SENATE—*Wednesday, April 23, 1980*

(Legislative day of Thursday, January 3, 1980)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by Hon. HOWELL HEFLIN, a Senator from the State of Alabama.

PRAYER

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

Let us pray.

Eternal Father, from the tumult of the world without, from the clash and clamor of daily duties, from the confusion of many voices, we pause in this, our place of labor, to hear once more Thy still small voice; and hearing Thee may we, at all cost, obey Thee. Make us to know that God is a spirit and they that worship Him must worship Him in spirit and in truth. Come, Thou Living Spirit, and rule our hearts, our minds, our voices, that we may be instruments of Thy purpose for this land and the whole world; for Thine is the kingdom and the power and the glory forever. 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., April 23, 1980.

To the Senate:

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

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

THE JOURNAL

Mr. CRANSTON. Mr. President, I ask unanimous consent to have approved the Journal of the proceedings of Tuesday, April 22, 1980.

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

Mr. CRANSTON. Mr. President, I have no use to make of the time at this point.

Mr. PROXMIRE. Mr. President, will the Senator, when he gets an opportunity after the minority leader, yield to me?

Mr. CRANSTON. Certainly.

RECOGNITION OF THE MINORITY LEADER

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

Mr. BAKER. Mr. President, I have no request for time and I have an additional special order in my name this morning. So I am glad to yield my time to the acting majority leader or to the distinguished Senator from Wisconsin.

Mr. CRANSTON. Mr. President, how much time does the Senator need?

Mr. PROXMIRE. Four minutes.

Mr. CRANSTON. Mr. President, I am glad to yield 4 minutes of the majority leader's time.

TRIBUTE TO SENATOR GAYLORD NELSON, THE FOUNDER OF EARTH DAY

Mr. PROXMIRE. Mr. President, yesterday was Earth Day. I apologize to my colleague and to the Senate for not having made this statement in honor of my distinguished colleague GAYLORD NELSON yesterday. He was the founder of Earth Day.

In January of 1970, he introduced the "Environmental Agenda for the Decade," which was the blueprint for environmental action in the 1970's covering clean air provisions, clean water proposals, energy efficiency, and environmental safety, strip mining, ocean dumping, and others.

These specific proposals outlined in 1970 led to a series of reform bills passed by the Congress. Thus, Senator NELSON not only sounded the call but led the way.

He has an exceptionally strong environmental record. He was Governor of Wisconsin for 4 years, in which he set a remarkably fine precedent that other Governors have followed for doing our very best in our State, under sometimes very difficult circumstances, to preserve and enrich our beautiful State and preserve our environment.

He concentrated on the national scenic waterways for Wisconsin, preventing the Great Lakes pollution, and so forth.

Mr. President, I am proud that my colleague, GAYLORD NELSON, has been a national leader in the struggle for the environment. If our descendents look back on this period of congressional history 50 or 100 years from now, they will be grateful for the battle that GAYLORD NELSON led to establish Earth Day and to begin the long struggle to give America a clean and healthy environment while we are intensifying our industrialization.

This is a terrific challenge that this country faces. And I think, in spite of all the criticism, that we are progressing. Unfortunately, the press does not habitually report the good news. They report the bad news: The confrontations, the mistakes—and they should. But they neglect the successes. And I think we have had some remarkable successes in the area of the environment, under very, very difficult circumstances.

THE GENOCIDE CONVENTION: A TRIBUTE TO RAOUL WALLENBERG

Mr. PROXMIRE. Mr. President, yesterday I spoke of the truly heroic actions of one man in his fight against genocide. Raoul Wallenberg risked his life to rescue Hungarian Jews from extermination during World War II.

I alluded to the fact that nobody seems to know for certain what happened to him. On January 17, 1945, Wallenberg and his driver set out for Debrecen for a meeting with the Russians. Neither he nor the driver ever returned. The Soviets refuse to comment on the case.

That such a compassionate man should die would be tragic. That such a man should be imprisoned for his actions would be a crime against all human sensibilities. But in this case we simply cannot judge; we do not know what happened to Wallenberg.

Wallenberg deserves our highest admiration for his actions, but the obscurity surrounding his case has made it difficult for even the very people he saved to honor him as he deserves. Hungarian Jews accepted the idea that Wallenberg had been killed in street fighting. The Soviet-dominated government prevented the Budapest Jews from erecting a monument to him in 1948.

But human spirit and compassion so strong cannot be obliterated. Wallenberg's spirit must not and cannot be forgotten. Rauol Wallenberg touched too many lives to be forgotten. No government effort can possibly diminish his stature.

One of those he saved, Annette Lantos, says of him:

> For many years I've lectured on the Holocaust and I've always talked about Wallenberg. He not only saved our lives, but our belief in mankind and the power of good.

Such thoughts are a moving tribute to a saintly man.

The Jewish people have also raised a

memorial in Israel at Yad Vashem, the Holocaust memorial. At the center, trees are planted to honor righteous gentiles, those who risked their own lives to save Jews. But Raoul Wallenberg's mother, Mrs. von Dardel, did not want such a memorial raised because she felt it made her son seem dead. Last year she and her husband died; their children accepted a tree planted in Raoul's name on the "Street of the Righteous Gentiles." Hungarian Jews living in Sweden planted a woodland of 10,000 trees in a special area as a memorial dedicated to Wallenberg.

A tree or a forest is a fitting tribute. A living monument to the effort of one man to save life. The tribute lives on and perpetuates itself. The monument looks to the future.

It is, of course, appropriate that we honor Wallenberg with living tributes. But just as these tributes look to the future, so must we. As appropriate as living tributes are, there is another even more appropriate.

No monument to the efforts of those who fought genocide is more fitting than one which seeks to continue that fight. The Genocide Convention is just such a memorial. It is practical and looks to the future by outlawing the crime of genocide. It recognizes, as did Wallenberg and the others who fought genocide, that this most heinous crime offends the very premises of a civilized world. We owe the Genocide Convention as a memorial to those who died, to those who survived, and especially to those like Wallenberg who actively fought the atrocity.

The Genocide Convention affirms our hope that the scourge of genocide never touch the Earth again. And it could be, among other things, a great tribute to this distinguished Swede who died to save the lives of Jews—who may have died, who seems to have disappeared under these unfortunate circumstances—to pledge our efforts to prevent any reoccurrence of this kind.

I call on my colleagues to ratify the Genocide Convention and to ratify it soon.

Mr. President, I thank the acting majority leader and I yield the floor.

ORDER OF BUSINESS

Mr. CRANSTON. Mr. President, I have no further need for the time of the majority leader, but I yield such time as is remaining to the Senator from New Jersey, Senator BRADLEY. The Senator from New Jersey might also like to have the time yielded from the minority leader, if he would be willing to do that. The Senator is sort of masterminding the colloquy here and would like some additional time, if that would be possible.

Mr. BAKER. Mr. President, what colloquy is that?

Mr. CRANSTON. It is on energy.

Mr. BAKER. Mr. President, I would be happy to share that time. I must say that there is another colloquy coming up on the War Powers Act, I understand.

Maybe I ought to reserve a little of my time for that, just in case we need to reinforce it.

If the Senator from New Jersey needs any time, I will be glad to accommodate him. For the moment, then, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. I notice that both Senators are here. Is there an agreement between the two Senators as to who will go first?

Mr. BRADLEY. Yes, Mr. President. Senator EXON is the first order, and I will follow him.

RECOGNITION OF SENATOR EXON

The ACTING PRESIDENT pro tempore. The Senator from Nebraska is recognized.

THE GAO REPORT ON THE DOE GASOLINE ALLOCATION PROGRAM

Mr. EXON. Mr. President, we are approaching the anniversary of a painful reminder of our Nation's dependence upon imported crude oil, the 1979 gasoline shortage of last summer. The long gas lines which we experienced provided clear and convincing evidence of the ever present threat to our economy and national security with the continued U.S. reliance on foreign oil supplies. Our society's standard of life and economic progress hangs by the delicate thread of oil shipments from the producing nations of OPEC.

The gas lines of last summer may soon become a distant and faded memory until a major supply disruption occurs again. Gasoline stocks are now above the level of a year ago. Americans are using less gasoline due to increasing fuel costs and a realization of the need to reduce our petroleum use. However, we cannot afford to become complacent and to wait until another supply shortage occurs to prepare for the need to minimize the impact of such disruptions in our vital energy lifeline.

Mr. President, we have an opportunity to provide for such an eventuality. A GAO report, which I hold in my hand and which is being released today, has reviewed the DOE's gasoline allocation program, which is the only program that can be used to manage the distribution of supplies when shortfalls are under 20 percent. The GAO concluded in its findings that the current program failed to meet its intended objectives during the 1979 shortage, and is so seriously flawed that a major overhaul of the program is needed. The ineffectiveness of the DOE's program was a contributing factor to the long gas lines which we experienced last summer. That shortfall was less than 5 percent. It is frightening to imagine what would have happened if there had been a 20-percent shortfall.

Many, however, may point to this report and merely criticize the Department of Energy. I would hope that the Congress will view this report as an opportunity to make important improvements in the system. In fact, the GAO report, entitled "Gasoline Allocation: A Chaotic Program in Need of Overhaul" does not recommend scrapping the system. If managed properly, the gasoline allocation program can be a valuable tool in coping with supply shortages of less than 20 percent. An efficient program can be used to avert the imposition of gasoline rationing. I would agree with the GAO's recommendation that the Secretary of Energy proceed to immediately revise the mandatory petroleum allocation regulations to insure the successful implementation of the program should another shortage occur.

Mr. President, our Nation's energy history has been replete with recurring themes. It would seem that we as a nation have been either unwilling to face the realities of today's energy problems, or that we have been overly optimistic about someone else finding a solution to the problem somewhere down the pipeline. The gas lines of 1973 and 1979 however, have warned us that we cannot afford to "learn the hard way." Last summer's gas lines should have provided an adequate lesson to us all.

Mr. President, our lack of preparedness cannot stand one more round in the ring. Crisis management cannot be tolerated. Our Nation cannot afford to ignore the lessons of history. We must grasp the opportunity to provide for a well-planned response to further anticipated problems with our foreign oil supplies rather than to proceed "ad hoc" as we have in the past.

As we strive to develop domestic energy supplies, it is important that we face the risks of our continued reliance on imported oil with greater preparedness.

The oil-producing nations have been tightening their grip on crude oil distribution. The producing nations have been pulling supply contracts out from under the major multinational oil companies and have diverted a greater supply to their own oil companies. Today, the majors control less than 50 percent of the oil available from the OPEC nations. This move away from the majors has increased the chances that an end user will have its supplies disrupted. With an increasing percentage of crude oil flowing away from the majors to the producing nations, the likelihood of reversing the disturbing trends of 1979 is all but eliminated. Shortages and misallocations are likely to increase. We must accentuate our preparedness.

Mr. President, I would urge all Members of this body to review this important GAO report carefully and seek to implement its recommendations quickly. I am convinced that the Congress will take this opportunity to constructively criticize the DOE's allocation program, and that the DOE will act swiftly to provide for an adequate program. A well-managed allocation system will demonstrate to the OPEC nations that we as a nation, have the ability to contend with threats of shortfalls, and that we

have the discipline required to reduce our hostage-like dependence upon imported oil. I ask unanimous consent that a digest of the GAO report be printed at this point in the RECORD.

