks, and will undermine the administration's efforts to influence Israel behind the scenes. By their own standards, the vote may have backfired. This will result in a net loss from where the administration's policy began, that is, trying to use quiet diplomatic channels to influence Israeli settlement policy.

However, there remains a legitimate concern in the Congress and among the people that rather than being a "diplomatic blunder" this vote may foreshadow a significant underlying shift in U.S. policy. Putting the question of Jerusalem aside, there are too many other references in the resolution, such as the call for dismantling of all existing settlements, which suggest a conscious political break with past policy as opposed to a mere foul-up in communications. There is concern that the United States has decided to push Israel publically on this issue, and that the United States is actively encouraging increased U.N. intervention into the very sensitive autonomy talks.

It is well known that in response to similar resolutions in the past, our policy has been to abstain. This pattern has now been broken. It is hard to believe that after all the efforts made by President Carter to achieve a negotiated settlement in the Mideast that the adminisration would pursue a course of action which so clearly undermines the autonomy talks formulated under the Camp David accords.

I fear, Mr. President, that in the wake of this error there will be tangible losses for U.S. foreign policy in this region. Now more than ever, Israel questions real U.S. intentions both with respect to the determination of this administration to bitterly oppose Israeli settlement policy, and in the sincerity of our overall bilateral relationship. In addition, our relations with Egypt will not be unaffected by these developments. Egypt will be afforded the opportunity to point to U.S. support of the U.N. resolution in its efforts to gain Israeli concessions. At the same time, however, the administration's backpedaling will leave doubts as to what U.S. policy really is. In either case, it seems likely that some strain in United States-Egyptian relations will be unavoidable. In sum, it is difficult not to reach the conclusion that our role as "honest broker" in the Camp David peace process has been compromised.

Finally, I have deep reservations about the administration's handling of this sensitive issue in the context of regional instabilities in the Persian Gulf. At a time when there remains a crisis in Southwest Asia—Iran, Afghanistan, and Pakistan—it would seem only prudent that we avoid a diplomatic crisis with allies in the Middle East. At precisely the time when we are beginning to appreciate the strategic value of Israel as a staunch ally of the United States—at a time when we need the diplomatic and perhaps material support of more moderate Arab nations such as Egypt—we have unnecessarily muddied the waters of the Camp David peace process and have jeopardized our relations with those countries so anxious to be our friends.

As hearings begin before the Senate Foreign Relations Committee, I urge the administration to submit a full and complete explanation of U.S. policy on this issue, and to reaffirm its commitment to the orderly negotiating process established under the Camp David accords—a process free from the undue pressure of those unaffected by the outcome.●

PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I submit the notification I have just received.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., March 12, 1980.

HON. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80–48, and under separate cover the classified portions thereto. This Transmittal concerns the Department of the Army's proposed Letter of Offer to Egypt for defense articles and services estimated to cost $454.1 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA,
Director.

[Transmittal No. 80–48]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Egypt.

(ii) Total estimated value: Major defense equipment,* $409.1 million; other, $45.0 million; total, $454.1 million.

(iii) Description of articles or services offered:

Two hundred forty-four (244) M60A3 tanks with related communications equipment, armament, ammunition, spare parts, support equipment, training and associated services. The estimated total cost is $454.1 million.

(iv) Military department: Army (UBB).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See Classified Annex.

(vii) Section 28 report: Case not included in Section 28 report.

(viii) Date report delivered to Congress: March 12, 1980.●

* As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

AFL–CIO SUPPORT FOR RFE/RL

● Mr. PELL. Mr. President, on February 1, I addressed the Senate on the question of the Soviet invasion of Afghanistan. On that occasion, I stated that the administration had overlooked one very important nonmilitary retaliation option—a stepped up capability of Radio Free Europe and Radio Liberty to broadcast news about the Soviet invasion.

Subsequent to my address, the Executive Council of the AFL–CIO met in Bal Harbour, Fla., and adopted a very strong statement of support for Radio Free Europe and Radio Liberty. The council also stated, as I did in the Senate, that there is an urgent need to increase the number of transmitters beamed at Soviet central Asia, Siberia, European Russia, and the Ukraine.

I support that proposal and ask that the full text of the AFL–CIO statement, which I commend highly to my colleagues, be printed in full in the RECORD.

The statement follows:

STATEMENT BY THE AFL–CIO EXECUTIVE COUNCIL ON RADIO FREE EUROPE AND RADIO LIBERTY

Radio Free Europe and Radio Liberty broadcasts, like those of the Voice of America, provide complete and timely news and analysis to the captive people who live behind the Iron Curtain. Without this source of information, these people have little or no access to the truth.

The broadcasts of Radio Free Europe and Radio Liberty serve as a lifeline of communication to those who courageously defend human rights in Eastern bloc countries. The airwaves provide protection for Andrei Sakharov and others who have no other defense except for public prominence.

The AFL–CIO Executive Council is deeply concerned by the continued slow disintegration of these broadcasting organizations. The reach of their message is being restricted by cuts in transmitter power and hours, and reductions in staff and program resources.

Bureaucratic delays have prevented the positioning of important new transmitters to reach Soviet Central Asia and Siberia, and there is a demonstrated need to increase the number of transmitters beamed at the heartlands of European Russia and the Ukraine.

We call upon the Congress and the Administration to work together to provide the leadership and resources necessary to continue the vital mission of Radio Free Europe and Radio Liberty.●

THE AFGHAN INVASION: SOVIETS USE GERM WARFARE

● Mr. DOLE. Mr. President, for quite some time now the Senator from Kansas has urged that the administration press the U.N. Committee on Disarmament for an investigation into the use of nerve gas warfare by the Soviet Union in Afghanistan. There are several reports coming out of that invaded, but not yet conquered, country that the Russians have used soman, a deadly nerve gas, in their attempt to suppress further Afghan resistance. This is a monstrous disregard for international law and tradition—an inhuman tactic to which even Hitler refused to resort.

The U.S. defense intelligence agency, by intercepting Soviet communications, believes the Soviets may also be waging germ warfare in their confrontations with the Afghan freedom fighters—and the innocent civilians who live in this testing ground for Russian military atrocity.

The Soviets, of course, deny this callous and flagrant breach of civilized values and inhibitions. But reports have leaked to the Western European press of industrial accidents in the U.S.S.R. involving biological weapons. Yesterday, the State Department confirmed that the United States was discussing the available evidence with the Soviets in Geneva. It is something the United States must take a firm stand against; no one can possibly "win" if NBC warfare (nuclear-biological-chemical) is ever employed.

HUNDREDS DIE

Perhaps the Soviets may find this out. Evidently, hundreds of Soviet citizens in Novosibirsk and Sverdlovsk died in 1979, after an explosion leaked virulent bacteria into the atmosphere. Only the isolation of the area from the outside world perhaps prevented a widespread plague. But in the Soviet Union, where the Communist elite holds the population in bondage, controls the press, and even prevents free movement by the citizens within the country—we cannot expect the Russians to refrain from further manufacture and use of biological weapons, even after these disasters.

ALLIES MUST JOIN UNITED STATES IN CONDEMNATION

Mr. President, the unprovoked invasion of Afghanistan was an affront enough to the values of the global community, which condemned by a massive vote in the United Nations the Soviet action. The invasion is also a serious challenge to U.S. and Western interests in the oil-rich Southwest Asian region. The threat of further Soviet incursions across the borders of Iran or Pakistan calls for the strongest of U.S. counteractions. We must be aware that the calculated desperation and determination that led the Russians to use nerve gas and germ warfare in Afghanistan is proof of the deadliness of Soviet purpose.

In his state of the Union speech, President Carter spoke loudly and firmly against the Soviet invasion, serving warning on the Kremlin that the United States would not tolerate an attack on the Persian Gulf. Since then, unfortunately, the administration has spoken only in symbols, taking little preventive action.

The United States must take heed that the rest of the world, particularly the Soviet Union, does not come to perceive that we are all bluster and bravado. Yesterday, Presidential Emissary and former Secretary of Defense Clark Clifford testified before the Senate Foreign Relations Committee, reminding all of us that the situation we face now in Southwest Asia bears striking resemblance to the situation Europe faced in the 1930's with the rise of Hitler. The same threat to world peace may result if we indulge in appeasement or "business as usual," the attitude which seems to characterize most of our European allies now. Secretary Clifford put the European attitude in proper perspective, saying:

> I believe they're engaged in a policy of wishful thinking, and they hope it will all go away . . . I would hope there would be a better understanding of the price we will have to pay if we do not stand up to the Soviet Union.

As the horror of Soviet "military" techniques in Afghanistan begins to

sink in, as we learn more and more about the Russians' dangerous experiments in germ and gas warfare, the United States and our Western allies must soon realize just how important it is to stand up firmly to the Soviet Union. This is no occasion for business as usual, but for horror-stricken reaction. Every effort must be made to impress the U.S.S.R. of the world's condemnation of it. From the symbolism of moving the Olympics out of Moscow to the real crunch of meaningful restrictions on trade and technology transfer, we must act firmly and in concert.●

SENATOR MILTON YOUNG

● Mr. BAYH. Mr. President, I wish to commend Senator MILTON YOUNG in his completion of 35 years in the U.S. Senate. For several of those years I have had the privilege of serving with him on the Appropriations Committee. MILTON is honest, reliable, warm and friendly to all. He is a gentleman and a truly faithful servant of the people of North Dakota. But of even greater note than his devoted service to his home State, MILTON YOUNG's calm and patient presence has made a great contribution to the Nation and to the U.S. Senate during his career on Capitol Hill.

MILTON, we all join in wishing you well and thank you for being such a good friend and warm colleague.●

ANATOLY SHCHARANSKY STILL A PRISONER OF CONSCIENCE

● Mr. PELL. Mr. President, last Saturday was the third anniversary of the imprisonment of Anatoly Shcharansky. Three years ago, on March 15, 1977, the Soviet KGB arrested this young Jewish activist and in July of the next year, he was sentenced to a total of 13 years of incarceration—3 years in prison and then another 10 years in the harshest category of labor camp.

He was convicted of the political crime of "anti-Soviet agitation and propaganda" and the trumped-up charge of "treason." At his trial—which was little more than a farce—the authorities claimed that Anatoly Shcharansky had worked with the CIA, a completely unfounded accusation that President Carter explicitly denied.

Anatoly Shcharansky's real crime was that he was a Soviet Jew who wanted to leave the country but whose government would not let him. First refused permission to emigrate in 1973, this articulate young mathematician became a spokesman for the Jewish emigration movement in the Soviet Union. His commitment to basic human rights for all of his countrymen—not just Jews—soon led him to become one of the founding members of the Moscow Helsinki Monitoring Group. Along with Yuri Orlov, Aleksandr Ginzburg and the other monitors, he worked to promote his government's compliance with the 1975 Helsinki Final Act.

We can now see that Anatoly Shcharansky's arrest and trial marked only the beginning of yet another brutal official crackdown on freethinking in the Soviet Union. Thirty-eight Helsinki monitors are now in prisons or exile in the U.S.S.R.; in 1979 alone, 13 members of the Helsinki groups and their affiliated committees were arrested.

In the last few months, the KGB has stepped up its drive to silence all critics of the Soviet regime. Some observers are calling the end of 1979 and the beginning of 1980 one of the worst periods of repression since the modern Soviet human rights movement originated in the mid-1960's. Valiant figures representing all facets of dissent in the Soviet Union have been punished. Political activists, religious believers, workers' rights advocates, nationalists, dissident authors and would-be emigrants—all have paid a heavy price for speaking out for what they believe. As recent events have shown, not even Nobel Peace Prize laureate Andrei Sakharov was able to escape this latest campaign of repression.