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

GASOLINE ALLOCATION: A CHAOTIC PROGRAM IN NEED OF OVERHAUL

The 1979 gasoline shortage was another reminder of the continued U.S. dependence on foreign oil supplies and the ever-present threat of supply disruptions. It also underscored our lack of preparedness to minimize the impacts of such disruptions.

This report examines why the Department of Energy's allocation program was ineffective in managing the shortage and makes recommendations for improving the program.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C.

To the President of the Senate and the Speaker of the House of Representatives.

This report discusses the principal problems in the Department of Energy's administration of its gasoline allocation program. It contains recommendations for improving the program as well as for enhancing the Department's overall energy emergency response capability.

We made this review pursuant to the individual requests of 13 Senators and Representatives. However, because of the broad interest in this program, we are issuing the report to the Congress as a whole.

We are sending copies of this report to the Director, Office of Management and Budget, and to the Secretary of Energy.

ELMER B. STAATS,
Comptroller General of the United States.

DIGEST

The gasoline allocation program is the only program which can be used to manage the distribution of supplies when shortfalls are under 20 percent.

Yet, during the 1979 gasoline shortage the program failed to meet its intended objectives and is so seriously flawed that a major overhaul will be needed before better results can be expected.

Following the Arab oil embargo of 1973, the Congress provided legislative authority to deal with energy shortages and to assure sufficient supplies to priority users and equitable distribution of supplies nationwide. This authority will expire by October 1981 unless extended by the Congress. The Department of Energy (DOE) is responsible for satisfying these legislative objectives through its petroleum allocation program. Individual States play a key role in the program's implementation.

Under the Energy Emergency Conservation Act of 1979, rationing can be used only if the shortage is 20 percent or more, unless the President considers a lesser shortage to be a danger to national security.

CONCLUSIONS

When the supply shortage began in early 1979, emergency response planning was incomplete and outdated, and Federal and State Governments were ill-prepared to deal with their supply management role.

DOE's program operations were plagued by inadequate management and staffing, relentless demands for services, poor or totally lacking information systems, and unclear guidance and direction. Even under the best of conditions, the workload would have been formidable; in this instance, it was overwhelming.

DOE's problems were mirrored in the States' set-aside program operations. Like DOE they had not prepared to deal with the sudden workload, and also were handicapped by the absence of clear, definitive guidance.

DOE's audit activities were belated and of mixed success. These audits and the work GAO performed encountered a high incidence of possible violations of allocation program regulations.

The United States will continue to risk shortages as long as it depends, in substantial part, on imported energy. Furthermore, in a product-short situation, industry decisions and practices, based as they are on profit motivations, may not satisfy public interests or needs and will warrant Government intervention.

Consequently, despite its shortcomings as presently designed and implemented, GAO favors efforts to make the allocation program an effective tool. The program has not yet had a "fair" test. After it was established in 1974 it was not significantly revised until the midst of the 1979 gas shortage; and even those revisions were "quick fix" remedies.

HOW THE PROGRAM IS SUPPOSED TO WORK

The regulations affect the entire gasoline distribution system, from the refiner to wholesalers to retail stations and bulk end-users. Basically, gasoline allocations are determined by reference to a historical base period. Suppliers must sell to the same purchasers who bought during the base period, although the purchasers are not obligated to buy the volumes offered them. The amounts purchased during the base period (base period volumes) are used to determine the quantity to which purchasers are entitled. Certain national defense, agricultural, and other uses are given priority in receiving gasoline. The remainder is allocated to nonpriority purchasers as a fraction of the base period volume.

Each prime supplier (a refiner or wholesaler who first transports gasoline into a State) generally must use a uniform allocation fraction nationwide in distributing the gasoline, unless DOE directs or approves the use of a different fraction for a particular region. In addition, a "set-aside" program permits States to direct the distribution of a portion of the gasoline to meet hardship and emergency requirements within the State. Each prime supplier must set aside 5 percent of the supplies for this purpose.

Firms can request an exemption from the regulations or appeal a decision of DOE through DOE's Office of Hearings and Appeals.

WORKLOAD REDUCTION AND MANAGEMENT PROBLEMS

DOE found itself in a ground swell of activity for which it had not planned or prepared. Its allocation program, prepared 5 years earlier and found by GAO and others to be seriously deficient, had not been revised or updated. Further, DOE had not defined how it would implement the program.

The day-to-day operations were poorly managed. The work pressures and the sheer volume of requests, coupled with staffing shortages, fueled a crisis atmosphere and the program floundered.

In the five DOE regional offices GAO visited there were large processing backlogs, with several adverse effects. Those seeking relief through DOE suffered by not receiving timely service. They sometimes turned to the State set-aside program, thus inappropriately increasing the workload of the States.

Much of the workload that consumed DOE's resources could have been averted if program requirements had been better defined and understood and an improved base period had been used. These measures, coupled with improved monitoring activities and a strong audit and enforcement program, would better insure that the program operates as intended.

PROGRAM MONITORING PROBLEMS

DOE's lack of information on supply and market activity as well as operational information, or its failure to use the information on hand, was a recurring problem which eroded the program's effectiveness. For example, DOE could not determine whether supplies had moved to end-users and retail stations or instead were being stockpiled by distributors. DOE is taking action to obtain the information. Also, because DOE did not have confidence in the monthly allocation fraction reports from the suppliers it did not use them as a basis for exercising its authority to ensure equitable distribution of supplies throughout the United States. Because the States do not have access to the data, they are not in a position to know when imbalances exist and to request corrective action.

AUDIT AND ENFORCEMENT PROBLEMS

DOE needs to establish an audit and enforcement program that will better assure program integrity and deter violators. DOE was not prepared to audit compliance with allocation regulations at the beginning of the 1979 shortage. Its Office of Enforcement did not begin its full-scale audit effort of small refiners until June, and of product resellers until August. Some of its staff were switched from their normal audit and enforcement activities to augment the Office of Petroleum Operations field staff.

The Office of Special Counsel for Compliance did not begin its allocation audit of major domestic refiners until May and did not complete 14 audits, even though in some instances there was preliminary evidence of potential violations that needed further investigation. It suspended the audits to meet the deadline for completing its primary mission, but it plans to complete 9 of the audits in 1980 through the use of a contractor.

DOE needs to develop a staffing plan which would allow a quick scale-up of its audit and enforcement program at the onset of a gasoline shortage, using fully developed audit programs. Likewise, there should be public awareness that there is a reasonable chance that violators will be identified, and that DOE will take whatever enforcement actions are necessary to remedy the violations, including assessing adequate penalties to encourage compliance.

STATE SET-ASIDE PROGRAM PROBLEMS

DOE had not provided the States the program guidance and review necessary to promote more effective administration of the set-aside program. There were wide variations among the States' definitions of emergencies and hardships and the criteria for allocating set-aside supplies. Uniform and consistent administration of the State set-aside program is a critical prerequisite to an effective petroleum allocation program.

State energy offices were unprepared to handle the significant increase in workload. As a result—

There were wide variances among the States in granting set-aside supplies, and State releases of set-aside volumes were not distributed uniformly or equally,

Set-aside supplies were distributed without requiring adequate documentation of emergency or hardship conditions,

Applicant information was not being verified, and

Priority users whose requirements should have been met through normal distribution channels were receiving set-aside supplies.

PROBLEMS IN PROGRAM PLANNING AND DIRECTION

DOE failed to revise and update its program and to plan for its implementation. As a result, DOE was forced to make numerous program modifications, revisions, and updates between February and August 1979 during the course of the shortage. The frequency of changes and their immediate implementation caused significant problems, both for the industry in complying with the changes and for DOE field offices in retraining staff and dealing with the increased workload.

The changes were made without benefit of regulatory analyses and, in many cases, without public hearings, and with minimal time for written comments from interested parties. Also, this ad hoc approach forced DOE to make its decisions based on limited information, and invited further changes.

DOE's emergency planning and management is fragmented and lacks overall high-level coordination and direction. In response to a similar finding by DOE's Inspector General, in September 1978 the Assistant Secretary for Policy and Evaluation was made responsible for coordinating departmental energy emergency planning activities. However, this action does not go far enough and the need still exists for the appointment of a full-time coordinator of energy emergency planning, with full-time staff.

RECOMMENDATIONS

GAO is recommending that the Secretary of Energy act immediately to revise the Mandatory Petroleum Allocation Regulations and to insure successful implementation of the regulations during shortage periods. GAO makes a number of specific recommendations for improving the program, and identifies several desirable characteristics to be used in revising the program.

AGENCY COMMENTS

DOE agreed with GAO's findings regarding operational aspects of the allocation program, with the exception of the portion dealing with the Office of Hearings and Appeals. Consequently, DOE endorsed GAO's recommendations for identifying means to improve the program monitoring, audit and enforcement activities, Federal/State relations, and program planning and direction.

DOE said it was conducting a comprehensive regional office review to improve case management and strengthen program monitoring. Also, DOE said, it is in the process of resolving issues relating to the State set-aside program, including proper guidance, and reviewing of the entire allocation system and continuing audit and enforcement activities. The final report on the regional office review, issued in late March 1980, confirms GAO's findings regarding DOE's operation of the program during 1979.

However, DOE disagreed with GAO's findings regarding: the base period, the regulatory functions performed by DOE, and the Office of Hearings and Appeals response to the problems created by the gasoline shortage.

GAO's evaluation of DOE's comments is contained in chapter 6, beginning on page 85.

Mr. EXON. Mr. President, I ask unanimous consent that any remaining time assigned to me be transferred to the Senator from New Jersey.

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

RECOGNITION OF SENATOR BRADLEY

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, I thank the distinguished Senator from Nebraska for yielding the remainder of his time to me for the purpose of the following colloquy. I would inquire of the Chair, what is the time presently under my control?

The ACTING PRESIDENT pro tempore. Thirty minutes.

Mr. BRADLEY. I thank the Chair.

THE STRATEGIC PETROLEUM RESERVE

Mr. BRADLEY. Mr. President, this morning the Senate will be discussing the strategic petroleum reserve, an issue which this Senator has addressed with increasing alarm over the last several months. That alarm and urgency has only heightened in the last several weeks.

Mr. President, there is a clear and persuasive case for filling this Nation's strategic petroleum reserve. We need an ample strategic petroleum reserve because of the probability of disruption of our imported oil supply. We obtain 25 percent of all our oil from the Arabian Peninsula or the Persian Gulf area of the world. Our allies are dependent on this region for substantially greater amounts; 50 percent of all the oil that is consumed in Europe passes through the Straits of Hormuz. Almost 90 percent of Japan's oil comes from the Persian Gulf region.

Because of its political volatility and inherent instability, the Arabian Peninsula is a particularly unreliable and vulnerable source of oil supply. Even under the most optimistic view the likelihood of an interruption is significant.

If you simply take historical experience, in the last 6 years we have had two oil supply interruptions. In the last 30 years, we have had three oil supply interruptions. Since oil first began to be produced in the region some 45 years ago, there have been four oil supply interruptions.

So the question is whether the last 6 years provides the most realistic view of the probability of interruption, that is a 1 in 3 probability, or whether we should rely on the experience of the last 30 years, in which case there would be a 1 in 10 probability of an interruption, or on the last 45 years, which would mean a 1 in 15 probability.

But regardless of the pessimism or optimism of our assumptions, any of these probabilities would argue for filling the strategic petroleum reserve.

In fact, a number of studies have calculated that there is a 70-percent chance that a 3 million barrel-a-day disruption for 1 year will occur at least once in the next decade, that there is a 30-percent chance that a 10 million barrel-a-day disruption for 1 year will occur at least once in the next decade, and that there is a 5-percent chance that a 20 million barrel-a-day disruption for 1 year will occur at least once in the next decade.

Moreover, many who are experts in the political and military affairs of the Middle East as well as in U.S. defense policy, believe that the probabilities of interruptions of this magnitude are substantially higher than the probabilities that I have talked about. In other words, experts think that the last 6 years is a more reliable guide to the likelihood of a supply disruption than the last 45 years. This means that a one in three chance of an interruption of 3 million barrels a day, which is what this country receives from the Persian Gulf understates the magnitude of the threat.

Indeed, Mr. President, both the CIA and the Department of Energy have told the Senate Energy Commmittee that a major supply interruption between now and 1990 is a virtual certainty.

The potential for a disruption lies in the many elements of insecurity in and around the Persian Gulf that threaten our oil supplies and that facilitate the expansion of Soviet influence in the region.

The attack on the Grand Mosque in Mecca, the chaos in Iran, the continuing border clashes between Iraq and Iran, the recent coup in South Yemen, the growing Soviet intrusion into the Iranian political situation—all of these events provide ample illustration of the forces and events that could precipitate a real crisis during the next 10 years when the U.S. economic and political vulnerability to oil supply cutbacks will be at its peak.

Were this crisis to occur, what is the magnitude of the economic loss it would entail? Oil supply disruptions impose enormous costs on the United States and other consuming nations. A conservative estimate—conservative in that it assumes smooth adjustment of the economy to sudden reductions in oil supplies—of the GNP loss of a 20 million-barrel-a-day disruption for 1 year is $700 billion. The loss to all consuming nations would be three times greater. If the disruption were only 3 million barrels a day, the loss to the U.S. economy, according to Stanford University, would be over $100 billion—$100 billion sucked out of this economy in 1 year.

For the consideration of the Senate, it is important to remember that the entire Vietnam war cost a little over $100 billion. So what was put into the economy paid over a period of 7 to 10 years would be taken out of the economy in a single year if there were an oil supply interruption of a little over 3 million barrels a day.

In addition to mitigating the economic costs of a supply disruption, a strategic petroleum reserve will significantly promote several key U.S. national security objectives. First, it will increase the U.S. freedom of policy action in the Middle

East; second, it will reduce the threat of oil supply interruptions to U.S. allies who join with the United States in Middle East action; third, it will increase the ability of NATO members to sustain military efforts and continued civilian production if supply lines were cut; and, fourth, it will reduce the probability of a politically motivated interruption in the first place—in other words, it will provide a deterrent.

Now more than ever, when the administration is persuading our allies to join in economic sanctions on Iran and contemplating the possibility of subsequent military action, it is essential that the United States take steps to enlarge the range of policy options in the Middle East so that military intervention is our last and not our only recourse. The United States must also act to reduce the cost of our allies of participating in economic and military actions; to enhance the cohesion of the NATO alliance in responding to an oil supply interruption; and to increase the period during which military operations could be maintained in the event of a disruption of oil supplies. The strategic petroleum reserve will promote each of these goals.

Mr. President, the invasion of Afghanistan by the Soviet Union posed a serious and direct threat to that vital region of the world upon which we are so dependent for oil. Our response, so far, has been to increase military expenditures, which is probably correct. But we must also recognize that the Soviet threat has also increased the likelihood of an oil supply interruption. This makes it absolutely essential to refill the strategic petroleum reserve.

In this regard, Mr. President, both the historical and current experience of the Japanese amply illustrate the costs and benefits of a strategic reserve. In December of 1941, the tight and dwindling supply of oil was a major factor impelling Japan to war with the United States, Great Britain, and the Netherlands. Historians of the period have described the oil supply situation as follows:

> The feeling had grown that Japan was like a fish in a pond from which the water was gradually being drained.

The Japanese recognized that if they lost access to their sources of supply, as, indeed, happened as a result of the U.S. embargo, they would be left with only an 18-month stockpile, a situation that would impel them to action. And it did, indeed, impel them to the Pearl Harbor attack on the United States.

The lesson of this historical precedent is that when the embargo took place and reserves were inadequate, military action was the only recourse left and it was taken. Coming closer to the present day, Japan is able to support U.S. action and objectives in Iran because it has an ample strategic petroleum reserve. Were it not for Japan's 87 days in stocks, it is highly questionable whether the United States could have prevailed upon this critical ally to support us.

However, in order both to preserve the freedom of our policy action and to maintain our allies' support and respect for the credibility and reliability of U.S. security guarantees, we must, ourselves, rapidly acquire our own strategic petroleum reserve.

Mr. President, what are the assumptions underlying the Senate Budget Committee's position on the strategic petroleum reserve? The committee report recognizes two major national security needs that are addressed by the strategic reserve: first, the need to mobilize the Nation's resources to protect the Nation's energy security and independence; second, the need to protect the Nation from being harmed by disruptions in energy supplies. Yet, Mr. President, the committee's decision to rescind $2.3 billion in budget authority for fiscal years 1980 and 1981, to limit outlays to $300 million, and to defer oil acquisition to the latter half of 1981, is wholly inconsistent with its recognition of the vital national security needs that the strategic petroleum reserve addresses.

Mr. President, I suggest that this inconsistency derives from two fundamental flaws in the committee's analysis. First, the committee erroneously assumes that the costs imposed by the turmoil in the Persian Gulf are beyond Congress' ability to control.

Second, it erroneously assumes that the program is stalled by our inability to purchase oil in a unstable world market.

In fact, Mr. President, the United States does have the ability to control the impact of turmoil in the Persian Gulf. A billion-barrel strategic reserve would mitigate the devastating cost to the U.S. economy and reduce the likelihood of precipitous military intervention. Moreover, the reason the United States has deferred purchases for the strategic reserve is not that we cannot acquire the oil. At the very least, we could use our own domestic reserves. It is that we lack the political will to do so. The time has come for the United States to assert the independence of its foreign policy and to take the actions necessary to protect and promote our national security and the security of our friends and allies.

AMENDMENTS NOS. 1719 THROUGH 1921

Mr. President, I propose to offer an amendment in the coming debate that will restore the $2.3 billion which the Senate Budget Committee has rescinded.

This amendment assumes a strategic petroleum reserve fill of 100,000 barrels a day beginning July 1, 1980, and increasing to 200,000 to 250,000 barrels a day in 1981.

Mr. President, the United States must be in a position to take advantage of the current slack market and the high level of inventories worldwide. The time to buy is now. There will always be uncertainties and there is no reason to believe that the uncertainties will be any less this time next year.

We cannot afford to assume the market will improve considerably in the years ahead. Rapid fill rates, Mr. President, are justified because our extreme and continuing vulnerability to disruptions makes each additional stored barrel enormously valuable. According to the CBO and the Department of Energy analyses, when our stockpile is small, additional barrels are worth several hundred dollars per barrel because they will result in a major reduction in the GNP cost of a disruption.

Mr. President, in conclusion, it is clear that we must fill the strategic reserve.

Second, the oil is available now and now is the time to move.

Third, the likelihood of a disruption is high and the costs it would impose are enormous.

Fourth, the strategic petroleum reserve is our most cost-effective means of both deterring a politically motivated interruption and mitigating the costs of a supply curtailment.

Finally, we must demonstrate to ourselves, our allies and our enemies, that we have the political will to act in our own self interest and to take those actions that are necessary to secure the protection of our national security.

Mr. President, I see the distinguished chairman of the Energy Committee is on the floor. He has time allotted for his use.

I reserve the remainder of my time.

Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 12 minutes remaining.

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

I am pleased the chairman has come to the floor to discuss this issue.

The PRESIDING OFFICER (Mr. BOREN). The Senator from Washington.

Mr. JACKSON. Mr. President, I commend the distinguished Senator from New Jersey for his leadership and dedication in connection with the restoration, may I say, of the strategic petroleum reserve.

Mr. President, the junior Senator from New Jersey has been extremely helpful to me as chairman and to all members of the committee.

Mr. President, this morning I want to call attention to a deplorable situation now confronting the naval petroleum reserves. This historic mission of these invaluable—indeed, irreplaceable, oilfields is in danger of being severely distorted.

Established prior to World War I by Presidents Taft and Wilson, Naval Petroleum Reserve No. 1 (Elk Hills in Kern County, Calif.) and Naval Petroleum Reserve No. 3 (Teapot Dome in Natrona County, Wyo.) were withdrawn by Executive order from the public lands. Together with the once prolific Buena Vista oilfield (Naval Petroleum Reserve No. 2—which adjoins Elk Hills) these reserves were established for the specific purpose of insuring that, in time of war or national defense emergency, the ships of the Navy would have a secure source of petroleum fuel supplies.

Following the war, President Harding added another huge tract of Federal lands with promising petroleum potential to the naval petroleum reserve system. In February 1923, he established Naval Petroleum Reserve No. 4, located north of the Brooks range on the Arctic North Slope of Alaska. This reserve, with its 23,680,000 acres, was subsequently transferred to the Department of the Interior in 1976, and is now known

as the National Petroleum Reserve in Alaska.

I believe that it is important to understand that the naval petroleum reserves were originally created as national security assets—the first models of a strategic petroleum reserve. Even today, the naval petroleum reserves at Elk Hills and Teapot Dome rank 15th in terms of daily production from U.S. oilfields. Naval Petroleum Reserve No. 1 (Elk Hills) is one of the largest producing oilfields in America and still contains about 1 billion barrels of recoverable petroleum. By 1982, when over 900 new wells will have been drilled, its crude oil production capacity is expected to reach the level of 200,000 barrels per day.

Although Elk Hills was opened up and produced during World War II, in order to augment crude oil supplies on the west coast, it was shut-in soon after that conflict and once again reverted to its designated status as a national defense petroleum stockpile. In 1967, noting that there was increased concern in the minds of many military planners about the need of the armed services for secure sources of oil, the Navy began work on a comprehensive plan to fully explore and develop the naval petroleum reserves. That plan was completed in 1973, prior to the Arab oil embargo, and submitted to Congress and the President. Increased funding for the naval petroleum reserves development plan was appropriated the following year and work began to bring the reserves to a new state of readiness.

The record of the Navy and the Department of Energy, to which the naval petroleum and oil shale reserves were transferred in 1977, in managing, developing, and producing these reserves is a commendable one. It is a record of a loyal and diligent discharge of an important responsibility which reflects great credit upon the dedicated men and women who have served and are serving the Nation well.

By 1975, Congress had appropriated almost $70 million for the exploration and development of Elk Hills, a project that would involve drilling approximately 1,000 new wells and the installation of modern oil field production facilities. The cost of the project at that time was estimated to be about $800 million and the work was projected to be completed in fiscal year 1981. The goal was to be ready to produce 400,000 barrels per day in the event of a national defense emergency.

The fact that the naval petroleum reserves were not ready to meet a wartime or national defense emergency counted heavily in 1976, when Congress enacted the Naval Petroleum Reserves Production Act. Another important consideration which contributed to the decision to authorize a temporary 6-year open-up of Elk Hills and Teapot Dome was the heavy expenditure that would be required in order to bring the reserves to a posture of full capability.

An important feature of the 1976 statute was the establishment of a special

Because the strategic petroleum re-

leum from the naval petroleum reserves would be deposited. From this special account funds would be appropriated, as needed, by the Congress for the continued exploration and development work on the reserves.