Last Saturday, Anatoly Shcharansky began his 4th year as a prisoner of conscience in the Soviet Union. Reports coming out of Chistopol Prison, where he is currently serving his term, indicate that his health is rapidly deteriorating.

We must not forget Anatoly Shcharansky and the others like him who are now suffering in Soviet jails, forced labor camps and psychiatric hospitals. Their tragic fates are potent reminders that the Soviet Union continues to violate the many human rights covenants that it has signed. On this sad anniversary, I must once again call on the Soviet Government to honor the pledges it made at Helsinki 5 years ago and live up to its agreement to respect the human rights and fundamental freedoms of its citizens.●

FIFTIETH ANNIVERSARY OF THE INAUGURATION OF HERBERT HOOVER AS THE 31ST PRESIDENT OF THE UNITED STATES

● Mr. HATFIELD. Mr. President, Vaughn Davis Bornet, who recently retired as professor of history and social sciences at Southern Oregon State College, has prepared an essay entitled "An Uncommon President" for inclusion in the series of essays commemorating the 50th anniversary of the inauguration of Herbert Hoover. Dr. Bornet is coauthor with Edgar Eugene Robinson of a 1975 study of Hoover entitled "Herbert Hoover: President of the United States."

The title of the essay, "An Uncommon President," perfectly characterizes Dr. Bornet's view of Hoover. The essay broadly examines every facet of his Presidency—foreign and domestic policy, style, methodology, politics, and principles. Dr. Bornet takes issue with attempts in recent years to brand Hoover with traditional political labels:

In my judgment, there are serious flaws in calling him a "conservative", a "liberal", and especially a "progressive". He did consider himself a liberal in the 19th century sense but not in the 20th century usage of turning to the National Government to finance and regulate solutions to innumerable problems. His contemporaries in the financial community by no means included him as a conservative . . . the progressive officeholders in his party did not consider him one of them . . . he deeply resented being called an exponent of the 19th century "laissez-faire", calling it in 1933 a long-forgotten thesis.

Hoover in office behaved somewhat as a modern "moderate". One should not be deceived on Hoover the President by focusing too long on Hoover in later years when he was in opposition to a rival political figure and party. The description "reactionary" is, to say the least, totally inappropriate. Hoover believed in "Capitalism with a human face".

Dr. Bornet also discusses Hoover's style and methodology, and here expands on one reason that Hoover was not more successful in the White House:

The engineer-President of 1929–1933 tried to root his every act in orderly study and firm facts. This was commendable, but at the same time it must be admitted that it made for inevitable caution and delay. Wrote a confidant from Hoover's relief-giving years in Belgium:

"He was an engineer, and an engineer has an entirely different type of mind from that of a lawyer. An engineer deals with concrete, exact facts—mathematics. And, inevitably, as a very successful engineer, his mind was of that nature, and did not admit of the compromise, the trading, and the give-and-take, which is characteristic of a legal mind . . . it ran counter to his innate feeling of what was right and proper". It is no surprise that he was not given to sloganeering or to image-making—but these have become essential to effective Presidential performance.

Mr. President, Dr. Bornet's essay is rich with such glimpses of the Presidency of a truly extraordinary man. I request that the essay, "An Uncommon President," be printed in the RECORD, along with a brief biographical sketch of the author.

The material follows:

AN UNCOMMON PRESIDENT

(By Vaughn Davis Bornet)

On March 4, 1929, over fifty years ago, Herbert Hoover took the oath of office as President of the United States. On March 4, 1933, he left Washington on a train for New York City, having predicted, "I am going to sleep for 36 hours." His had been a remarkable four years in office, during which he focused his powers of mind and spirit for the public good. There had been interaction with great leaders in and out of office, from overseas and at home, to seek solutions to national and world problems. The President had totally sacrificed personal considerations to the daily necessities of government leadership.

At the outset it will be well to offer once again the words of the evaluation of the President which concluded our book. Herbert Hoover: President of the United States (Palo Alto, California: Hoover Institution Press, 1975) and on which Edgar Eugene Robinson and I were agreed; I have no reason to modify the assessment: "Herbert Hoover, as President of the United States, conducted himself as an enemy of war and its armaments; as a friend of constitutional government; as a supporter of voluntary methods; and as a preserver of a partially regulated capitalist system that could hold its own in the face of such rival ideologies of the day as fascism, socialism, and communism. There would be for America no collapse or revolution; on the contrary, despite the economic emergency,

there was a real record of accomplishment. President Hoover in the White House was, above all, a determined spokesman for the traditional American virtues, hopes, and ideals of individual opportunity, personal freedom, and love of country."

One should not delay in placing on the record the basic beliefs held at the time by the 31st President. A week before leaving office he summarized in a formal letter to the chairman of the Republican National Committee the "fundamentals and safeguards" that he believed to be absolutely essenial if the American system were to keep its high place among others in the world. He wrote: "They embrace rigid adherence to the Constitution; enforcement of the laws without respect to persons; assurance of the credit of the Government through restraint of spending and provision of adequate revenue; preservation of the honor, and integrity of the Government in respect to its obligations, its securities, and its sound currency; insistence upon the responsibilities of local government; advancement of world peace; adequate preparedness for defense; the cure of abuses which have crept into our economic and political systems; development of security to homes and living; persistence in the initiative, equal opportunity and responsibilities of individuals and institutions; and finally every encouragement to the development of our intellectual, moral, and spiritual life." Then he added, "Upon these foundation lies the freedom, the welfare, and the future of every citizen in the country."

A presidency is a blend of ideas, policies, actions, and techniques all of which have their due effect on foreign and domestic affairs. To reconstruct any of this intricate variety of patterns is one of the most challenging and difficult to be found in the arena of historical investigation and recording. The Hoover presidency is made no easier by the gap that has long existed between the relatively contemporary versions of events by participants, the capsulized sloganeering of political opponents then and since, and the accounts framed in due course by the academic fraternity.

The basic volumes by "those who were there" are the second volume of the Memoirs of Herbert Hoover, The Hoover Policies by Ray Lyman Wilbur, Secretary of the Interior, and Arthur M. Hyde, Secretary of Agriculture, The Hoover Administration by William Starr Myers, an historian, and Walter H. Newton, secretary to the President, and Hoover Off the Record by Theodore G. Joslin, special presidential secretary. Ranking with these, but less generally available, is the original manuscript diary of Henry Stimson, Secretary of State, which can be purchased on microfilm. Six volumes of Hoover's public papers, in two sets, are in print. Together, these volumes give the reader the definite impression that he is present on the scene, 1929 to 1933. Today, the scholar also has the manuscript collections of the Hoover Institution at Palo Alto and the Hoover Library in West Branch, Iowa, subject to the limitations of personal talent in research and living costs while at work.

Serious and dedicated investigators can also ransack contemporary magazines and newspapers, seek out other manuscript collections, read hundreds of recorded reminiscences ("oral history"), and read, to their confusion, scores of footnoted books and articles on various aspects of the Hoover incumbency. From all of this can be gathered facts in vast numbers and interpretations which cannot be reconciled with one another. To write a simple narrative about this president, therefore, is an exercise in enormous psychological strain, without the final satisfaction of assurance that one has fully recreated reality or judged fairly. Nevertheless, the story of President Herbert Hoover in office, technically a citizen of the United States but actually a citizen of the world both for the contents of his mind and the esteem in which he was held at the time, is one worthy of the effort. For this American was sui generis.

The foreign policies of President Hoover were not of the dramatic kind that are long remembered. Naval disarmament was one of his causes; the economic stability of European governments was another. A policy of goodwill toward Latin American countries began in earnest almost at once after his election, as he set sail for nations to the south and in speeches and actions sought to erase memories of past slights and injustices, real and imagined. The legacy of European monetary obligations dating from World War I was taken by him as a presidential responsibility, so that progress was made on the debt problem. Person to person diplomacy was practiced with heads of state, some of whom for the first time came to Washington to visit a leader who long since had spent fruitful periods in their countries.

A special problem demanding attention during the years 1929 to 1933 emerged when the Japanese invaded and occupied Manchuria. As a mining engineer with a worldwide clientele that took him to such remote places as South Africa, Australia, Russia, and China, Herbert Hoover brought to his relations with Japan a worldview and a profound knowledge of conflicting ideologies and cultures. His Secretary of State, Henry Stimson, wrote privately of him, "As a matter of fact, Mr. Hoover's knowledge of the Far Eastern situation, from his visits and his long residence there, from his experiences at Versailles and after made him probably the best informed man in Washington on Oriental questions." Faced with the plain fact of bald aggression by Japan against China, the President could bring to bear vast experience on the causes and consequences of war and the long-range results of provocative actions rashly taken in time of peace.

Contemplating the international situation that obtained in 1931, when major nations seldom cooperated for the common benefit, one notes with interest the Hoover assessment on the Manchurian crisis: "The United States has never set out to preserve peace among other nations by force. . . . Our whole policy in connection with controversies is to exhaust the process of peaceful negotiation. But in contemplating these we must make up our minds whether we consider war as the ultimate if these efforts fail. Neither our obligation to China, nor our own interest, nor our dignity requires us to go to war over these questions." Thus, "We will not go along on war or any of the sanctions either economic or military, for those are the roads to war." But he did have a program short of such action.

In 1929 the President had discussed with former Secretary of State Frank Kellogg the possibility of adding "moral teeth" to the Kellogg-Briand Pact. "The proposal I made to him was non-recognition of spoils or territory seized, withdrawal of embassies, united public denunciation by other powers, exclusion of membership to such aggressive powers in world conferences, etc." This Hoover Doctrine of nonrecognition was followed during his administration. (A similar policy has sometimes been pursued by this and certain other governments since then.) Hoover himself admitted that "it did not restore Manchuria," but he did feel that it might have played a role in the ultimate halt of Japan's attack on central China and so expedited their withdrawal from that area. Stimson felt at the time that he had enough clues to the Hoover mind to guess that in the event of a miraculous uniform agreement by the great powers or the League of Nations in favor of sanctions that his leader might well have gone along. In any case, Stimson would pursue the imposition of sanctions against Japan much later in the decade with results that are known to every reader of books on the various causes of the fateful Japanese attack on Pearl Harbor.

Few statesmen have acquired the deep and moving knowledge of war's capability for inhumanity and devastation that Hoover possessed. This insight was decidedly related to his cautious response to Japan's aggression, and it also motivated his desire to limit armaments. He said, ". . . certainly we want no military establishment for the purpose of domination of other nations." On another occasion he noted, "Ours is a force of defense, not offense." No foreign soldier should ever be allowed to land on our soil; at the same time, he thought it urgent "that legislation should be passed conferring upon the President authority in his discretion to limit or forbid shipment of arms for military purposes. . . ." He saw vast armaments as not only a burden upon the economic recuperation of the world, but also as a source of constant threats and fears. It is wholly futile to speculate as to how Herbert Hoover would now handle questions of national defense and protection of democratic nations, but it is worth recording that in 1945 he would be critical of the use of the atomic bomb on Japan.

Every presidency is tested by posterity, usually in an astonishingly simplistic manner: on a single subject, in response to a single question, or only after a single (and mandatory) emphasis in assessment. Those who dig deeply into history in order to pass judgment are free, of course, to set up their own criteria and to pass judgment much as they please. So it is not unfair, perhaps, to ask of President Washington, "Did you manage to unite public feeling in the country?" Or of President McKinley, "Did you resist to the end the moral pressures to take the country to war against Spain?" Or of President Wilson, "Having planned and sacrificed to create a League of Nations, did you maneuver opinion and your opponents so that your own country joined?" One could even ask of President Roosevelt, "Did you bring the Depression to an end with your programs?" (But that question is far more often directed at Herbert Hoover!)

Hoover was a peacetime president. The waging of war, more or less successfully, has been a major characteristic of those presidents customarily ranked high in the esteem of our historians. It is, in part, Washington the General in charge of revolutionary armies who is really being ranked among the top ten presidents, is it not? Then there is President Lincoln who by accepting war saved the Union. President Wilson rose to the heights entering war to make the world safe for democracy. President Truman, well regarded, kept South Korea and the United Nations intact with his "police action." Even President Polk, who expanded the nation to the Pacific through a divisive war with Mexico, does well when space is allocated in our history books and praise is doled out.

Such peacetime presidents as Cleveland, Taft, Coolidge, Eisenhower, and Hoover, who sought or accepted no war and never had the chance to whip up lasting national emotions in a fervent crusade are ranked well down the list of presidents. Thus is our penchant for quick and easy judgment exposed. Yet such unfair consistency is held up to puzzling display when we judge certain other presidents (Jefferson, Madison, McKinley, and three recent ones) who also waged war for Causes but certainly have not

been much rewarded for posterity for doing so. We grow accustomed to speaking of certain presidents as having been in office "during a time of peace." We take it for granted. Better, perhaps, that we say that while in office they did nothing to take the nation into war.

There has been little attention paid to the issue of prohibition during the Hoover presidency. (There may now be some analogy with the thorny marijuana liberalization question.) Prohibition then was more than a question of enforcing the Volstead Act; it was for the chief executive a constitutional question, for the 14th Amendment was part of the Constitution. During the campaign of 1928 Hoover said, "Whoever is elected President takes an oath not only to faithfully execute the office of the President, but that oath provides still further that he will, to the best of his ability, preserve, protect, and and defend the Constitution of the United States. I should be untrue to these great traditions, untrue to my oath of office, were I to declare otherwise."

Furthermore, "the first duty of the President of the United States is to enforce the laws as they exist. That I shall continue to do to the utmost of my ability. Any other course would be the abrogation of the very guarantees of liberty itself." When urged by intimates in 1932 to be unclear or unsure rather than oppose a beer bill—thus winning wide support among the voters—Hoover replied, "If I have to resort to such tactics, I do not want to be in public life."

A sitting president, he judged, had no business advocating a change in the Constitution which he had taken an oath to defend; after all, there was a fully constitutional procedure for changing that document: "the President has no part in it, and should not have." So he told reporters, "regardless of what you believe will be the effect upon my political fortunes, and however right you may be, that is of no consequence. . . ."

The Hoover relationship to the Smoot-Hawley Tariff legislation has not been conveyed with full accuracy or balance in our textbooks. There has been much concentration on the higher rates of some products. But to the President, a major accomplishment of the legislation was its addition of flexibility in rate making by a new bipartisan Tariff Commission. He considered that body to be a way of getting an "eternally corrupting influence out of American life," that is, of minimizing log rolling and lobbying efforts exerted on partially informed Congresses.

The famous 1930 petition of a thousand economists was really directed at protective tariffs as such, not just at higher rates. It was written and distributed well before a bill on the tariff ever emerged from the Congress; thus the petition was a call to the Congress not to pass as well as to the President not to sign Smoot-Hawley. This has been little understood. Also forgotten is the fact that the new President in office felt strongly that not to sign would be to violate a campaign pledge that there would be a new tariff law; it was for Hoover a matter of honor.

When concentrating on the apparent causes of the Great Depression, many forget the great Mississippi flood of 1927 which devastated so much of the South Central part of American farm country, and the terrible problem of the 1930 drought. Moreover, grain prices had collapsed in Europe: there was Soviet dumping on the market; and European restrictions impeded trade. The Hoover policies designed to aid the farmer were extensive and meaningful, so that when speaking in 1932 the President could tell farmers, "Let no man tell you that it could not be worse. It could be so much worse that these days now, distressing as they are, would look like veritable prosperity." Thus, "Many of these battles have had to be fought in silence, without the cheers of the limelight or the encouragement of public support, because the very disclosure of the forces opposed to us would have undermined the courage of the weak and induced panic in the timid, which would have destroyed the very basis of success."

President Hoover felt that the farmer's problems should be solved with various forms of aid but not with subsidies from the government; and no special fee or tax should be imposed on him. Unlike many intellectuals then and since, he saw the tariff as a necessity in protecting American agriculture. He had high hopes for a new Farm Board, but the collapse in the stock market and subsequent deterioration of the economy turned that body for the most part into an emergency relief unit which used price supports to avert disaster. The long-range pluses, lowered income as consumers, losses in foreign markets, unemployment and migration, and the disappearance of world purchasing power—had emerged in the 1920's and continued on in the Hoover years. They certainly proved singularly stubborn and impervious to a variety of remedies for many years after 1929–1933.

It will be no surprise to those who recall Herbert Hoover the bonefish and fly fisherman that his long term as Secretary of Commerce, 1921 to 1928, and his period as President, were a time of growing federal interest in conservation. There was study at Hoover's initiative of such now-familiar problems as water purity, fish propagation, flood control, enhancement of the public domain, and other areas now of concern to the environmental movement. This story does not seem at this writing to have attracted its definitive biographer, although the outlines of accomplishment are emerging. His distinguished Secretary of the Interior, Ray Lyman Wilbur, observed in 1930, "We need to accept wise guidance if we are not to lose much of our heritage."

Among constructive policies pursued by the Hoover Administration was a major study of the national forests, and unrestricted lumbering came under control. The area of national parks and monuments was expanded by 40 percent. The President was personally responsible for activities which would later lead to the creation of Shenandoah National Park and the Skyline Drive. But the Congress and the public lagged behind the President in his concern, and much of what he wished was thwarted. His administration was worried about overgrazing on the public lands. Hoover took a particular interest in fisheries conservation, saying, "Pollution of the coastal waters by industrial wastes is yearly becoming a graver menace to the fisheries, shipping, and use of our pleasure beaches." Flagrant oil pollution was becoming damaging, he said. Meanwhile, as early as 1921 he had noted that salmon runs were disappearing, the sturgeon and shad were becoming extinct on the Atlantic Coast, and the lobster catch had declined by more than two-thirds.

Conservation of the nation's oil, however, got somewhat more publicity during the presidential years, but the effort seems to have been forgotten. Early in his term Hoover said, "There will be no leases or disposal of Government oil lands, no matter what emergency they may lie in, of Government holdings or Government controls, except those which may be mandatory by Congress. In other words, there will be complete conservation of Government oil in this administration." In words that ring well today, he observed that the people of the West were aware that there must be conservation of oil resources, for "they know that there is a limit to oil supplies and that the time will come when they and the nation will need this oil much more than it is needed now. There are no half measures in conservation of oil. The Government must cease to alienate its oil lands if we are to have conservation." Consequently hundreds of thousands of acres of oil leases on which drilling had not commenced were cancelled. (At the time, imports comprised 11 percent of American consumption, while 16 percent of national production was exported.)

Vast public works began or were furthered during the Hoover presidency, including major construction in the District of Columbia. The Boulder Canyon Project (which would lead to Hoover Dam) and the Grand Coulee Dam project on the Columbia River were expedited. The President's confrontation with Senator George Norris over the Tennessee Valley activity then known as Muscle Shoals has been much noted, since the President used the veto to block government production and distribution of electricity from water power and the manufacture of fertilizers. He saw little chance that a board appointed through the political process could ever provide "competent management" for such an enterprise. While in time both TVA and Bonneville would provide examples of government activity in the power business, the basic structure of power production in the nation remained in the private sector. That this result has met with little acclaim in books in the social sciences, and that Norris and his posture enjoy great stature in such circles, is altogether evident.

One public relations disaster of the Hoover presidency is always given prominence in discussion of the Depression years. This is the fate of the remnants of the veterans' Bonus Army in summer, 1932. There is new literature on this episode; two books, articles, and a summary treatment in Chapter 16 of the book, Herbert Hoover: President of the United States. In later years Washington would become accustomed to mass marches, sit-ins, and demonstrations, but at the time the encampment of some 20,000 veterans and others (including some Communists) was an event. As time dragged on, the President quietly initiated a bill to make loans available to provide transportation home for bona fide veterans. Many left, but the massed threat continued. Some veterans refused to leave buildings being demolished to make room for new construction; after that, police enforcing the law were wounded, and two veterans died. The District Commissioners now requested federal aid, in writing, so that Hoover reluctantly took over local administration, saying, "There is no group, no matter what its origins, that can be allowed to violate the laws of this city or to intimidate the government." But there was no martial law and the army did not take over the capital.

Even though the army officers and men were as good as the nation had at the time, and the orders of the Secretary of War said to "use all humanity consistent with the due execution of this order," General Douglas MacArthur, then Chief of Staff, took his small army across the Potomac River to Anacostia Flats (the BEF residence area) despite previous orders from the President to the Secretary of War that this not be done. The general thought there was "incipient revolution in the air." Unfortunately, the Bonus Army's camp was now burned by marchers with various motives and by the Army in the interests of sanitation and finishing the job. Hoover privately upbraided MacArthur; but neither then nor later did he take steps that would damage the career of the famous military figure. Thus the nation's leader accepted responsibility for what soon was portrayed as an unnecessary action executed with raw vigor.

Although no veterans were killed and no infants died (both false charges that linger)—indeed, no shots were fired—the reputation of a President who boasted a humanitarian record of long standing was besmirched. It was a tragedy that the President's initial desire that the troops carry

only sticks and no firearms had been thwarted by the military—who quite properly worried that some humiliating event might then take place. Photographs of mounted cavalry and ragged bonus marchers made a lasting impression on the public consciousness; here was a cross for Herbert Hoover to take into the fall election and live down through the years.

A political legacy of the Hoover administration is the lesson that a President with a divided political party in the Congress, a substantial part of which is unwilling to follow his lead on ideological grounds, is one who cannot expect to exert optimum leadership in a crisis situation. The so-called Progressive Republicans, William E. Borah, Hiram Johnson, and others in the Senate and House, agreed with Hoover too seldom on important foreign and domestic policy issues. Thus his program for a New Day legislative approach and an emphasis on economic rather than political considerations could not fully prevail. The National Committee of his party, moreover, was for the most part out of step with his modern, scientific approach to government.

It is difficult to concur with many who now, fifty years after the Hoover incumbency, are inventing new labels to describe his sophisticated ideology. In my judgment there are serious flaws in calling him a "conservative," a "liberal," and, especially, a "progressive." He did consider himself a liberal in the 19th-century sense but not in the 20th-century usage of turning to the national government to finance and regulate solutions to innumerable problems. His contemporaries in the financial community by no means included him as a conservative, for they supported an appropriate opponent in the 1928 primary. The Progressive office holders of his party did not consider him one of them, and they knew that the recent Robert M. LaFollette campaign on a Progressive ticket in 1924 (in which the Socialists joined) found him on the opposing side. Unlike them he spent little time expounding on "monopoly" as a battle-cry, nor did he seek government ownership and production in competition with private business. His faith in the courts was greater than theirs. Since he did admire Theodore Roosevelt as president, he could be viewed as an "old progressive."

Knowledgeable scholars have offered such labels as "associational progressive" and "corporate liberal" for him and "cooperative capitalism" for his program. Two of his own terms virtually disappeared during the presidency: "American Individualism" (in contrast to socialism and communism) from his 1922 book and "The New Day" from the 1928 campaign. His November 6, 1928 call that America not lose its "rugged individualism" was grossly distorted by collectivist opponents for political purposes. He deeply resented being called an exponent of 19th-century "laissez-faire," calling it in 1933 a long forgotten thesis.

Hoover in office behaved somewhat as a modern "moderate." One should not be deceived on Hoover the President by focusing too long on Hoover in later years when he was in opposition to a rival political figure and party. The description "reactionary" is, to say the least, totally inappropriate. Hoover believed in "capitalism with a human face."