Incidentally, although the special account was allowed to operate only for a short period—it was terminated by the NPR Authorization Act last year—the statute also authorized it to be a source of needed appropriations for the continued exploration of the national petroleum reserve in Alaska and the development of the strategic petroleum reserve. The elimination of the special account was accepted by me and other concerned Members of Congress, because it was never contemplated that the income-producing capabilities of the naval petroleum reserves would someday interfere with their contribution to the development of the strategic petroleum reserve. In retrospect, it was a mistake to divert those revenues to the general receipts of the Treasury.

As I mentioned earlier, I believe that the historic mission of the naval petroleum reserves is in danger of being distorted. Instead of securing a secure source of vital oil supplies for the armed services of this Nation, they are now being viewed by some people in the administration, as well as some Members of Congress, as merely a convenient expendable source of Government revenues.

Last year, for example, the sale of crude oil produced at Elk Hills and Teapot Dome generated income to the Treasury of the United States to the tune of over $720,000,000. In fiscal year 1980, the current year, the revenues are expected to rise to almost $1.6 billion and in fiscal year 1981, the projected income from the reserves is over $2 billion. While the $2 billion would help balance the 1981 budget, using NPR oil for this purpose would seriously shortchange the American people. It is pennywise and pound foolish. Use of NPR oil for its real purpose as a national defense petroleum stockpile will greatly increase the value of each barrel. In the event of a supply interruption, the value of the oil could easily be over $200 per barrel, rather than $35.

The fact that crude oil sales from the naval petroleum reserves can, and probably will, generate revenues on such a vast scale, as reflected in the projections I just mentioned, has tended to obscure the reason for their recently authorized production.

During the prolonged debates which preceded the passage of the 1976 statute that opened the naval petroleum reserves to peacetime production, the opponents of the bill were repeatedly assured that an even-larger source of crude oil would soon be available in time of emergency. The newly authorized strategic petroleum reserve was to augment the naval petroleum reserves with a greater capacity to deliver oil in a severe energy emergency.

Instead of the projected production rate of 400,000 barrels per day which would be available at Elk Hills when that reserve was fully explored and developed, the strategic petroleum reserve would be designed to permit the withdrawal of 5 or 6 million barrels a day. The argument was persuasive and Congress adopted it in the passage of the 1976 statute.

Today, we can see the flaw in the argument that the strategic petroleum reserve would be a superior emergency crude oil stockpile. The strategic petroleum reserve is not being developed in accordance with the legal timetable specified in the SPR plan, as approved by the Congress in 1977.

It is a small stockpile of only 91.7 million barrels—less than one-tenth of its authorized 1-billion barrel size and less than one-tenth the size of the huge naval petroleum reserve at Elk Hills. No purchases of oil for the strategic petroleum reserve have been made by DOE since November 1978, and none is contemplated by the revised budget until at least June 1981—14 months from now.

Many voices in Congress have been raised concerning this dangerous turn of events. Many Members of Congress have repeatedly urged that the President exercise his statutory discretion to order that crude oil production of the naval petroleum reserves be utilized, directly or indirectly, for filling the strategic petroleum reserve. Even allowing for the continued sale of 25 percent of the naval petroleum reserve crude oil production to small refiners—in accordance with the set-aside provision of the 1976 statute—approximately 100,000 barrels per day could be made available to the now feeble strategic petroleum reserve.

One of the serious obstacles to proceeding with such a course of action, unfortunately, is the reluctance of some people to forgo the income to the Treasury which would accrue from continued commercial sales of the crude oil produced at Elk Hills and Teapot Dome. This is the tragic distortion of the historical mission of the naval petroleum reserves. It is inconceivable to me that these national defense assets cannot be utilized for the needed development of the strategic petroleum reserve, because they are now considered to be more important as short-term income producers.

I have long championed both the maintenance of the naval petroleum reserves and the speedy development of the strategic petroleum reserve. The need for a system of strategic petroleum reserves became apparent to the members of the Interior and Insular Affairs Committee during hearings on oil import issues in January 1973. Hearings on legislation designed to create a strategic petroleum reserve were held in May and July 1973, and the creation of such a reserve was finally authorized in 1975 by the passage of the Energy Policy and Conservation Act.

The need for a large and effective strategic petroleum reserve is even more evident today than it was in 1975. There are many compelling arguments in favor of building such a crude oil stockpile. For example, possession of a sufficient reserve of petroleum reduces our vulnerability and minimizes the adverse impact on the United States of any potential curtailment of oil imports.

account in the Treasury into which all proceeds from the disposition of petro-

serve would reduce our vulnerability to import curtailments, the effectiveness of an oil embargo as a politico-economic weapon would be significantly lowered, thereby reducing the likelihood of its employment.

There is no argument with the fact that a strategic petroleum reserve would enhance the readiness capability of the Armed Forces of this Nation to defend our national security and to protect American interests around the globe.

In my opinion, it is vitally important to the security of the United States for all of us to recognize that the paramount mission of the Naval Petroleum Reserves must remain that of contributing to the national defense. Such recognition requires that the revenues generated by any sale of crude oil produced at Elk Hills and Teapot Dome be earmarked specifically for the development of a strong, viable strategic petroleum reserve. It would be a dangerous, shortsighted piece of folly to view those Reserves as just another source of income to the Treasury. Such a bonanza would only serve to strangle the establishment of a vital component of our national security—namely, the strategic petroleum reserve.

Experts on the world oil market and the Central Intelligence Agency have repeatedly warned that these will be insufficient supplies of crude oil to satisfy world demand sometime during this decade. Those warnings make it imperative for the United States to take advantage of the present surplus of petroleum—the so-called mini-glut. The price of crude oil will obviously continue to increase, and therefore a policy of delaying purchases not only will fail to maximize the favorable supply situation we now enjoy but also will end up costing the taxpayers more money. Another aspect of the strategic petroleum reserve should appeal to those who seek to economize on the costs of Government: The oil that is stored increases in value and is the only inflation-proof commodity—except for the gold stored in Fort Knox.

The United States simply cannot follow a path that will bypass the creation of the strategic petroleum reserve, but will continue to fritter away the crude oil treasure that was wisely set aside for national defense in the Naval Petroleum Reserves over six decades ago. If those Reserves are to continue on production, the revenues generated from the sale of that petroleum must be dedicated to the purpose for which they were created. To do otherwise, would be to choose a policy of unpreparedness that would imperil the security of our Nation.

Mr. President, I yield back the remainder of my time.

Mr. BAKER. Mr. President, I yield 5 minutes of the time remaining to me under the standing order to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. DURENBERGER. Mr. President, this is a difficult issue to discuss in a public forum like the U.S. Senate. The strategic petroleum reserve touches directly upon our national security and the health of our economy. It is the subject of ongoing negotiations with our allies and with the oil producing nations of this world.

A week ago Monday I met with Charles Duncan, the Secretary of the Department of Energy to discuss a series of issues. High on the list of topics was the strategic petroleum reserve. I sought a direct discussion with the Secretary on this matter because I was greatly concerned about the press reports on his recent trip to Saudi Arabia and about the Carter administration's revised budget which cuts fiscal year 1981 funding for the reserve program.

The comments I make this morning are not to be associated with the Secretary of Energy. In fact, our views are quite different on this subject. The substance of the Secretary's comments on the reserve program, at his discretion, will remain confidential.

Mr. President, there are three issues related to the strategic petroleum reserve which I should like to touch upon. The first of these is the symbolic interpretation of the reserve. I believe that the OPEC nations have a perception of the reserve which is dissimilar to that held in the United States, particularly in the U.S. Senate.

OPEC is a successful cartel because of its power to control the price and supply of crude oil on the world market. It would of course be troubled by the policy of any consuming nation which reduced its control. However, to the extent that the OPEC nations view our reserve program as an attempt by the United States to diminish their control over world oil markets, their view is incorrect. We do not advocate a strategic—and I emphasize the word strategic—reserve so that we can gain control of the oil supply system or influence the price. We would not use the reserve to buy and sell oil on a short-term basis. Our intention is to create a reserve with rapid recovery mechanisms that will allow us to respond to cataclysmic events.

A reserve of this type is as much in the interest of the OPEC nations as it is in the interest of the oil consumers. OPEC depends on a stable economic system in the West. Events which seriously jeopardize the economies of the consuming nations, threaten the economies of the OPEC nations, as well. Perhaps it would be useful to consider legislation which would spell out our intent with respect to the reserve. We could put a trigger mechanism on reserve withdrawals like those which govern implementation of gasoline rationing. That way the OPEC nations could be certain that the United States would not use the reserve to the detriment of their policies.

The second issue I shall discuss is the price of oil on the world market and the effect that resumption of reserve purchases might have on that market. It would appear that the Carter administration will not resume the program because they are convinced that it might force the price of oil upward. Yet this very same administration has imposed a $4.62 import fee on imported oil to accomplish a price increase. And they will use the $11 billion which flows from this import fee to balance a budget that has no room in it for the strategic petroleum reserve. That combination of contradictions makes pure nonsense out of our energy policy.

I have seen no evidence that regular and modest purchases for the reserve program will dramatically increase the price. And even if price increases did occur, I doubt very much that they would approach the $4.62 that President Carter has imposed as an import fee.

Mr. President, I make one final point on the price issue. If we decide not to resume the reserve because we cannot accept the possibility that it will increase the short-term price slightly, we might just as well decide to abandon the reserve concept entirely. It is now clear that the OPEC nations will manipulate supply on a regular basis to maintain a close balance between world oil supply and world oil demand. Their ability to fine tune the system will most likely improve in the future. We may very well never be able to resume purchases for the reserve without having some impact on the price. We should recognize that fact and get on with the program.

The final issue that I shall touch upon is U.S. policy on primary and secondary storage of crude oil and petroleum products. We do not have a storage policy as such. Evidence from 1979 indicates that world oil supply was not much affected by the Iranian revolution. What was lost in Iran was made up by increased production from other nations. But the revolution did have a dramatic effect on world oil demand. Because of the uncertainty created by the revolution, oil consuming nations and major oil companies rushed to increase their stocks of crude oil and petroleum products. Petroleum in primary storage stands at an all time high in the United States.

The record indicates that similar stockpiling occurred during the embargo of 1973. The dramatic price increases in the spot markets followed naturally by increases in contract prices may have been as much a result of this stockpiling response to uncertainty as it was directly related to shortage in supply.

I think it is time that we in Congress consider the question of primary and secondary storage. I also think that the administration should explore this question in depth with the other oil consuming nations of the world.

Mr. President, I thank Senator DOLE, Senator JACKSON, and Senator BRADLEY for bringing this important issue to the floor of the Senate.

I yield back the remainder of my time.

Mr. DOLE. Mr. President, the Senator from Kansas has 15 minutes; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. Mr. President, I thank my distinguished colleague from New Jersey, Senator BRADLEY, and the distinguished colleague from Washington, Senator JACKSON, and the Senator from Minnesota, Senator DURENBERGER, another distinguished member of the Finance Committee, for their comments concerning the SPR.

TIME TO BUILD THE SPR IS NOW

Mr. President, it has been nearly 6 months now since the Senate expressed its will in approving the Dole-Bradley amendment to S. 932 relating to the strategic petroleum reserve. That amendment requires the President to resume purchasing oil for the SPR at the average daily rate of 100,000 barrels. Despite the Senate's vote on November 8, 1979, President Carter has continued with his policy of ignoring the importance our SPR program holds and has inexplicably slashed the needed funding for SPR from his fiscal year 1981 budget. While I am quite sure that no one in this body is any more aware of the need to balance the Federal budget than is the Senator from Kansas, I feel it is penny wise and pound foolish to place budgetary considerations above those of national security. For that is what the strategic reserve is really all about—national security. The President and his advisers seem to be totally ignoring the reality of possible future energy supply interruptions beyond our control, such as those which occurred during the Arab oil embargo of 1973 and the more recent Iranian crisis. If we do not take the necessary steps today to protect the life blood of our economy, there may be no economy to protect tomorrow.