If President Hoover's personality had possessed more sparkle in public, or if he had possessed skills in public relations which in our day have become prerequisites to seeking and achieving the office in the first place, he might have been able to overcome to a great extent the lack of Republican majorities in Congress after the midterm election of 1930. Yet his success with vetoes was nearly complete.

The fact that Hoover received 1,126½ votes out of 1,154 in his 1932 nominating convention shows support, but it does not tell the story of division and disunity in his party, which was split into units and blocs, just as it had been for a quarter of a century. He had entered office without the support of Wall Street on the one hand, and Progressives on the other. He was not favored by "wets." The Republican Party, as an organization, was responsible neither for his nomination nor his election in 1928, for he had built his own personal following and captured the public imagination during World War I relief activities and the administration of food production and distribution; still others would enlist during his outstanding performance as Secretary of Commerce. But a president needs a strong party organization. So in 1932 Hoover faced the nation, inescapably linked in many minds with the stock market crash whose roots went back in time and were international in origins, with the failure of Prohibition, and with the bonus fiasco; he was severely handicapped.

The President developed and carried out a program against the Depression; there can be no doubt on the matter, whatever the joviality once directed at his insistence on balancing the budget and fighting against inflation. The point of view he held, and the measures he chose quite naturally not those to be provided two or four or six years later when it was fully recognized that the Depression was no temporary thing—as had been the case so often in decades past. Although he inherited a miserably weak office from his predecessor, had only a minute secretarial and clerical staff, and could not extract from Congress the power to reorganize government offices as he thought vital, he passed a strong and activist office on to his successor.

Hoover at work used the method of extensive personal conference with top leaders in business, labor, and finance as one who was the peer of all he consulted; and he did get results. The President relied, initially, on major organizations in being—voluntary groups, the Community Chest movement, and the American National Red Cross—in an effort to get Americans at the grass roots to share fully in aiding their countrymen. Over and over the leaders of these bodies told him, in 1930 and during most of 1931, that what they were doing, and were capable of doing, would be sufficient to meet all immediately impending relief needs. It must be admitted that he was trapped to an extent by their inexperience; they also did not entirely trust one another; and the gap between the cities and rural America was vast in the extent of need and its remedy.

Secretary of Commerce Hoover had striven to develop new systems for making the government more effective in preventing boom and bust and coping with economic dislocations. In 1927, for example, he wrote a trusted subordinate that he wanted a department commission set up on the Present Business Cycle, with its members given "as much relief" as possible from other duties. The committee should study the past; how much mitigation of the cycle had been achieved; where we are in the present cycle; and what new statistical services would be required "to more clearly give warnings or indications of the position." A two-volume study, Recent Economic Changes, appeared in 1928 and, together with other Hoover efforts at assessment of industrial America, has been credited with being a pioneering effort to give the ship of state a compass and sextant.

The President believed, as was the general conviction at the time, that states and local governments were the next level of responsibility after voluntary agencies reached their limits. Governor Roosevelt spent most of his term of office with a similar belief, and both men then said and believed that government budgets should be balanced. The next recourse, Hoover thought, was for the national government to underwrite the efforts of state and local governmental units, provided they could demonstrate that their taxing and borrowing capacities were extended to the limit. It was at this level that the famous Reconstruction Finance Corporation could be effective: it could serve to keep giant employers from going under, thus maintaining employment, and it would play a vital role in saving overextended banks from disaster. Congressional insistence, led by John Nance Garner, that RFC loans be publicized was a sword in the heart of public confidence.

As his term in office began, Hoover determined that there should be a White House Conference on the Health and Protection of Children, saying that the nation was fundamentally concerned with equality of opportunity for every child—and that meant health and protection. The first such conference since the Roosevelt and Wilson efforts, it was financed by a half million dollars from private sources. By social workers it was considered "one of the most significant events of the year." From the conference came a famous Children's Charter, in which Herbert Hoover took a personal interest. Very early he drafted some poignant notes for it in the broad pencil handwriting in which he wrote memoranda and all of his speeches.

Those Hoover notes on society's obligations to children tell much about the man. He wrote:

1. Adequate care at maternity.

2. Frequent medical inspection—(a) By family doctor (b) By School or Community Clinic.

3. Adequate hospital or clinic treatment for cure of deficient children.

4. Adequate room, diet, sleep and play.

5. Decentralized County, State, National organizing against communicable disease.

6. Rigid inspection and control of food and water against infection.

7. Adequate facilities of recreation and play.

8. Education in Health for child and parenthood.

9. Special education for deficiencies ("Handicapped" was jotted nearby).

On another draft Hoover wrote, "Every child is entitled to the feeling that he has a home. The extension of the service of the community should supplement and not supplant parents." To the 5,000 who attended this conference-style learning experience the President said, "If we could have but one generation of properly born, trained, educated, and healthy children, a thousand other problems of government would vanish." Thirty books grew from the conference, and follow-up meetings were held in most states, after which much state legislation emerged.

A perceptive view of aid for the needy in the 1930's is to see help being given in ascending sequence at various levels and through many methods, with the amount of help and the degree of organization and centralization increasing gradually through the Hoover and Roosevelt administrations in response to expanding needs. It is foolish to suggest that Hoover should have led a crusade for old age pensions or unemployment insurance, for the groundwork in experts' minds was only beginning to be laid in the second and third year after the Crash. (The Survey magazine of Paul Kellog was then conceded to be in the forefront of social work thought; yet only in December, 1931 did editor Kellog make his first public social insurance suggestions, and it was spring, 1932 when a "planning" issue finally appeared.)

Back in his early days as Secretary of Commerce Hoover had circulated a memorandum on old age pensions, but as President he says he judged that "the height of the world's greatest depression was no time to introduce such ideas, even had we possessed the leisure time to formulate the plans. Our first job was recovery of employment . . ." Yet a confer-

ence in the White House on September 28, 1929 was designed to interest insurance executives in the problem of old age income support. (It might be borne in mind that the Social Security Act did not ameliorate the Depression. It was passed in August, 1935, but the first checks went out only in 1939.)

The engineer-President of 1929–1933 tried to root his every act in orderly study and firm facts. This was commendable, but at the same time it must be admitted that it made for inevitable caution and delay. Wrote a confidant from Hoover's relief-giving years in Belgium: "He was an engineer, and an engineer has an entirely different type of mind from that of a lawyer. An engineer deals with concrete, exact facts—mathematics. And, inevitably, as a very successful engineer, his mind was of that nature, and did not admit of the compromise, the trading, and the give-and-take, which is characteristic of a legal mind. I've always felt that he had very little sympathy for that type of dealing. He could get along with it, but it ran counter to his innate feeling of what was right and proper." It is no surprise that he was not given to sloganeering or to image-making—but these have become essential to effective presidential performance (hollow though they may seem to those of serious mind).

Hoover held the loyalty of subordinates through a long lifetime. He did not always distinguish between his responsibilities and theirs, but he did not go around officials to their subordinates. His method in conference was to argue the opposition's case, so that those on his team had to produce counter arguments. Ultimately, he would make up his mind and then turn to action, says Stimson, "with great courage." He had the habit of first seeing and outlining the dark side of a proposition. This naturally did not make life any easier or pleasanter; thus Stimson recorded in 1931 that he was "clean discouraged and tired out. I don't think he realizes how hard it is to work for him," for the President interfered with every detail, whereas Coolidge had just turned subordinates loose. With Hoover, he noted in his diary, one didn't dare plan to go ahead a step without looking around.

The President viewed his governmental duties with the utmost seriousness. A colleague once heard him say that he knew how to make money, for he had learned that in the London financial market—and it didn't interest him any more; "but public service did interest him, and the humanities interested him; therefore, he had no interest in making more money." So those affiliated with him knew that theirs was a vitally important role in the eyes of The Chief. A correspondent for the New York Herald-Tribune in those years said later, "he was a general in a war—marshalling the forces to meet each new assault of business decline, unemployment, distress of people and of financial institutions, as well as economic blows from abroad." Neither subordinates nor the public could fully relax with such a man.

President Hoover's speeches in office are a compendium of glowing, heart-felt statements in recognition of needs, in praise of volunteerism, and of the essential nature of people-to-people effort. He did not use ghost writers. Said he, "By every means that is available as Chief Executive I have for the past three years summoned every private and public agency to cooperate in making certain that no man, woman, or child of all our people should go hungry or cold through a lack of forehanded provision." Again, "It is unthinkable that any of our people should be allowed to suffer from hunger or want. The heart of the nation will not permit it." Wrote the Salvation Army's Evangeline Booth to him, "May I venture to add that once more you are expressing to the world your great heart of feeling for those who are caught in the malestrom of tragic misfortune."

It is clear that the President's chosen methods, as they expanded, were appropriate to the winters of 1930–31 and 1931–32. They still further expanded to fit the needs of winter, 1932–33. They clearly would not have sufficed as the Depression tightened its grip in 1933–34 and what had been a seasonal problem became a twelve-month ordeal. It is insulting to the Hoover mind and spirit even to intimate that the man who had expanded world and national action for the needy in response to changing circumstances would not have continued to do so had he been kept in office. Still, he probably would not have retreated from his belief that it was his job "to maintain the bedrock principle of our liberties by the full mobilization of individual and local resources and responsibilities" even while expanding old and developing new relief mechanisms.

The partisan who is insistent on condemning Herbert Hoover in perpetuity for not having founded a WPA, CCC, NYA, or the equivalent should in fairness judge his successor for not having developed, say, legal aid, Medicare, or federal aid to education as did the Lyndon Johnson administration years later. In history all know that everything must await its time: needs must be demonstrated; ideas must be born; advocates must do their work; that is—circumstances must be ripe. Jefferson spent little time on equal rights for women, Lincoln virtually no effort on social rights for freedmen, Gompers no vigor incorporating negroes into his beloved AFL, and Wilson no major force in cutting down the 60-hour workweek (as Hoover would do, successfully, for the steel industry in 1921).

One of the President's great plans early in his term was that a carefully chosen team of thoughtful social scientists should spend several years studying American society in all of its aspects. Thus the groundwork would be laid for progressive effort by himself and others in what (he then had every right to expect) would be his second term. Recent Social Trends and a dozen other commercially published books emerged from this privately financed effort. The central volume of the work was given enormous—really unexampled—front page attention by the nation on and after New Year's Day, 1933. This fact-filled study clearly had a profound effect in facilitating changes in the next decade, especially since it was quietly transmitted to a central official of the incoming administration's "brains trust" for his and Roosevelt's attention; it almost certainly influenced the president-elect's inner circle. For some years Recent Social Trends would be a textbook in college classrooms, and most commentators and scholars preeminent in its area of concern reviewed the book or commented thoughtfully on its findings. (In social science it was a pioneering collaborative research effort, so that in its manner of execution it was a forerunner of the technique of systems analysis relied on in our own day.)

The Hoover defeat for reelection in 1932 although fully anticipated by the incumbent executive, was nevertheless a strain, not just on the President but on those intimates who had absolutely no thought of abandoning him as a person or symbol. Wrote Frank Kellogg to a State Department official on November 18, 1932, "I have been so stunned by the election that I haven't had any disposition to write to anybody. The President made a splendid speech in St. Paul, had a wonderful reception, the Auditorium was packed for a couple of hours before he spoke and thousands turned away. However it was of no use. Nobody could have been elected on the Republican ticket this year. Depression and beer swamped us absolutely." Many there were among the nation's best educated men of affairs who felt much the same way.

There seems to be little point in further review in this place of the terrible period in the Hoover administration between Election Day, 1932 and the inauguration of Franklin Roosevelt on March 4, 1933. That the incoming President deliberately did not cooperate with the incumbent is clear and amply on the record. Roosevelt's motives and his methods as he bided his time while the financial situation deteriorated (in considerable part because of wide uncertainty over future government financial policies) are, even so, in permanent dispute among those who have read the dismal record. Many believed then, and more should believe now, that any bank holiday beyond that already declared in many states was entirely unnecessary. Hoover certainly was convinced of this.