Mr. President, the administration has not given the American people a coherent national energy policy, nor have they given convincing reasons for why they are refusing to buy oil for our only insurance against possible oil cutoffs—the SPR. When the program was first terminated by the administration in November of 1978, there was no reason given. Then last fall when rumors began circulating that it was Saudi Arabia which objected to our continuation of the SPR program, we were told by the administration that a nebulous state of "adverse market conditions" prohibited the purchase of SPR oil at the time. The Dole-Bradley amendment to S. 932 removed those technical loopholes used by the administration but unfortunately S. 932 continues to be held up in conference.

ADMINISTRATION STANCE

Mr. President, after reviewing testimony given before various energy committee hearings, it is becoming increasingly clear that there is currently a glut of oil on the world market. However, before a Senate Appropriation's Subcommittee hearing Secretary Duncan testified that the administration would not resume purchasing SPR oil until June 1981.

Mr. President, the position taken by the Senate when it voted on the Dole-Bradley amendment showed the administration that the SPR should and must be a part of any overall energy strategy. Subsequently, in January this year, Secretary Duncan said he would come up with a plan to buy oil for the SPR. But in his testimony Monday, before the Appropriations Subcommittee, he said no oil would be bought until at least June 1981 on the grounds that buying such oil would "adversely impact the market."

Mr. President, how can Secretary Duncan or anyone else for that matter predict whether the market will be stable in 1981? The Secretary has stumbled on his own words. Today, there is a clear glut of oil in the world market, as testified by Dr. Ruth Davis at our Energy Committee hearing held April 18, 1980. This testimony, given by one of Secretary Duncan's own deputies, is a clear-cut example of contradiction in logic with respect to the Carter SPR policy. In her testimony Dr. Davis testified that oil companies have themselves stockpiled oil, which they could easily sell to the Government for the SPR, but which they will dump on the world market because of the administration's anti-SPR policy.

In turn, this dumping of oil on the world market may prompt the Saudis to curtail their production from 9.5 million barrels to 8.5 million, in order to create an artificial shortage and keep prices high. The Saudis' oil policy is opposed to any loosening of the world oil supply and any build-up of a strong reserve by the United States.

In short, if now is not the right time to buy oil for the SPR, when will there be a right time? The fact of the matter is that the illusion of a "stable world market" has nothing to do with the administration's decision to terminate the SPR. We are left to infer that it is only Saudi pressure which has dictated the administration's weak policy? If we kowtow to Saudi pressure on this, how can we realistically be expected to defend our own interests elsewhere?

Secretary Duncan went on to say in his testimony that the so-called "allies" present at the Tokyo economic summit pledged not to buy oil for their own reserves.

This may be true, but these allies have in some way managed to build up a very large SPR of their own, so they don't need to fill it further. For example, Japan has a reserve lasting for 87 days. It is precisely this reserve which will enable Japan to stop importing Iranian oil, in order to avoid paying the high prices asked for by the revolutionary government of Iran. This irony shows the folly of our unilateral decision to terminate our own SPR. We would be in a far less tenable position than Japan, to resist OPEC pressure, because we have no viable SPR. Our current SPR level will last for only 12 days, and beyond that we would be at the mercy of OPEC.

POLICY OF APPEASEMENT

Mr. President, these contradictory and absurd rationales are an insult to the American people. The administration is literally playing games with the very survival of our economy. They are placing our economy and military position in the world in jeopardy by following a policy of appeasement toward the OPEC oil sheiks, who remain steadfastly opposed to any build-up at all of our SPR. When the strategic petroleum reserve program was first initiated under President Ford, the Arabs voiced similar threats of curtailed production. However, at that time President Ford saw the necessity for some sort of cushion against possible cut offs and proceeded to go ahead with the program. It is unfortunate for all that the program was discontinued under the Carter administration. Our economy, our military and geopolitical position and our entire way of life are all threatened because our Nation remains totally vulnerable to energy supply shut-offs.

In order to urge the administration to immediately resume purchasing oil for the reserve, as the Senate voted last November, the Senator from Kansas, along with the Senator from Washington (Mr. JACKSON) and the Senator from New Jersey (Mr. BRADLEY) will offer an amendment to the first concurrent budget resolution which will restore the necessary budgetary allowance needed to resume our SPR program. The reserve program is so important that we cannot be concerned about haggling over where the funding should come from or what functions in the budget should be reduced to allow for the SPR. This is a matter of national security and we must not avoid our responsibility and our duty. It is more important to provide our country with energy insurance today rather than to achieve a politically desirable, token balanced budget at the expense of our national security.

CARTER ADMINISTRATION PESSIMISM

Mr. President, there is one more point I would like to talk about and that is the pessimistic tone of the administration's witnesses testifying before the various committees. All seem to be exceedingly negative about the chances for us to find a productive positive way out of the energy crisis. Everywhere we look at this administration we see no sign of hope—whether it is the economy, energy, or foreign affairs. They tell us we must continue to tighten our belts, despite the real costs this entails to jobs and overall productivity of our economy. They seem to continually paint a scenario of bleak economic malaise by virtue of their policy actions and decisions.

The American people can conserve energy, but only up to a certain point. We can eliminate unnecessary driving and we can also monitor our thermostats, but these measures and similar ones taken in the name of conservation will not loose the stranglehold OPEC continues to have on us. And we cannot be asked to destroy jobs, Mr. Carter notwithstanding. The administration believes that high oil prices are a good thing because high prices will discourage consumption, thereby reducing our demand.

However, when it comes to allowing oil companies to use their profits for exploration and development they take a totally different view and call for a massive so-called windfall profit tax which will only hurt American consumers and those small royalty owners and independent producers and do little to encourage increased domestic production. Here again we see a good opportunity for domestic production taken away through the revenue process. The administration is also refusing to lease vast lands in Alaska for oil and gas exploration. As Senator TED STEVENS of Alaska pointed out during an energy hearing on April 22, 1980, Alaska may be the Saudi

Arabia of the United States, in terms of its recoverable oil reserves.

Eighty years ago two Senators from Texas told their colleagues that the United States would run out of oil in 10 years. But instead of accepting this grim prediction we found oil and a great deal of it. This Senator knows as well as anyone that our untapped oil reserves are limited, but the Senator from Kansas also knows that American innovation and resourcefulness are unlimited and we cannot afford to allow these most valuable resources to lie dormant. This country must embark on a course of achieving all-out energy independence rather than on a policy of continued pessimism. For if we allow this Carter policy of pessimism to persist it will, I am afraid, become a self-fulfilling prophecy.

Mr. President, if the administration wants to keep us dependent on OPEC then its anti-SPR program makes sense. If we kowtow to OPEC here what will their next demand be? No matter how you look at it, the United States is being blackmailed by OPEC, and our future is being held ransom and it will continue until such time as we can stand free of the OPEC oil weapon. A strong and viable SPR will help make this goal possible. We are bound by our IEA agreement to help supply oil to any "ally" whose oil supplies decline by 7 percent, yet we cannot even honor this commitment and supply our own needs adequately due to our low level of reserves.

ARMS ALONE WILL NOT BUY SECURITY

Mr. President, the Senator from Kansas is pleased as many of his colleagues are to see the Carter administration finally realize that increased defense spending is necessary in order to boost our military posture which has steadily declined over the past 3½ years.

However, tough talk in terms of defense posture is not enough. What good are arms without oil? What good is defense security without energy security? This Senator feels that energy and defense are inextricably linked, and to separate them is to do an injustice to our overall national security efforts. Today our Nation is faced on many fronts with threats that at times seem insurmountable—the Soviet invasion of Afghanistan, the Iranian crisis, Soviet troops in Cuba, inflation, and many, many more. But perhaps the biggest threat to our national security is the merciless policy of cartel exploitation which has devastated our economy, put our people out of work, and led national leaders to preach pessimism.

Mr. President, it is time for the Congress to reverse the dangerous trend set by this administration and immediately resume our SPR program. Even with a massive synfuels program, which I may add is still tied up in conference committee, or with increased domestic production of oil and gas, our Nation will continue to be dependent on imported crude oil for at least the next decade, barring any unforeseen technological advances in the energy area. Without a strong reserve we run too great a risk of economic upheaval.

Mr. President, the strategic petroleum reserve is a much needed ingredient in our national energy program. Without the cushion the reserve provides we are left totally vulnerable to an oil shutoff by OPEC. It is in the best interests of the United States as well as our allies that we move forward with SPR even at the bare minimum provided for in the Dole-Bradley amendment to S. 932. The amendment which will be offered to the budget resolution will permit the Dole-Bradley amendment to become reality.

I urge my colleagues to support that effort when this comes to the floor.

S. 2598—NAVAL PETROLEUM RESERVE

Mr. DOLE. Mr. President, the danger of the Carter administration's policy against filling the SPR is compounded by the fact that the administration is currently depleting our naval petroleum reserve at Elk Hills, Calif., at the rate of 130,000 barrels per day. They are selling this oil to private oil companies in California. California obtains approximately 18 percent of its oil needs from the petroleum reserve.

This policy of net depletion of our oil reserves amounts to "national security suicide." Presumably, our "friends" and "allies," the OPEC Arabs, are gleeful that we are engaging in a systematic net depletion of our oil reserves. This depletion only makes us more vulnerable to their pressure and leaves our military reserves frightfully low. Sheik Yamani is reported to have told a high U.S. official recently, "we will be your reserve."

While this may be a well-intentioned gesture, we cannot rely on such promises in a region of the world where international instability is increasingly the rule and not the exception. We cannot afford to let our national interests be dictated and distorted by would-be "allies," even as they wreak havoc on our economy by mercilessly hiking up the price of oil in classic, cold-blooded cartel style beyond any reasonable limits.

Accordingly, I am introducing a bill which will ban the sale of any more oil from our naval petroleum reserves numbered 1 and 3 to private oil companies. This measure will however allow only the sale of oil in exchange agreements whereby the oil companies will deposit an equal amount of oil in the SPR in Texas and Louisiana.

Mr. President, this bill will insure that at least we will not unilaterally deplete our only real oil reserve, and will hopefully convince the administration to sign exchange agreements to deposit the oil and begin rebuilding the SPR. Why should we supply California with 18 percent of its energy requirements by depleting our own naval reserves while, at the same time, oil companies possess large stockpiles? The Elk Hills naval reserve was initially authorized for defense and national security purposes only. But that fact seems to have failed to impress this administration.

Perhaps the administration believes that we can best assure our security by bending over backwards to please the Arabs by making ourselves more vulnerable to the oil weapon. Perhaps it believes that even keeping the Elk Hills oil in our naval reserve will "displease" the OPEC cartel, so we must remove our only source of insurance against a shortage. And, perhaps Mr. Carter really believes that Saudi Arabia is stable enough to constitute a permanent petroleum reserve for the United States. I am afraid that I am not quite as confident in the stability of the Middle East to risk foregoing the only reasonable insurance against any oil supply interruption.

Mr. President, the Senator from Kansas and many of his colleagues see the necessity for a strong, viable, and reliable reserve. The only way to achieve that is to continue the program started during the Ford administration. The bill being introduced today concerning the naval petroleum reserve by this Senator in addition to the amendment to restore budgetary allowances for continuing the SPR program are two necessary ingredients in insuring our economic and military security. I trust my colleagues will see the urgency of this issue and give their support to the efforts being made in this area.

I am introducing the bill today and am pleased that Senators HATFIELD, BRADLEY, McGOVERN, and BOREN have joined me in my efforts to revitalize our reserve programs.

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. 2598

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7430 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) The Secretary shall sell petroleum produced from the Naval Petroleum Reserves numbered 1 and 3 only to persons who enter into an agreement with the Secretary whereby—

"(A) such person agrees to deposit, or by contract or other arrangement causes to be deposited, in the Strategic Petroleum Reserve within 30 days an amount of crude oil equivalent to the amount of petroleum acquired from the Naval Petroleum Reserve, and

"(B) the Secretary agrees to pay such person the appropriate current market price at the point of transfer of title and considering the oil grade, quality, transportation, cost and other such factors for the amounts so deposited.

"(2) There are authorized to be appropriated to carry out the purposes of this subsection such sums as may be necessary.".

UTILIZING THE NAVAL PETROLEUM RESERVES FOR THEIR INTENDED STRATEGIC PURPOSE

Mr. HATFIELD. Mr. President, as their name would imply, the naval petroleum reserves were established to act as a reserve in time of war for oil-fired naval vessels. While that wartime need may have diminished somewhat over the years, the strategic nature of the reserves has increased in stature—increased to the point where we can no longer afford to burn away Elk Hills naval petroleum reserves for nonstrategic purposes.

The bill I am sponsoring today, along with Senator DOLE, would require oil from the naval petroleum reserves at Elk Hills, Calif. and Teapot Dome, Wyo. to be sold with an equivalent amount of crude oil deposited in the strategic petroleum reserve.

As my colleagues are well aware, the strategic petroleum reserve has had very little oil placed in the Gulf Coast sites over the last year. In fact, the Department of Energy has made a conscious decision not to fill the reserve at this time. The Department's reason for not filling the reserve centers around objections voiced by the Saudis and finding the "right time" to resume oil acquisition. However, the Department has been unable or unwilling to provide convincing rationale or analyses for their decision. Given that the world price of oil has doubled over the past year, and given the current availability of world oil supplies, it is indeed difficult to figure out when the Department will determine the "right time" has arrived.

Certainly our flaccid negotiating posture with the Saudis and others concerning United States needs for a viable strategic oil buffer has been a factor in the administration's lackluster performance.

The argument that it makes little sense to take oil out of the ground in Saudi Arabia, at some risk to field longevity, simply to put the same oil in the ground in the United States obviously makes a great deal of sense to the Saudis and others in OPEC who care not to weaken the supply and price stranglehold of the cartel. The United States has failed, however, to convey to our friends, the Saudis, the mutual benefit derived from a strong strategic reserve in the United States. Saudi Arabia cannot act as a geographically displaced strategic petroleum reserve for the United States because, after all, the Saudis are not impervious to the external or internal forces accelerating in the Middle East which may in the coming decade jeopardize that country's current regime.

But leaving aside the issue of whether or not we should be buying oil on the world market, there remains the important question: What role will our naval petroleum reserves play in minimizing the potentially devastating effects of a sustained oil supply interruption?

The bill introduced today will insure that naval petroleum reserve oil will serve the defensive and strategic needs of all Americans, not just those fortunate to live in the vicinity of Bakersfield, Calif.

The bill will provide 130,000 barrels per day, and greater amounts in coming years, to strengthen our oil supply buffer, the strategic petroleum reserve. And, the bill will end the current policy of burning away a reserve to the benefit of only a small segment of the American public.

An alternative defensive use of Elk Hills petroleum would be shut in the field's production. While this, too, would maintain the strategic nature of the naval petroleum reserves, the refinery capacity and transportation network of the gulf coast strategic reserve sites far exceed those of the west coast, and Alaskan and other Californian production guarantees sufficiency of supply to the west coast. Thus, for strategic purposes, the more efficient storage location is the gulf coast.

Another alternative for naval petroleum reserve oil would be to establish the Department of Defense as an intermediary or as sole user. Proponents of this camouflaged method of utilizing naval reserve oil for the strategic reserve or simply for defense oriented purposes would argue that the Saudis would not mind NPR oil going to the Defense Department but they would object to the more visible route of requiring NPR to be placed in the strategic reserve if that would require additional purchases on the world market to make up for NPR oil stored on the gulf coast. That rather convoluted mechanism may confuse our foreign suppliers for awhile but, in the end, would still require purchases on the world market. Its value, therefore, is questionable and I would urge my colleagues to support a more direct, upfront approach which requires a barrel-for-barrel exchange of naval petroleum reserve oil for storage in the strategic petroleum reserve.

I encourage my colleagues to join me and Senator DOLE in cosponsoring this legislation to return a strategic posture to the naval petroleum reserves.

Mr. President, I ask that a status of our inactive but necessary strategic petroleum reserve be placed in the RECORD at this point.

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

STATUS OF THE STRATEGIC PETROLEUM RESERVE

Now in storage, 92 million barrels of crude oil (at 3 sites on the Gulf Coast).

Fill rate, currently zero (although capacity is 15 million barrels per month).

Oil acquisition, last delivery was August of 1979; no contracts being negotiated.

Purchase stopped under provision of Energy Policy and Conservation Act of 1975 which implicitly allows discontinuance of SPR fill if purchases would negatively "impact . . . supply levels and market forces."

Funding, oil acquisition is funded through Phase 1 (248 MMB, $18/bbl assumption).

Construction is funded through Phase 2 (an additional 280 MMB).

FY-81 funding and carryover appropriations are a prime target of recent budget cutting.

Constraints, Tokyo Accord signed by U.S. in June of 1979 says that oil consuming nations will not buy oil for strategic stockpiles if it would place undue pressure on prices in the world market.

Saudi threat to decrease supplies if the U.S. renews purchases for the SPR have not been formal, but Yamani has let it be known that the Saudi's higher than average production rate will not continue if the U.S. resumes SPR purchases.

Import Quota Impact, section 162 of EPCA states that no import restrictions shall apply to imports for storage in the Reserve.

Issues, the world price of oil has doubled in the last year yet the Administration continues to wait for the "right time" for further purchases for the strategic reserve.

The administration has failed to aggressively pursue with the Saudis our need for a strategic buffer. The "Yamani budget cut" for SPR oil acquisition is the latest example of U.S. appeasement policies.

The probability of a U.S. oil import cutoff in the order of 2 to 3 million barrels per day is very high over the next 10 years, yet the administration has failed to search for even "distress cargoes" seeking a buyer.

The administration has, in addition, balked at an exchange or swap of Naval Petroleum Reserve oil at Elk Hills, California (130,000+ barrels per day) for oil to be stored in Gulf Coast strategic reserve sites.

SPR Goals, the Energy Policy and Conservation Act of 1975 (ECPA) directs the establishment of a Strategic Petroleum Reserve of up to one billion barrels of crude oil and petroleum products to:

(a) diminish U.S. vulnerability to disruptions in petroleum supplies, or

(b) meet U.S. obligations under the International Energy Program.

The SPR plan, as amended, sets a storage schedule, to be met "to the maximum extent practicable," of

250 MMB by December 1978;

500 MMB by December 1980; and

750 MMB by December 1985.

DOE has yet to submit plans for a possible fourth 250 MMB.

DOE's FY-1980 budget tempered these ambitious goals with a three phase cavern development and fill schedule:

Phase—Storage	MMB	Date
I—Existing caverns and mines, 5 sites on Gulf coast.	248	End of 1980.
II—New leached caverns, expansion at 2 of the sites.	280	
III—New sites	222	
	750	End of 1986.

Even this schedule was obviously too optimistic since only 92 MMB of crude are now in storage and inventory. Further nearterm increases are at best uncertain since: (a) all oil acquisition contracts for the SPR expired at the end of April, 1979 and (b) SPR solicitations out for additional supplies have been unsuccessful.

DOE's current policy on SPR fill removes all time frames from Phases I, II, and III. DOE has no oil acquisition strategy for the strategic reserve. The policy of the administration is to stay out of the world oil market for reserves.

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

Mr. BRADLEY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 12 minutes remaining.

Mr. BRADLEY. Mr. President, I wish to thank the distinguished Senator from Kansas for his remarks and for his assistance in this critical national security matter, and also the Senator from Minnesota and, of course, the chairman of the Energy Committee, Senator JACKSON.

Mr. President, I yield 5 minutes of my time to Senator MCGOVERN who would like to join in the colloquy on the strategic reserve.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. McGOVERN. Mr. President, I thank the Senator from New Jersey.

I ask that the Senator add me as a cosponsor to this resolution.

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

STRENGTHENING U.S. ENERGY SECURITY

Mr. McGOVERN. Mr. President, first I want to commend the Senator from New Jersey, Senator BRADLEY, for his initia-

tive in this field, as well as the Senator from Kansas, Senator DOLE. I think it is important that we strengthen the petroleum reserve.

Senator BRADLEY has concerned himself with this matter since he first came to the Senate and has become an extremely knowledgeable Member of this body on all aspects of the strategic petroleum reserve.

The energy crisis poses one of the most serious national security threats we face in the next decade. Yet the first budget resolution leaves us unprepared to meet this threat. The Budget Committee action weakened the strategic petroleum reserve program by eliminating its oil purchasing authority and outlays for fiscal year 1981.

Since the reserve is the best short-term insurance policy against sudden disruption of our foreign oil supplies, I announced last week that I intend to offer an amendment to restore $2.2 billion in budget authority and $1 billion in outlays to function 270 for the reserve. This will enable the Government to purchase 100,000 barrels per day in fiscal year 1981 and 250,000 barrels per day in fiscal year 1982.

This amendment, Mr. President, attempts to accomplish much the same objectives that Senator BRADLEY, I think, is attempting to accomplish. I am glad to join as a cosponsor of that effort.

But it provides another track on which we can send a strong message to the administration that the reserve is essential to the military and diplomatic flexibility we need to protect our vital interests. I think we should strive to balance the Federal budget without unbalancing our energy security priorities.

The reserve should be financed without unbalancing the budget or requiring new revenues, if we can do that. Many of the resolution's real-growth military investments, including higher pay rates and more readiness funds to increase our deterrent power in the Persian Gulf, are important. At the same time, however, I do not believe that funds cut from the SPRO should have been used to make indiscriminate increases in the military budget. Since the reserve is an important element in our national security policy, my amendment will move funds from function 050 back to the reserve.

This is not a guns-against-butter amendment. It is an alternative national security amendment. If funds are shifted to the reserve, our national defense will still receive real growth of 8.4 percent in budget authority and 5 percent in outlays. These growth rates substantially exceed President Carter's program and the NATO commitment.

According to the committee's report, "the technical and management problems associated with the SPRO have been ameliorating somewhat." Strong congressional oversight will be needed to prevent a reoccurrence of these problems. The main obstacles now are the strength of our will and the skill of our diplomacy. My amendment will make our intentions clear and will provide the financial base for a new diplomatic effort to begin the overdue task of filling the reserve.

To take oil from the ground for the reserve we cannot expect revenues to come out of thin air. We will have to make some tough choices in this budget. National security depends on more than just military hardware. A more equitable distribution of defense spending will allow us to fill the reserve and meet our national defense needs.

Mr. President, I am very happy to join in the Senator's resolution here today. It may very well be that that is the only route that is open to us. But I would urge the Senate to also consider this transfer possibility of moving funds out of the function 050 portion of the budget into the reserve, so that we do not unbalance the overall budget calculations but do recognize that the petroleum reserve is a vital part of our national defense and security needs.