Thus the dramatic crisis of the first days of the new administration was an unnecessary but very frightening trauma. An account of these facts appeared in 1955 in Edgar Eugene Robinson's widely noted book The Roosevelt Leadership, 1933 to 1945 (for which I had the privilege of being research associate), but research and writing on the matter have continued, for the questions are difficult ones of propriety, good faith, ethics, judgment, economic predilections, and both Democratic and Republican partisanship.

The people had spoken. As the time to depart arrived, the New York Times said editorially, "Herbert Hoover ought to be remembered for his abilities, his successes as well as his failures. Through all the great crisis he certainly displayed great qualities. No President ever worked harder in the hope of helping people escape from their troubles. Into his coming retirement the American people will follow him with respect. They will regret that he fell upon evil days wherein his usual powers could not be rightfully appreciated or made completely effective."

To consider the Hoover administration in perspective, one turns to several who could judge expertly because, like Hoover, they occupied the presidential office. Asked if the former president's help in the 1952 campaign would have posed a problem because of his "depression background," Dwight D. Eisenhower replied, "No, because first of all I have never thought that he had the slightest thing to do with the development of that depression. He was made the goat, very unfortunately, and it took the American people a long time to free themselves of the influence of demogogic statements that had been made over the years about the 'Hoover depression.'" Then he added, "These things happen. It has been sometimes happenstance that wars have broken out; it was a happenstance that this depression came along so quickly after Mr. Hoover was elected." Harry Truman's regard for Hoover is well-known, for he relied heavily on him.

Another White House occupant, Lyndon Johnson, would judge, "The more I see of his record of public service the more I respect his genuine dedication to what was best for the people of this country and the world. I think he gave a good deal more in the way of talent and dedication than he has received credit for. I think he endured many cruel moments during his lifetime by being pictured as a heartless man. I believe history will correct these things." (Perhaps it was with some such thoughts in mind that Joseph P. Kennedy was so anxious in December, 1960—in the words of his wife—"to arrange that the first meeting of our son, the President-elect, had with any public official was that which he arranged for him with Herbert Hoover. At that conference, the newly elected President asked and received all sorts of personal advice from Hoover.")

Sometimes it is observed that Herbert Hoover would have made a magnificent

president at some time other than when he entered upon that responsibility. The implication is that somebody else would have done better, 1929 to 1933. This is strongly to be doubted, even though the name of Alfred E. Smith is remembered with respect. The main task at that time was to keep the ship of state afloat with American economic integrity, civil liberties, and families intact. Democracy was then lost in the Soviet Union and Italy, and it quickly disappeared in Germany. At a time when communism and fascism were on the march, President Hoover strove mightily—and successfully—to save democratic capitalism. (The unfairness and the stridency of some criticism of him in the past leads one to believe that this very success on his part is one reason why some will never forgive him. Indeed, a noted historian who later became a major figure as a presidential aide once wrote that a problem with the way Roosevelt handled the bank crisis is that in spring, 1933 he had the opportunity to nationalize the banks of America but let the chance slip from his fingers. Those who like socialism in whole or in part are unlikely ever to like Hoover for the right reasons.)

To think back on President Hoover in the perspective of a half-century is to recall one who was dedicated to the idea that America should be a land marked by equality of opportunity. Strains placed on children by the Depression were a constant concern, and his faith in the family and moral training never wavered. He acted in office as one who believed as did the founding fathers in the federal system and in separation of powers. The executive branch had a role clearly spelled out in the Constitution. The chief executive of a great nation could and should be a leader in world affairs, leading both by conference and example. War had proven itself to be no solution for international problems, so the time for general reduction in armaments was at hand.

Finally, when considering this President of long ago, we will want to bear in mind that Herbert Hoover was an idealist at a time when ideals had not yet risen to the (sometimes unrealistic) heights of our own day. He was a realist who did not have at hand the machinery of fact-finding or the array of specialists and electronic machinery now available. He was a leader in office who had to lead at a time of drastically changing communications practices.

Shortly before his retirement from office the bone-tired President confided to his secretary Joslin, "What I have tried to do during these years has been to save the American people from disaster. They do not know what they have missed. Because they don't know what they have missed, they are dissatisfied with what has been done. In such circumstances, they turn to other leaders. A former European official recently observed that statesmen, in trying to prevent disaster, kill themselves off. He might say that my tactics have been wrong, that I should have waited until the American people were half-drowned and then have waded in and tried to save them. In such an event, they would, of course, have known what it was all about. But it would have meant catastrophe."

Neither the last of the old presidents nor the beginning of the new, not a defender of an Old Order nor a forerunner of the New Deal, Herbert Hoover as President of the United States created his own parameters for democratic government. He was a dedicated man who worked unbelievable hours on behalf of his countrymen. His presidency, like others, is by no means beyond critical evaluation and telling comparisons unhelpful to his historical stature, nor should it be. At the same time, he is entitled to fulsome praise for what he tried to do, and he deserves appreciation for what he achieved during only four years in the White House. The United States will always need and must have leaders of his intelligence, energy, fidelity to duty, sense of propriety, and determination to serve the best interests of their fellow countrymen. Herbert Hoover was an uncommon President.

VAUGHN DAVIS BORNET

Born, Philadelphia, Penna., October 10, 1917, married Mary Elizabeth Winchester of Susanville, Calif., December 28, 1944, children Barbara Lee Riggs (grandchildren Dana and Susan), Stephen Folwell Bornet. Lived Bala Cynwyd, Penna. to 1933, Miami Beach, Fla. to 1935; graduated Ida M. Fisher High School; Bachelor of Arts With Honors, Emory University, Ga., 1939, Master of Arts, 1940, doctoral work, University of Georgia, 1940–41; U.S. Navy, 1941–45 and reservist, Yeoman First Class to Commander (ret.); faculty, Mercy University, 1946, University of Miami (Fla.) 1946–48; enrolled, Stanford University, 1948–51, Doctor of Philosophy, history, 1951. Lived subsequently in Menlo Park, Calif., 1951–56, Glen Ellen, Ill., 1956–59, Santa Monica, Calif., 1959–63, since 1963 in Ashland, Oregon at 365 Ridge Road (97520).

Grants and awards: Emory University Alumni scholarship, 1935–37, Senior scholarship, 1939, Graduate fellow, 1939–40, University of Georgia fellow, 1940–41, Carson fellow (Stanford), 1951, Ford Foundation fellow, 1951–52, Volker Foundation fellow, 1956, Lyndon Baines Johnson fellow, 1977, Oregon Committee for the Humanities awards, 1978, 1979; grants, Foundation for Economic Education, Merrill Center for Economics, others. Received Meritorious Service Medal, Oregon Heart Association, Distinguished Service Medal, American Heart Association; selected Visiting Professor of History, World Campus Afloat around-the-world trip, 1969.

Employers after doctorate: Commonwealth Club of California, 1953–56, Stanford University (research associate, Institute of American History), 1952–53, Encyclopaedia Britannica, 1957, American Medical Association, 1958. The RAND Corporation, 1959–63, Southern Oregon State College, 1963–79 (Professor of History and Social Science), Emeritus, 1980– , (Chairman, Social Sciences Division, 1963–74).

Author: Of the books California Social Welfare: Legislation, Finances, Services, Statistics (Prentice Hall, 1956); Welfare in America (University of Oklahoma Press, 1960); Labor Politics in a Democratic Republic (Spartan Press, 1964); with Edgar Eugene Robinson, Herbert Hoover: President of the United States (Hoover Institution Press, 1975). For the Committee on Future Role, American Heart Association, The Heart Future (1961). Editor for Herman Kahn's On Thermonuclear War (1960). Research associate for E. E. Robinson's The Roosevelt Leadership, 1933 to 1945 (1955). Author 23 documents and reports for The RAND Corporation, and the article "United States" for Encyclopaedia Britannica Yearbooks, 1956 and 1957. Author of limited edition book Speaking Up for America: A Bicentennial Voice from the Rogue River Valley (1975). Author of numerous articles and book reviews.

Listed in: Contemporary Authors, Who's Who in the West, Who's Who in America, others.●

HANDGUN CONTROL—ALLARD LOWENSTEIN

● Mr. JAVITS. Mr. President, this is not the first time I call to my colleague's attention another tragic illustration of the need for gun control. Today we bury Allard Lowenstein, a former colleague, fellow New Yorker, and civil rights activist.

Among his varied causes, advocacy for handgun control was prominent. Lowenstein may have been saddened, but not surprised, to know that the man accused of his murder bought the weapon in a Connecticut gun shop, using only a drivers license as identification. This purchase took place despite the fact that the man buying the pistol had been confined to a mental institution in the same State. As is so common in these cases, no one bothered to check.

Connecticut does have one of the stricter gun control codes in the Nation. New York's laws are still stricter. Yet, over 90 percent of the handguns used in New York City come from out of State. Every year, 250,000 citizens are assaulted with handguns. Of these, 9,000 are murdered. Allard Lowenstein was 1 of the 24 deaths a day that are attributable to handguns.

Only when we have strong Federal legislation will we be able to abate these apalling statistics. The tragedy is that it is now too late for Allard Lowenstein to continue helping in this effort.

I would also like to call my colleagues' attention to an editorial from the New York Times on this subject that appeared yesterday.

The editorial follows:

THE SHADOW OF THE GUNMAN

Last Thursday, Allard Lowenstein offered this urgent advice to Senator Kennedy's New York campaign aides: Don't forget gun laws; be sure that one of the Senator's taped commercials includes a plea for Federal control of handgun sales. On Friday, the former New York Congressman was fatally shot in his office. The man accused of the killing had bought a pistol in a Connecticut gunshop, using a driver's license for identification. The purchase was perfectly legal, even though the purchaser had been committed to a mental institution in the same state.

"Guns don't kill people. People kill people." That bumper-sticker slogan of the gun lobby is nonsense. Many impulsive murders would never occur if the attackers lacked easy access to handguns. America is the only industrial society without effective national controls on the sale of firearms. The distinction would end if Congress passed Senator Kennedy's handgun control bill. One provision would authorize the police to block the sale of handguns to persons with a history of mental disorder. It would have prevented the man charged with murdering Mr. Lowenstein from buying a Spanish-made weapon with $120 and a driver's license.

A sound Federal gun law alone would not keep felons or the deranged from acquiring firearms. But the absence of such a law also undercuts the gun-control measures of states like New York, whose neighbors persist in lax standards. In thwarting the desire of a majority of Americans, as expressed in a multitude of polls the firearms zealots ignore the shadow of the gunman on American life.

Al Lowenstein was a gallant crusader for a hundred causes, some of them lost, but none ignoble. He was that rare character, the impassioned but moderate liberal. His single term in Congress, despite many tries, was insufficient measure of his influence on his chosen constituency, the young. Like his hero, Norman Thomas, he was an agent of ferment. His death by violence is the more scarring because the only weapon he ever used was the sharp language of debate.●

NATIONAL HISPANIC CAMPAIGN TO FREE AMERICAN HOSTAGES IN IRAN

● Mr. GRAVEL. Mr. President, I wish to call to the attention of my colleagues

the outstanding work of the National Hispanic Campaign to Free American Hostages in Iran, headed by Mr. Jose Aceves, president of Hartec Enterprises. The National Hispanic Campaign has set a goal of 100,000 signatures from Hispanic Americans on petitions demanding the immediate release of their fellow Americans being held hostage in Tehran. Once the signatures have been collected, the campaign will deliver them to Iranian officials both in the United States and in Iran.