Mr. President, I thank the Senator from New Jersey again for his leadership on this issue, as well as the Senator from Kansas. I thank the Senator for yielding to me.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, the colloquy this morning has confirmed that there is a broad range of support for filling the strategic petroleum reserve. I think that, in summary, discussions this morning have established the following: that we must build a reserve, that the oil is available now, and now is the time to move; that the likelihood of disruption is high and the costs that it would impose on the economy are enormous; and that the strategic reserve is the most cost-effective way of deterring politically motivated disruptions and of mitigating the costs of a supply curtailment.

I think each speaker, in his own way, also said that now is the time when we must demonstrate to ourselves, our allies, and our enemies, that we have the political will to act in our own self-interest and to protect our national security.

Mr. President, is the distinguished Senator from Kansas prepared to yield back the remainder of his time?

Mr. DOLE. Will the Senator yield for a question?

Mr. BRADLEY. Yes.

Mr. DOLE. Mr. President, as I understand the Dole-Bradley proposal, we are in agreement on what we propose to do. We support the same amendment which will reinstate the BA and BO's for SPRO.

Mr. BRADLEY. Yes, that is correct. The amendment would restore the funding that was taken out of the budget resolution by the Budget Committee, the full funding for the reserve, without any other aspect of an amendment that I am sure the Senator was concerned about.

Mr. DOLE. Mr. President, I have just been asked the question if they were separate amendments and I said, "No, I think we are in total agreement."

Mr. BRADLEY. Mr. President, this is an amendment to the budget resolution which will be at the desk, and to which I am pleased to add the Senator from Oklahoma, Senator BOREN, as a cosponsor.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. DOLE. Mr. President, I know of no other request to speak on our side on the petroleum reserve issue. I think other Senators may be inserting their remarks in support of the Bradley-Dole proposal, but have no further request for time.

I would just say, with Senator BOREN presiding, that we are making progress in some way to exempt the small royalty owners in this country, and we hope that we will then have Senator BRADLEY and others working with us for these small royalty owners who are now privileged to pay the same tax rate as Exxon. They are getting their notices now. It is almost like a draft notice, "Greetings, you have been invited to participate in this great experiment called the windfall profit tax. You will be permitted to pay between 50 and 60 percent of the difference between the base price and the selling price."

I have had a number come to me saying that they did not realize that they were part of big oil. I have joined with Senator BOREN and others, and I hope there will be others from the wide spectrum we have in this body who will focus on the plight of the small royalty owner. I am certain that Senator BOREN will persuade the Senator from New Jersey to assist us in that effort.

Mr. BRADLEY. Mr. President, I thank the distinguished Senator from Kansas for his capacity for optimism, and salute him. We work together in the field of the strategic petroleum reserve.

ALLIED SANCTIONS

Mr. ROBERT C. BYRD. Mr. President, America's allies have taken the first steps toward imposing sanctions on Iran to help free the hostages in the Tehran Embassy.

The Nations of the European Community voted unanimously to request their parliaments to impose sanctions in accordance with the Security Council resolution which was vetoed by the Soviet Union. These sanctions will go into effect on May 17 unless decisive progress toward freeing the hostages is achieved in the meantime.

The European nations have decided to adopt immediately a number of partial sanctions. West Germany deserves special credit for taking the lead in the debate to impose sanctions. And Great Britain is to be praised for coming up with a compromise that all nine nations could support.

The Japanese Foreign Minister was in Luxembourg while these decisions were being taken, and the Government of Japan is expected to take parallel measures. Japanese trading companies have already refused to pay the premium price demanded by Iran for oil. The result will be a halt in Iranian oil exports to Japan, a considerable sacrifice for Japan, which has been importing about 10 percent of its oil from Iran. Thus, the policies of our major allies are increasingly alined with our own.

The price increases demanded by the Iranian Government are being resisted by the European nations as well. The result could be a total cut-off of Iranian oil to these nations. While there is some excess supply in the world mar-

ket, the United States should consult closely with allies to be sure that the burdens of a disruption of oil supplies are evenly shared.

These allied steps are important because they help to reduce the strains in U.S. relations with allies. The seizure and detention of American diplomats in Tehran is a contravention of international law and established diplomatic practice. All nations are threatened by such acts. The steps announced by the allies are in their interest as well as ours. The focus of the debate on the hostage question can now shift away from the question "what will our allies do?" to the proper focus "what will Iran do?"

The Iranian Government now faces a clear choice. Unless decisive progress is made toward freeing the hostages by mid-May, Iran will be faced with a near total cut-off in trade with its major non-Communist trading partners.

Iran today is in a sorry state. Political violence is on the rise, ethnic separatism and anarchy in the countryside threaten the control of the central government. The disintegration of Iran is not in the interest of the United States nor its allies.

Disintegration in Iran is not in the interest of that country itself.

Only one nation stands to benefit from the disintegration of Iran. You guessed it: The Soviet Union.

It is the Soviet Union that stands poised on Iran's borders with tens of thousands of troops. It is the Soviet Union that supports disruptive political factions in Iran.

It is tragic, Mr. President, that the Ayatollah Khomeini seems to be entirely incapable of recognizing, of discerning the very critical threat to Iran, the threat posed by the Soviet Union on the northern border of Iran and the eastern border of Iran.

Ending the hostage crisis would free the government of Iran to deal with the real threats to Iran's independence and security.

What are those real threats? The spreading chaos within and the very real, growing, imminent presence of the military threat on the borders of Iran.

The steps taken by the United States and the allies are designed to encourage the Iranian Government to do what it should do, to do what it ought to have done a long time ago in its own interests—to release the hostages which were wrongfully and unlawfully taken in the beginning and who have been illegally detained for many months, to encourage the Iranian Government to turn to Iran's real problems.

All of us welcome the support of our allies. We applaud their determination to respond cooperatively to a situation that threatens them as well as us.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I congratulate the majority leader on his observations, and I also wish to say that his remarks as reported in the press this weekend provided me with the inspiration for the comments I am about to make.

(Mr. BUMPERS assumed the chair.)

THE MILITARY OPTIONS IN IRAN

Mr. WARNER. Mr. President, over the past 6 months, we have marked the passing of the seasons from late fall to winter and now to the rejuvenation of spring. As it always does, Washington has recovered brilliantly from the drab winter months. But for the Americans held hostage in Iran, the passing seasons have meant nothing but the inexorable passing of days—now the 172d. We as Americans are deeply bereaved for our countrymen and feel keenly the humiliation thrust upon our Nation by the Iranian terrorists. Our people in Tehran are constantly in our hearts and prayers, and our efforts to gain their freedom must be relentless.

I am, however, becoming gravely alarmed over the indiscriminate escalation of political rhetoric concerning the unilateral use of U.S. military force as a means to resolve the stalemate. Moreover, I am concerned by the apparent failure of the administration to recognize that the laws of this Nation mandate a collective judgment of the President and the Congress whenever the use of military force is contemplated.

The administration seems to be marching to drum beats that the President is "losing patience" and that the use of military force is "the only next step available." There is, however, no clear demarcation or sure way to determine when the President is speaking in his constitutional role as Commander in Chief of the Armed Forces and when he is speaking merely as a candidate for the Democratic nomination for President of the United States. Consequently, other Presidential aspirants find it compelling to discuss freely, sometimes in the most sensitive detail, the undertaking of military options against Iran.

The options being discussed carry grave risks, not only for the hostages but for all Americans and, indeed, the free world. American foreign policy from Europe to the Persian Gulf is involved. Our judgment to undertake those risks must be reasoned and coldly calculated; they must not be impatient or political.

I urge, therefore, that all candidates seeking the Office of the Presidency, when debating Iran, forgo making judgments on the use of military options.

As you know, Mr. President, the provisions of the Constitution related to war powers are as follows:

Article 1, Section 8: "The Congress shall have the power . . . to declare war . . .".

Article 2, Section 2: "The President shall be the Commander-in-Chief of the Army and Navy of the United States . . .".

Thus, power to make war is divided between the President's responsibility as Commander in Chief to wage war and the judgmental responsibility of the Congress to declare it. The Constitution controls, not candidates.

As we have discovered on numerous occasions in our history, and most dramatically during Vietnam, the respective powers of the Congress and the Executive are ill-defined in situations short of a declaration of war. To fill that gap and to extend the logic of the Constitution to those ill-defined situations, Congress, in 1973, passed the war powers resolution.

I am astonished that, throughout the building crescendo of rhetoric relating to military options with respect to Iran, the administration has not taken the most elemental step respecting the joint Executive-Congressional responsibility for the use of military force mandated by the resolution.

The purpose of the resolution is:

To fulfill the intent of the framers of the Constitution of the United States and ensure that the collective judgment of both the Congress and the President will apply to the introduction of the United States Armed Forces into hostilities or in the situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces and hostilities or in such situations.

Specifically, the war powers resolution requires that:

The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations were imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

Therefore, Mr. President, I call on the leadership of the Senate and the chairman and ranking member of the Foreign Relations Committee to advise the Senate with respect to the application of the war powers resolution to the current situation.

I do not believe that assessment has been made—and if it has, it has not been conveyed to the Congress in the full sense of consultation required by the war powers resolution. Yet the President's Press Secretary was on nationwide TV just this morning referring to military options. We—the Congress—must demand that that consultation begin and begin now.

The last time this Nation used the military option of mining as part of a naval blockade was during the Vietnam war, when Haiphong harbor was mined in May of 1972. This, of course, was prior to enactment of the war powers resolution. As I was Secretary of the Navy at that time, I am knowledgeable about that operation; and, since we were then actively engaged in an on-going armed conflict, the need for the element of surprise was present. There was, to my recollection, only minimal consultation with congressional leadership, just hours prior to the military carrying out of the mining operation. I am doubtful that, in the present situation in Iran, the element of surprise outweighs compliance with section 3 of the war powers resolution.

Only when the President has fully complied with the resolution will we know that the decision to use military force reflects the collective judgment of the President and the Congress. The hostages and, indeed, the American people desire that kind of judgment; they and we should demand no less.

Mr. President, as our colleagues know, the purpose of the war powers resolution was to restore the proper constitutional balance between President and

Congress with respect to the involvement of American Armed Forces in the absence of a declaration of war. This controversial law arose out of a background of two military conflicts—Korea and Vietnam. In neither did Congress declare war.

When the war powers resolution was passed, the Congress and the American people were rightfully concerned that too much power over life and death decisions had drifted to the Presidency.

I need not remind my colleagues of the urgent voices that were raised, many of them in this chamber, decrying the growth of the so-called "Imperial Presidency" and the danger of unilateral extension of American military power around the world by Presidential fiat.

We heard charges of one-man rule and one-man decisionmaking. We were reminded of the temptations of excessive and unrestrained power. We were warned that errors in judgment, human frailty, or even selfish motivation on the part of an incumbent President, could needlessly plunge our Nation into a local or worldwide conflagration from which there could be no return.

Americans have always mistrusted unchecked, undivided power. That is why the framers gave us a unique system of government by checks and balances. That is why Congress passed the war powers resolution. That is why, in the case of Iran, Congress must insist that the letter and the spirit of the war powers resolution be honored and adhered to. I also remind my colleagues that the Secretary of State, before the Senate Foreign Relations Committee, has committed the administration to "good-faith observance of that law."

Let there be no mistaking the potential consequences of military action in Iran. Great caution must be used.