This effort to express to Iranian leaders the united position of all Americans on the fate of our fellow countrymen is especially significant, coming as it does from within the Hispanic community. Iranian leaders and the militants holding the Americans captive have often tried to suggest that members of American minority groups would be sympathetic to their actions agains the United States and its citizens because of an alleged similarity between the suffering of these minorities and the suffering of the Iranian people at the hands of the U.S. Government. The National Hispanic Campaign makes abundantly clear the speciousness of that allegation, and as Mr. Aceves made clear in his statement before the National Press Club on March 12, the American people are quickly losing whatever sympathies they might initially have been inclined to have toward the Iranian people because of alleged actions by the Shah.

Mr. President, the National Hispanic Campaign has received the endorsement of the President, and I know my colleagues will want to join me in endorsing this fine effort as well. I ask that a statement by Jose Aceves which explains the campaign more fully be printed at this point in the RECORD.

The statement follows:

STATEMENT MADE BY JOSE ACEVES

The more than 20 million Hispanic people in the United States have united together in the universal effort to free the American hostages now being held captive in Iran. Let it be known that we will not sit still on this issue.

We officially launched the National Hispanic Campaign to free the American hostages in Iran one month ago today. Thousands of members of the Hispanic community have signed petitions in support of this movement. I have with me some of these signatures—signatures that have been pouring in from Florida, Puerto Rico, Texas, Nebraska, Illinois, New York, New Jersey, California, Connecticut, Wisconsin, Colorado, Minnesota, Arizona and New Mexico just to name a few.

National organizations such as image, the American G.I. Forum, the Latin American Manufacturers Association, the National Economic Development Association, the Association of Spanish Speaking Certified Public Accountants and the League of Latin American Citizens are just a few of the organizations supportive of this national effort.

We will show the Iranians visible proof of our united effort by delivering these petitions to representatives of their Government. Mr. Lupe Saldana, chairman of the American G.I. Forum and a decorated ex-Marine officer, will present copies of the names to the Iranian Embassy here in Washington. At that same time, our campaign's national steering committee will select four nationally recognized Hispanic leaders to present the signatures to the Iranian delegation at the United Nations in New York.

Visas for travel to Iran have been applied for through the Iranian Embassy and these same Hispanic leaders shall endeavor to deliver the signed petitions to Iranian Government officials in Tehran.

We are outraged at the Moslem students' takeover of the American Embassy and the lack of sensitivity shown by the Ayatollah Khomeini in regard to these hostile actions on the part of the students. It is very clear that the fate of the hostages hangs on the will of these militants who continue to ignore President Bani-Sadr's wishes thus making it very difficult to identify where the power and authority lies in Iran.

Americans must now evaluate Bani-Sadr. Is he a puppet?—or the President? Is the Ayatollah Khomeini really in charge?—or are there other elements manipulating this self-imposed ruler? Very simply—what the hell is going on? What do the Iranians think will happen if they continue to play games with human lives? It is true that we are known as a forgiving nation, but in this situation, our patience is quickly running out.

It is time that the American people realize that the Ayatollah Khomeini, the student militants and perhaps Bani-Sadr never intended to resolve this problem and will continue to change their minds over and over again just to keep us hanging. It appears that they are trying to use American internal politics to eventually tear our confidence in our own leaders and in our brothers.

America provides support to many governments in their efforts to promote democracy and human rights. Americans can no more accept responsibility for all actions by the heads of the many countries we support and maintain friendly relations with, than we can be responsible for the actions taken by the Soviets in Afghanistan.

The Ayatollah Khomeini has stated many times over that the Americans are being held prisoner because of the many "acts of aggression" on the part of the United States towards the Government of Iran. We ask ourselves, "What acts of aggression?" For years our country has been supporting the economic growth of Iran. Over 59,000 Iranian students are currently enrolled in many of America's colleges and universities. These students graduate and return to their country to better understand, to deal with, and to better the economic growth of their country. Are these "acts of aggression?" We say, "no"—and we ask ourselves "why?"—why is the Government of Iran placing itself in such a precarious position with the United States? Iranian demands include the return of the Shah and his wealth. If the Iranians want the Shah and his wealth—let Iran go and get them. We are not their messengers or their servants.

With the takeover of the American Embassy in Tehran, Iranians have established a dangerous precedent that is spreading to many other places endangering the lives of many innocent people. A precedent that is in violation of their own Holy Laws of Islam. They themselves are killing their own brothers just a few hundred miles away—and in the name of the Ayatollah Khomeini!

I consider myself fortunate that I live in this great country. I think that all of us are fortunate to live in this democracy. We must not take this international humiliation and abuse of our people from the Iranians. We must take a message from the American people—no more games! Iran has nothing to gain by holding the Americans any longer. They must know that they are losing whatever sympathy Americans may have had at one time felt for them because of past actions by the Shah. Americans are angry and it appears that if we allow Iran to make us crawl, they still won't release the hostages.

While we respect our Government's efforts in their negotiations, the American Hispanic community feels that this injustice has gone on long enough. We must now demand the immediate release of all the American hostages.

God only knows of the torment these people have experienced over the last 130 days. Free our people—and let us all get on with the business of life.

STATEMENTS

The following is a statement from Mrs. Louisa Kennedy, wife of Moorhead Kennedy. Mr. Moorhead Kennedy is the United States Embassy's economic officer now being held captive in Iran.

I am outraged at the containment of international diplomats on United States owned property in Tehran.

Hopefully, this situation will be resolved in a responsible manner by the powers that be.

My many thanks go out to the National Hispanic Campaign for making clear their support for these innocent people.

Read at the National Press Club on March 12, 1980 during the National Press Conference given by the National Hispanic Campaign to Free the American Hostages in Iran.

The following is a statement from Mr. Jesse Lopez, father of James Lopez, now being held captive in the American Embassy in Tehran.

It is hard to tell who is in charge anymore in Iran. I only hope that the people of Iran realize that they have nothing to gain by holding the American hostages.

My family and I are constantly praying for the safe return of my son. I would like to thank all of you who have joined us in our prayers.

Let me also take this opportunity to thank the National Hispanic Campaign for their wonderful work in their efforts to release all the hostages.

Read at the National Press Club on March 12, 1980, during the National Press Conference given by the National Hispanic Campaign to Free the American Hostages in Iran.

The following is a statement from Dick and Teresa Gallegos, parents of William Gallegos, now being held prisoner at the American Embassy in Tehran, Iran:

We would like to thank everyone for their support and especially to the National Hispanic Movement for their deep concern. We have seen evidence of their signature campaign out here in Colorado and approve wholeheartedly.

We hope that this situation will be resolved peacefully—and very soon.

Read at the National Press Club on March 12, 1980, during the National Press Conference given by the National Hispanic Campaign to Free the American Hostages in Iran.

THE WHITE HOUSE,
Washington, D.C., March 5, 1980.

Mr. JOSE ACEVES,
c/o National Hispanic Campaign to Free American Hostages in Iran, Washington, D.C.

DEAR JOSE: President Carter has asked me to respond to your letter of February 12, 1980, in which you set out the structure of the National Hispanic Campaign for the release of American hostages held in Iran. On behalf of the President I would like to extend to you his deepest appreciation for this manifestation of support and confidence in his strategy to free our brothers and sisters held in Teheran.

It is efforts such as the National Campaign that will signal to the students holding the American hostages that we as a people stand united, confident and strong in our resolve that we will not yield to terrorist tactics as a means to dealing with international problems.

I have enjoyed working with you in the past and look forward to a long and fruitful relationship in the future.

Warmest regards.

Sincerely,

ESTEBAN E. TORRES,
Special Assistant to the President for Hispanic Affairs.

FEBRUARY 12, 1980.

Mr. DANIEL ARCHULETA,
Executive Director, American Association of Spanish Speaking Certified Public Accountants, Los Angeles, Calif.

DEAR MR. ARCHULETA: Thank you for becoming directly involved in the National Hispanic Campaign to Free American hostages in Iran. As I may have mentioned, this effort represents an expression of deep concern by Hispanics for their fellow Americans being held hostage in Iran. We are currently engaged in obtaining signatures from individuals and leaders of this nation's Hispanic community. Our target is 100,000 signatures from all Hispanic communities throughout the nation.

We are asking that you assist us by obtaining signatures from members of your organization, your immediate family, and your family of friends. Enclosed are signature forms to be filled out and returned to us at your earliest convenience. As time is a vital factor in this process, hopefully you will be able to return them within 10 days. Please feel free to make copies as the need arises.

We have been assured that this effort will be well received and strongly supported by our government.

Como siempre,

JOSE ACEVES,
National Coordinator.

ILLINOIS FEDERATION OF HISPANIC CHAMBERS OF COMMERCE,
February 11, 1980.

GENTLEMEN: Over 400,000 citizens of Hispanic Ancestry living in this city, most of them members of various Chambers of Commerce and Associations, are whole hearted endorsing President Carter's request to Iran, to free the Hostages immediately for the sake of Human Rights.

The imprisonment of innocent people, can never be justified in discrepancies of Governments.

Whatever the Government of Iran has to claim against the U.S. Government, let them do so, thru the innumerable legal international channels of the civilized world. Laws and methods of the jungle, have long ago, been abolished.

JOSE CARDOSO,
President.
MACIAL VILLARREAL,
Chairman.●

ORDER TO RESUME CONSIDERATION OF THE CONFERENCE REPORT ON WINDFALL PROFIT TAX ACT OF 1980 AT 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at 11 o'clock tomorrow morning the Senate resume consideration of the pending conference report.

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

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. tomorrow.

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

ORDER FOR THE RECOGNITION OF VARIOUS SENATORS ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order on tomorrow Mr. HARRY F. BYRD, JR., of Virginia, Mr. HELMS, and Mr. TSONGAS be recognized for not to exceed 15 minutes, after which the Senate then resume consideration of the pending conference report.

The PRESIDING OFFICER. 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 Nos. 664, 666, 669, and 678.

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

Mr. BAKER. Mr. President, reserving the right to object—and I will not object—the purpose of the reservation is to advise that the four items identified by the majority leader are cleared on our calendar, and we have no objection to their consideration and passage.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Republican leader.

PRIVATELY DONATED FUNDS FOR NATIONAL HISTORIC PLACES PROPERTY

The Senate proceeded to consider the bill (H.R. 126) to permit the National Park Service to accept privately donated funds and to expend such funds on property on the National Register of Historic Places, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 2, beginning with line 9, strike through and including line 12, and insert in lieu thereof the following:

"(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; or the expressed intentions of the donor.

On page 2, line 19, after "Act" insert a comma and "but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act";

On page 2, line 24, strike "National Park Service" and insert "Secretary for the purposes of the National Park Service";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes", approved October 15, 1966 (80 Stat. 915; as amended, 16 U.S.C. 470a), is further amended by adding a new section 109 as follows:

"SEC. 109. (a) In furtherance of the purposes of this Act, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 101 of this Act, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

"(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; or the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

"(c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for the purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act.".

Amend the title so as to read: "An Act to permit the Secretary of the Interior to accept privately donated funds and to expend such funds on property on the National Register of Historic Places.".

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96–625), explaining the purposes of the measure.

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

H.R. 126 authorizes the Secretary of the Interior to accept donations of funds in order to assist in the acquisition, restoration, or preservation of properties listed on the National Register of Historic Places owned by a local governmental unit or nonprofit corporation.

The Secretary of the Interior currently maintains the National Register of Historic Places, which identifies sites and structures significant in American history. Congress has enacted statutes which provide various means of fostering the preservation of properties listed on the National Register. H.R. 126 authorizes an additional tool which the Secretary may use to promote historic preservation, by permitting donations to be accepted and applied to register properties owned by local governments or nonprofit corporations. Funds previously donated to the National Park Service could be transferred into this account, and any donations would be expended only after consideration of the projects' historical value, threat to the resource, and the donor's intentions.

CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON

The Senate proceeded to consider the bill (S. 2055) to establish a reservation for the Confederated Tribes of Siletz Indians of Oregon, which had been reported from the Select Committee on Indian Affairs with an amendment on page 6, line 24, after "Reservation" insert "or the addition of lands to the reservation in the future," so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to all valid existing rights-of-way, reciprocal road rights-of-way agreements, licenses, leases, permits, and easements, all right, title, and interests of the United States in the land described below is declared to be held in trust for the Confederated Tribes of Siletz Indians of Oregon:

WILLAMETTE MERIDIAN OREGON

Township 9 South, Range 9 West

Section 13: Southeast quarter northwest quarter;

Section 14: Northeast quarter northeast quarter;

Section 15: Lot 2;

Section 20: East half east half northeast quarter, east half northeast quarter southeast quarter;

Section 21: South half northeast quarter, southeast quarter northwest quarter, northeast quarter southwest quarter;

Section 22: North half northwest quarter northeast quarter, northeast quarter northwest quarter, south half northwest quarter;

Section 23: Lots 3, 4, 5, southwest quarter northeast quarter, northwest quarter southeast quarter;

Section 24: Northeast quarter southwest quarter;

Section 25: Lot 3, lot 7, southeast quarter northeast quarter, southeast quarter northwest quarter, east half southwest quarter, southeast quarter;

Section 26: Southeast quarter;

Section 27: South half northeast quarter northeast quarter, south half northeast quarter, south half southwest quarter northwest quarter, southeast quarter northwest quarter, north half southeast quarter;

Section 31: Lot 20, southeast quarter northeast quarter;

Section 32: North half lot 21;

Section 34: East half west half northwest quarter, east half northeast quarter southeast quarter, east half southwest quarter southeast quarter, southeast quarter southeast quarter;

Section 35: North half southwest quarter, southwest quarter southwest quarter, northwest quarter southeast quarter, southeast quarter southeast quarter;

Section 36: Southwest quarter southeast quarter.

Township 10 South, Range 9 West

Section 2: North half of lot 7, north half of lot 8;

Section 3: Lots 1, 2, 3, and 14;

Section 4: East half east half southwest quarter, east half southeast quarter, east half northwest quarter southeast quarter, southwest quarter northwest quarter southeast quarter, southwest quarter southeast quarter;

Section 6: East half southwest quarter southwest quarter;

Section 8: Lot 3;

Section 9: Lots 1, 2, 3, and the east half of lot 4;

Section 13: Southwest quarter southeast quarter;

Section 15: Lot 1;

Section 16: Southeast quarter southeast quarter;

Section 17: Lot 4;

Section 18: Lot 1;

Section 20: Lot 11;

Section 21: Lots 5 and 8;

Section 22: Lots 4, 5, and 17;

Section 24: Lots 1, 2, and 12;

Section 25: West half northeast quarter;

Section 26: Southwest quarter southeast quarter.

Township 10 South, Range 10 West

Section 13: East half northwest quarter;

Section 14: Southeast quarter southwest quarter;

Section 15: South half northeast quarter and east half southeast quarter northwest quarter;

Section 20: Lot 1 lying south of the south boundary of the former Siletz Indian Reservation;

Section 23: Lot 6 and lot 7;

Section 24: Lot 8.

Township 10 South, Range 8 West

Section 18: Southeast quarter northwest quarter, southeast quarter southeast quarter;

Section 20: South half southeast quarter;

Section 22: Southwest quarter northeast quarter;

Section 30: Lot 1.

Containing 3,630 acres, more or less.

SEC. 2. The Secretary of the Interior, acting at the request of the Confederated Tribes of Siletz Indians of Oregon, shall, subject to all valid existing rights-of-way, licenses, leases, permits, and easements, accept any deed or other instrument conveying to the United States the land conveyed to the city of Siletz on July 27, 1956, known as Government Hill, and hold such land in trust for the Confederated Tribes of Siletz Indians of Oregon. Such land is described as:

WILLAMETTE MERIDIAN, OREGON

Township 10 South, Range 10 West

Section 4: South half of lot 32,

Section 9:

North half of lot 1,

North half of lot 2,

(except that portion of School Board Tract 62, described as:

Beginning at the 1/16 corner of the section line common to sections 4 and 9, this being the northwest corner of lot 2, and the true point of beginning, thence north 89 degrees 17 minutes east, 100 feet, thence south 0 degrees 01 minutes east, 660.31 feet, thence south 89 degrees 31 minutes west, 100 feet, thence north 0 degrees 01 minutes west, 659.84 feet, to the place of beginning),

Cemetery tract 61 described as:

Beginning at the section corner common to sections 3, 4, 9, and 10, thence south 0 degrees 34 minutes east, 664.74 feet, to the true point of beginning, thence south 89 degrees 31 minutes west, 1335.60 feet, thence south 59 degrees 44 minutes east, 1299.25 feet, thence north 89 degrees 45 minutes east, 54.2 feet, thence north 0 degrees 34 minutes west, 598.98 feet, thence north 89 degrees 45 minutes east, 165 feet, thence north 0 degrees 34 minutes west, 65.76 feet, to the true point of beginning.

Containing 35.03 acres, more or less.

SEC. 3. The lands described in the first section and (upon conveyance to the Secretary) section 2 of this Act shall constitute the reservation of the Confederated Tribes of Siletz Indians of Oregon and shall be subject to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.), and other provisions reapplied to such tribes pursuant to section 3 of the Siletz Indian Tribe Restoration Act (91 Stat. 1415; 25 U.S.C. 711a). Such lands shall be subject to the right of the Secretary of the Interior to establish without compensation to such tribes, such reasonable rights-of-way and easements as are necessary to provide access to or serve adjacent or nearby Federal lands.

SEC. 4. The establishment of the Siletz Reservation or the addition of lands to the reservation in the future, shall not grant or restore to the tribe or any member of the tribe any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, on such reservation.

SEC. 5. The State of Oregon shall have civil and criminal jurisdiction with respect to the Siletz Reservation and persons on the reservation in accordance with section 1360 of title 28 and section 1162 of title 18, United States Code.

The amendment was agreed to.

● Mr. HATFIELD. Mr. President, I am pleased that the Senate will act today on S. 2055, the bill to establish a reservation for the Confederated Tribes of the Siletz Indians of Oregon. The Siletz Tribe was terminated in 1954, was restored to Federal recognition in 1977 and now owns less than 10 acres of land.

This bill is the result of a plan presented to Congress by the Secretary of the Interior. The creation of a reservation plan was provided for in the Siletz Restoration Act of 1977 and is the result of 2 years of careful study by the Siletz Tribe, the Department of the Interior, and the State of Oregon. It will provide that 3,360 acres of Bureau of Land Management land be taken into trust for the Tribe to contribute a timber resource from which the tribal members can operate a lumber sales operation and fund the tribal government. It also authorizes the transfer of a 36.5-acre tract of land from the city of Siletz to the tribe. Prior to termination it was tribal trust property and was the headquarters of tribal operations. The tribe will return the land to its original use.

I am pleased to report that this legislation has the strong support of the Department of the Interior, Gov. Vic Atiyeh of Oregon and Mayor Roy Weaver of the city of Siletz. Devising a plan for a new reservation is a unique task and I commend the parties involved for accepting the challenge. The acreage is small compared to the 1.1-million acres once occupied by the members' ancestors, but it will provide an adequate foundation to get the tribe back on its feet. I am delighted with the action the Senate will take on this significant piece of legislation to the Confederated Tribes of Siletz Indians of Oregon.●

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-626), explaining the purposes of the measure.

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

The purpose of this act is to establish a reservation for the Confederated Tribes of the Siletz Indians of Oregon.

The Confederated Tribes of Siletz Indians of Oregon are comprised of a number of tribes and bands of Indians whose home has always been the Oregon coast. The U.S. Government treated the various groups as one confederation when it negotiated a treaty with them in 1855. The terms of the treaty were that the Indians would move from their aboriginal land to a 1.1 million acre reservation located on the most rugged portion of the Pacific Coast. In return for the cession of land, the Siletz Tribe was to receive economic development assistance, education and health benefits, food, shelter and clothing. The treaty was never ratified by the Senate but the reservation was eventually created by Executive Order and the Tribe did not receive the services from the government.

In later years, with the encroachment of the white settlers, the U.S. Government, without providing compensation, opened up the reservation land for sale to non-Indians. The Siletz Tribe was terminated in 1954 and now owns less than ten acres.

The Tribe was restored to federal recognition in 1977 and section 7 of the Restoration Act provided that the Secretary of the Interior submit to Congress a reservation plan within two years of its enactment. It is the following plan that was introduced as S. 2055.

The tribal members worked diligently with the Bureau of Indian Affairs and an engineering firm to study proposals for the establishment of the reservation. After considering many means to provide for economic self-sufficiency, a timber sales operation was decided upon which will provide the tribal government with approximately $600,000 annually. Bureau of Land Management land was selected as the acreage to acquire because of its value to Lincoln County, relative to Forest Service and O&C lands and because of its proximity to the City of Siletz. Only 5 percent of the timber revenues from BLM land accrues to the county and the Tribe has agreed to continue payment of these revenues to the county for 25 years. The BLM land is available in scattered parcels only and that included in the plan totals 37 parcels and amounts to 3,630 acres.

In addition to the BLM lands, a 36.55 acre tract within the City of Siletz is included in the plan. The area is known as Government Hill and was the tribal headquarters until it was donated to the city at the time of the Tribe's termination. The citizens of the city voted in a poll to turn back the land to the Tribe. The Tribe plans to return the area to its original use as a tribal center and anticipates construction of a tribal office, a medical and dental clinic, recreational facilities and a community hall which will be shared with the residents of Siletz. As required by the Siletz Indian Tribe Restoration Act, thorough consultation was conducted with the Tribe and State and local government officials as well as other interested parties. The Governor of Oregon, Vic Atiyeh, established a task force to assist the Tribe in this endeavor.

LAWS RELATING TO TRADE BETWEEN INDIANS AND CERTAIN FEDERAL EMPLOYEES

The Senate proceeded to consider the bill (H.R. 3979) to repeal and amend certain laws regulating trade between Indians and certain Federal employees, which had been reported from the Select Committee on Indian Affairs with amendments as follows:

On page 2, line 6, beginning with the comma" strike through and including line 7, and insert in lieu thereof "in such officer, employee, or agent's name, or in the name of another person where such officer, employee, or agent benefits appears to benefit from such interest";

On page 2, line 14, after "service" strike "of" and insert "or";

On page 2, line 25, strike "employee" and insert "officer, employee, or agent";

On page 3, line 5, strike "employee" and insert "officer, employee, or agent";

On page 3, line 8, beginning with "for" strike through and including line 10, and insert in lieu thereof" of any real or personal property (or any interest therein) for the purpose of commercially selling, reselling, trading, or bartering such property; or";

On page 3, line 20, strike "employee" and insert "officer, employee, or agent";

On page 3, line 24, strike "employee" and insert "officer, employee, or agent";

On page 3, line 25, strike "engage in such a purchase or sale" and insert "have such an interest";

On page 4, line 3, strike "employee" and insert "officer, employee, or agent,";

On page 4, line 5, strike "employee" and insert "officer, employee, or agent,";

On page 4, line 8, strike the semicolon and "or" and insert a colon and the following: *Provided further*, That (1) any such designee may not be a relative by blood or marriage of the officer, employee, or agent engaging in such purchase or sale; (2) with respect to purchases or sales by any officer, employee, or agent employed at the reservation, agency, or service unit level, such designee must be employed at not less than one grade level higher than such officer, employee, or agent at the Washington, District of Columbia, central office or at an area office installation other than that with authority over such reservation, agency, or service unit; (3) with respect to purchases or sales by any officer, employee, or agent employed at the area office level, such designee must be employed at not less than one grade level higher than such officer, employee, or agent at the Washington, District of Columbia, central office; and (4) the Secretary must approve purchases or sales by any officer, employee, or agent employed at the Washington, District of Columbia, central office; or

On page 5, line 10, strike "employee" and insert "officer, employee, or agent";

On page 5, line 15, strike "employee" and insert "officer, employee, or agent";

On page 6, line 6, strike the quotation mark and the last period;

On page 6, beginning with line 7, insert the following:

"(e) For purposes of this section, the term 'Bureau of Indian Affairs' means the Bureau of Indian Affairs and the Office of the Assistant Secretary for Indian Affairs, both in the Department of the Interior.".

On page 6, line 15, after the comma insert "other than one involving the sale of property held in trust or subject to a restriction against alienation imposed by the United States,";

On page 6, line 21, after "valid" insert "subject to all valid transactions subsequent to such time";

On page 7, beginning with line 9, insert the following:

SEC. 5. (a) On and after the effective date of this Act, the following tract of land shall be held in trust for the Wa-He-Lute Indian School for its beneficial use as an Indian school and community center for educational or cultural purposes:

Part of Government lot 2, section 8, township 18 north, range 1 east, Willamette meridian, Thurston County, Washington, described more particularly as follows: Government lot 2, section 8, township 18 north, range 1 east, Willamette meridian, Thurston County, Washington, except excluding that portion which begins at the northeast corner of the William Packwood Donation Claim Numbered 37, thence south along the east line of said claim, 655 feet to the point of beginning, thence south 655 feet; thence east 420 feet; thence north 655 feet; thence west 420 feet to place of beginning; all in section 8, township 18 north, range 1 east, Willamette meridian, except including a strip of land 0.7 foot in width, lying along the north boundary of said excluded tract, acquired by the United States of America on February 23, 1942, by Declaration of Taking filed in United States District Court, Western District of Washington, Southern Division.

(b) Legal title to the land described in subsection (a) shall remain in the United States under the administration of the Secretary of the Interior who shall hold the above-described tract of land in trust for the Wa-He-Lute Indian School so long as it is used for any of the above-mentioned purposes, and the beneficial title of the Wa-He-Lute Indian School shall terminate and full title shall revert to the United States if such school ceases to use such land for educational or cultural purposes.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96–629), explaining the purposes of the measure.

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

The purpose of H.R. 3979 is to repeal and amend certain laws regulating trade between Indians and certain Federal employees.

Laws restricting trade between Federal employees, except as lawful representatives of the United States Government, and Indians were enacted in the 1800's and early 1900's. Such restrictions were intended to protect individual Indians and Indian tribes and organizations from the undue influence which Federal employees might exert by reason of their positions.

These federal laws have served a critical need in protecting Indians at a time when they were less educated and untutored in commercial transactions. Federal employees who approve or disapprove the use or disposition of Indian trust assets or who approve or disapprove the disbursement of Indian trust funds are in a unique position to use that power to coerce Indians into commercial transactions which may not be advantageous to the Indians. However, Indians have now become better educated and more sophisticated in business practices and are better able to engage in arms-length transactions with non-Indians than they were when these statutes were enacted for their protection. Indians are now more aware of their legal rights and the avenues for enforcement of these rights against Federal employees who might try to use their positions for economic gain in trading or contracting with Indians.

Although there may still exist possibility that Federal employees may exert undue influence on Indians in commercial transactions, there is no longer need for the stringent Federal prohibitions and penalties for such employees engaging in trade with Indians. Many transactions are conducted between Federal employees and Indian individuals at locations far removed from Indian reservations, yet these Federal employees risk serious consequences because of the penal nature of the law which must be strictly construed regardless of the extenuating circumstances of the transactions. The employee faces the penalties under current law when engaging in trade with individual Indians who possess equal or better business acumen and without knowing of the legal prohibitions and penalties.

These laws with their severe penalties have served their purpose to protect Indians. For the most part, Indians now have reached a level which indicates such stringent measures are not necessary and these laws should be modernized.

H.R. 3979, as passed by the House of Representatives, and referred to the Senate, amends Section 437 of Title 18 and repeals both Section 2078 of the Revised Statutes and the Act of June 19, 1939. The bill maintains the ban against trade between Indians and persons employed by the Bureau of Indian Affairs or the Indian Health Service but otherwise authorizes the President to permit such trade, with certain exceptions, under the regulations promulgated by him or his designee. The bill further permits the Secretary of the Interior to ratify any transaction occurring prior to enactment of this legislation which would otherwise be a violation under existing law but which would be legal under the provisions of this bill.

NATIONAL SMALL BUSINESS WEEK

The Senate proceeded to consider the joint resolution (S.J. Res. 146) designating the week of May 11 through May 17, 1980, as "National Small Business Week," which had been reported from the Committee on Judiciary with an amendment on page 2, line 5, after "17," insert "1980".

The amendment was agreed to.

The joint resolution was ordered to be engrossed for a third reading, was read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, follows:

Whereas the success and vibrancy of the American free enterprise system and economy is dependent upon the health of small business;

Whereas small business comprises over 96 per centum of all American businesses, employs the majority of all working Americans, and accounts for 43 per centum of the gross national product;

Whereas small business has developed over one-half of this country's major innovations over the past two decades, produces inventions four times as efficiently as their big counterparts, and has provided for 96 per centum of the newly created jobs in the last decade;

Whereas the Members of the United States Congress and the members of the Small Business Committees of each House of said Congress all recognize that the founding, growth, and mature strength of small businesses is mandatory for the continued improvement of the employment, economic security, and standard of living of every American: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is requested and authorized to designate, by proclamation, the week of May 11 through 17, 1980, as "National Small Business Week", and exhort all citizens in the various States, the national and all local governments and groups and organizations therein, to give recognition, by appropriate celebration and ceremony, to the independence, initiative, and motivation of the small businessmen and businesswomen who have made America great.

The title was amended so as to read:

A joint resolution designating the week of May 11 through May 17, 1980, as "National Small Business Week."

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bills and the joint resolution be considered en bloc and that they be passed en bloc, and that the motion to reconsider the vote en bloc be laid on the table.

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

ORDER VITIATING THE ORDER FOR RECOGNITION OF SENATOR PROXMIRE ON TOMORROW AND ORDERING HIS RECOGNITION ON MARCH 25, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for Mr. PROXMIRE to be recognized on tomorrow morning be vitiated, and that on Tuesday, March 25, Mr. PROXMIRE be recognized for not to exceed 15 minutes, after the two leaders or their designees are recognized under the standing order.

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. Without objection, it is so ordered.

THE DEATH OF REPRESENTATIVE JOHN SLACK OF WEST VIRGINIA

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a resolution on behalf of myself and my senior colleague, and I ask for its immediate consideration.

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

The legislative clerk read as follows:

Senate Resolution 386, a resolution relative to the death of Representative John Slack, of West Virginia.

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

There being no objection, the resolution was agreed to as follows:

Resolved, That the Senate has heard with profound sorrow the announcement of the death of the Honorable John Slack, late a Representative from the State of West Virginia.

Resolved, That a committee of two Senators be appointed by the Presiding Officer to join the committee appointed on the part of the House of Representatives to attend the funeral of the deceased Representative.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased.

The PRESIDING OFFICER. Pursuant to the resolution just agreed to, the Chair appoints the two Senators from West Virginia as the committee on the part of the Senate.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there may now be a period for the transaction of routine morning business for not to exceed 10 minutes, and that Senators may speak therein up to 5 minutes each.

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

BOXERS' DEATH

Mr. STEVENS. Mr. President, last Friday, March 14, a tragic air disaster occurred in Warsaw, Poland. All 87 people on board that flight were killed instantly and included on that flight were 14 young athletes and 8 officials and coaches of the U.S. amateur boxing team. The group was en route to represent our country in matches against the Polish national team. They were, in a very real sense, ambassadors of the United States. Our Nation is deeply saddened by this terrible accident. We extend our deepest sympathies to all of the families and loved-ones of these Americans and we share their grief.

The boxers include:

David Rodriguez of Pomona, California.
Lonnie Young of Philadelphia, Pa.
Jerome Stewart of Norfolk, Va.
Byron Lindsay of San Diego, Calif.
Lemuel Steeples of St. Louis, Mo.
George Pimentel of Flushing, N.Y.
Gary Clayton of Philadelphia, Pa.
Paul Palomino of Westminster, Calif.
Chuck Robinson of Auport Townsend, Wash.
Andre McCoy of New Bedford, Mass.
Walter Harris of San Francisco, Calif.
Elliott Chavis of Ft. Bragg, N.C.
Kelvin Anderson of Hartford, Conn.
Bryon Payton of Troupe, Tx.

The coaches and officials include:

Tom "Sarge" Johnson of Indianapolis, Ind.; Head Coach.

Joseph Bland of High Point, N.C.; Team Manager.

Junior Robles of National City, Calif.; Asst. Coach.

Bernard Callahan of Carlisle, Pa.; Referee-Judge.

John Radison of St. Louis, Mo.; Referee-Judge.

Steve Smigiel of Boca Raton, Fla.; Asst. Manager.

Dr. Ray Wesson of Ocean Springs, Miss.; Team Physician.

Mrs. Dolores Wesson, wife of Dr. Wesson; Team Nurse.

Mr. President, I ask unanimous consent that an article that appeared in Newsweek, March 24, 1980, regarding these young boxers, be printed in the RECORD.

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

BOXERS' DEATH

"We don't have much to offer our young boxers," said Bob Surkien, national boxing chairman of the U.S. Amateur Athletic Union. "No college scholarships, no fancy cars. What we can offer them is a chance to see the world." Surkien fought back tears as he spoke: he had just learned that 14 members of a U.S. amateur boxing team, flying from New York City to matches in Cracow and Katowice, had died in the crash of a Polish IL-62 jetliner near Warsaw's Okecie Airport. The disaster, which took the lives of all 77 passengers and ten crew members, was the worst air crash in Poland's history.

The dead boxers included some of America's finest non-professionals. Lemuel Steeples, 23, from St. Louis, was considered by many to be the leading amateur welterweight in the U.S. "We looked for him to win a gold medal at the Olympics," said Ed Silverglade, chairman of the A.A.U. international selection committee. Andre McCoy, 20, of New Bedford, Mass, was touted among the nation's top three light heavyweights. Also killed was the team's coach, Thomas ("Sarge") Johnson, 58, who trained the U.S. boxing squad that won five gold medals at the 1976 Olympics in Montreal.

There have been other tragic air accidents involving American athletes. In 1961, 18 figure-skating stars, bound for the world championships in Prague, were killed in the crash of a Sabena jet near Brussels. In 1970, 30 members of the Wichita State University football team died when their chartered jet

hit a mountainside in Colorado. Seven years later, 14 University of Evansville basketball players, returning home from a game in Nashville, died when their DC-3 crashed on takeoff.

ORDER FOR RECESS FROM TOMORROW UNTIL 10 A.M. ON FRIDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow it stand in recess until 10 a.m. on Friday.

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

ORDER FOR RECESS UNTIL TOMORROW AT 9:45 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand recessed until the hour of 9:45 a.m. tomorrow.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW AND CONSIDERATION OF CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the orders for the recognition of Senators on tomorrow there be a period for the transaction of routine morning business of not to exceed 15 minutes 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 ask unanimous consent that at the close of routine morning business tomorrow, the Senate then return to the consideration of the conference report on the windfall profit tax.

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

RECESS UNTIL 9:45 A.M., THURSDAY, MARCH 20, 1980

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered and as a further mark of respect to the memory of the deceased Representative, the late John Slack, a Representative from the State of West Virginia, that the Senate stand recessed until the hour of 9:45 tomorrow morning.

The motion was agreed to; and, at 5:23 p.m., the Senate recessed until Thursday, March 20, 1980, at 9:45 a.m.