Under the war powers resolution, the President cannot involve American military forces in hostilities for more than 92 days without the specific authorization of Congress or an outright declaration of war.

But once our forces are committed by the President, particularly in an area as volatile, unstable and, indeed, undefinable as the Persian Gulf, the die may well be cast.

The President's action, by itself, could well change or escalate the situation drastically. The very fact that the conflict had been joined might make disengagement impossible. Any possibility of meaningful congressional participation might well have been overtaken by events. The situation could, by then, be irretrievable.

That is why I urge upon my colleagues an immediate reaffirmation and, if need be, clarification of the war powers resolution's requirement that the President "consult" with Congress before launching a military action in Iran.

The stakes are too high, the risks too grievous and incalculable, and the potential consequences too grave, for Congress to be anything less than a full and equal partner of the President in making such a fateful and momentous decision.

Let there be no misunderstanding. It may well be that the resort to military options may at some time be the only viable option left in the national interest of the United States, the hostages, and the free world.

Indeed, an unwillingness to consider military options may well embolden an adversary to take rash action.

I am one Senator who will not shrink from the hard choices that are now before us. If convinced that the situation calls for military intervention, I will not hesitate to give my full support.

But we owe it to ourselves, to our constitutional responsibility, to the Nation and people we serve, and to the free world, to proceed with caution and constitutional deliberation.

Mr. President, partisanship has no place in any of our deliberations on a matter of such moment.

But it is a fact of life that our Nation, at this hour, is in the midst—simultaneously—of a hotly contested Presidential campaign and a major international crisis.

It is a fact of life that one of the chief contenders in that campaign is the Commander in Chief of our Armed Forces.

And it is also a fact of life that, regettably and dangerously, the use of military and other options to resolve the hostage situation has been injected into the Presidential campaign both by the candidate who now occupies the White House and by his challengers—Democrats, Republicans, and Independents alike.

It is asking a great deal of the candidates to restrain their rhetoric, and not yield to the temptation of political fishing in the troubled waters of the Persian Gulf.

But, Mr. President, this is exactly what we must ask of all our candidates for office.

They, and we, must act responsibly to insulate the life-and-death decisions, even now being made, from the clamor and distractions of the Presidential contest now in progress.

Our actions should not be in response to polls and public sentiment alone, but guided by the national interest of the United States and the fate of the hostages and the free world. Only thus can we assure a united America. This is an hour of trial and testing. This is the hour when all men must put Nation above politics. It is in such an hour that we reach out for stability and return to the constitutional principles of shared, divided power which have served us so well for nearly two centuries.

Acting together, in prudence and in concert, we can best assure the future of the hostages for whom we feel so deeply, the Nation we cherish, and the children we love.

Mr. President, I ask unanimous consent to have printed in the RECORD the war powers resolution.

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

WAR POWERS RESOLUTION

§ 1541. Purpose and policy

(a) Congressional declaration:

It is the purpose of this chapter to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Congressional legislative power under necessary and proper clause:

Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) Presidential executive power as Commander-in-Chief; limitation:

The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions or its armed forces.

(Pub. L. 93–148, § 2, Nov. 7, 1973, 87 Stat. 555)

EFFECTIVE DATE

Section 10 of Pub. L. 93–148 provided that: "This joint resolution [this chapter] shall take effect on the date of its enactment [Nov. 7, 1973]."

SHORT TITLE

Section 1 of Pub. L. 93–148 provided that: "This joint resolution [this chapter] may be cited as the 'War Powers Resolution'."

§ 1542. Consultation; initial and regular consultations

The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

(Pub. L. 93–148, § 3, Nov. 7, 1973, 87 Stat. 555)

§ 1543. Reporting requirement

(a) Written report; time of submission; circumstances necessitating submission; information reported:

In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) Other information reported:

The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Periodic reports; semiannual requirement:

Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

(Pub. L. 93-148, § 4, Nov. 7, 1973, 87 Stat. 555)

This section is referred to in section 1544 of this title.

§ 1544. Congressional action

(a) Transmittal of report and referral to Congressional Committees; joint request for convening Congress:

Each report submitted pursuant to section 1543(a)(1) of this title shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on International Relations of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Termination of use of United States Armed Forces; exceptions; extension period:

Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 1543(a)(1) of this title, whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Concurrent resolution for removal by President of United States Armed Forces:

Notwithstanding subsection (b) of this section, at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

(Pub. L. 93-148, § 5, Nov. 7, 1973, 87 Stat. 556; H. Res. 163, Mar. 19, 1975)

CHANGE OF NAME

In subsec. (a), the name of the Committee on Foreign Affairs of the House of Representatives was changed to Committee on International Relations on Mar. 19, 1975, by House Resolution 163, 94th Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1545, 1546 of this title.

§ 1545. Congressional priority procedures for joint resolution or bill

(a) Time requirement; referral to Congressional committee; single report:

Any joint resolution or bill introduced pursuant to section 1544(b) of this title at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on International Relations of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Pending business; vote:

Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Referral to other House committee:

Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) of this section and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 1544(b) of this title. The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) Disagreement between Houses:

In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 1544(b) of this title. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

(Pub. L. 93-148, § 6, Nov. 7, 1973, 87 Stat. 557; H. Res. 163, Mar. 19, 1975)

CHANGE OF NAME

In subsec. (a), the name of the Committee on Foreign Affairs of the House of Representatives was changed to Committee on International Relations on Mar. 19, 1975, by House Resolution 163, 94th Congress.

§ 1546. Congressional priority procedures for concurrent resolution

(a) Referral to Congressional committee; single report:

Any concurrent resolution introduced pursuant to section 1544(c) of this title shall be referred to the Committee on International Relations of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Pending business; vote:

Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Referral to other House committee:

Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) of this section and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) Disagreement between Houses:

In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

(Pub. L. 93-148, § 7, Nov. 7, 1973, 87 Stat. 557; H. Res. 163, Mar. 19, 1975)

CHANGE OF NAME

In subsec. (a), the name of the Committee on Foreign Affairs of the House of Representatives was changed to Committee on International Relations on Mar. 19, 1975, by House Resolution 163, 94th Congress.

§ 1547. Interpretation of joint resolution

(a) Inferences from any law or treaty:

Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before November 7, 1973), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this chapter; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this chapter.

(b) Joint headquarters operations of high-level military commands:

Nothing in this chapter shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior

to November 7, 1973, and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) Introduction of United States Armed Forces:

For purposes of this chapter, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Constitutional authorities or existing treaties unaffected; construction against grant of Presidential authority respecting use of United States Armed Forces:

Nothing in this chapter—

(1) is intended to alter the constitutional authority of the Congress or of the treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this chapter.

(Pub. L. 93-148, § 8. Nov. 7, 1973, 87 Stat. 558)

§ 1548. Separability of provisions

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to any other person or circumstance shall not be affected thereby.

SECTION REFERRED TO IN OTHER SECTIONS 559)

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

Mr. WARNER. I yield to the distinguished minority leader.

Mr. BAKER. Mr. President, I commend the Senator from Virginia for the initiative he has taken today. He is speaking on a matter of such extraordinary importance that it should command the attention of every Member of this body. I urge those not present on the floor to study the remarks of the distinguished junior Senator from Virginia with great care because they are a carefully reasoned and important statement of one of the fundamental safeguards of this Nation.

These are perilous and difficult times, not only in terms of the external threat and danger to our interests in the Persian Gulf, but also in terms of the need for responsibility and maturity in responding to that challenge within our own country. I especially commend the Senator from Virginia for his admonition to those who are candidates for President—I might say parenthetically that I can speak as an alumnus of that group—to use care and caution in their statements on this subject.

What is said here is, in many ways, noted more fully in other parts of the world than in our own. What I am prepared to say now may be more noticed in Tehran than it will be in Washington.

I believe the people of the United States are fed up with the irresponsible acts of the so-called Government of Iran in holding Americans hostage for all of these months. It is not just an insult to the people of America. It is a danger to the stability of this world, and the world should not underestimate the anger of the United States and our determination to do something about it.

I hope this statement will be remarked on and noticed outside this Chamber because it is the statement of one Senator who feels very strongly on this subject.

Having said that, however, I urge the appropriate, essential element of restraint, reliance for the requirements of the war powers resolution. We must remain mindful of our cooperative collegial and shared responsibility for the formulation of the foreign policy and the execution of the requirements for national defense of this Nation.

I, too, call on the President to consider this matter in terms of the ultimate interests of the Nation, even though they may be in conflict with the indicated political preference of some of his advisers, or of the results of a particular poll. I believe the President will do that. I call on both the President and the Republican candidates for the Presidency to do that.

Moreover, I ask the President, as has distinguished Senator from Virginia, to give full credence and support to the provisions of the war powers resolution, which require him to consult with the Congress on the possible use of military power by the United States in the Persian Gulf.

I will support the use of naval, air and military power in the Persian Gulf if I am convinced it is necessary to implement the policies of this country, to protect our future, and to gain the release of our hostages. I will not support the use of such powers without consultation. As our late colleague Senator Arthur Vandenberg once remarked, "I do not want to be in on the crash landing without being in on the takeoff."

I will support whatever must be done to see that America has the position of strength necessary to convince the Government of Iran and the people of Iran that we are serious about gaining the release of our hostages. I will support that, but I will do it only as and when the President confides in us the requirement, the necessity, and the justification for exercising that strength. In short, Mr. President, I believe in the war powers resolution, and I believe it applicable in this instance.

I see my friend and colleague, the distinguished Senator from New York, is on the floor. I think that is most fortunate because he was one of the authors of that act. He is the senior Republican on the Foreign Relations Committee, and he probably knows more about the war powers resolution than anybody else in this Chamber—certainly more than this Senator.

If ever there were a challenge—a challenge mandated by the Congress and accepted in good faith by the administration—to share the responsibility for the future of this Nation, to consider carefully what next steps must be taken, to consult on the use of military power, it is now. I call on the President to consult fully within the letter and the spirit of the war powers resolution. I call on the people of Iran and its Government to release our hostages and to relieve us of this danger, for it is a danger. Before the danger progresses too far, I urge the President to give full credence to the war powers resolution.

Finally, Mr. President, I commend the Senator from Virginia for initiating this colloquy.

Mr. WARNER. I thank the distinguished minority leader. I express my appreciation to him for the advice he gave me in the preparation of these remarks.

I also wish to thank the senior Senator from New York, with whom I consulted. He particularly gave me advice and some cautionary suggestions with respect to the preparation of these remarks this morning.

I now yield to the distinguished author of the war powers resolution, Senator JAVITS.

The PRESIDING OFFICER. The Senator from Tennessee (Mr. BAKER) has 8½ minutes remaining on the special order of his 15 minutes, and the time to be allotted is his.

Mr. BAKER. Mr. President, is there any time remaining of my reservation of time under the standing order?

The PRESIDING OFFICER. The time of the Senator from Virginia had expired at the time he finished his speech; and before the Chair could recognize the Senator from Tennessee, he was in colloquy with the Senator from Virginia. That time was charged. The Senator does have 5 minutes remaining of his standing order.

Mr. BAKER. So I have 5 minutes remaining under the standing order and 8½ minutes——

The PRESIDING OFFICER. And 7½ minutes on the remainder of the special order.

Mr. BAKER. I thank the Chair.

Mr. President, I ask unanimous consent to yield the composite time remaining, from whatever source, to the distinguished Senator from Virginia, for his control.

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

Mr. WARNER. I thank the distinguished minority leader.

Mr. President, I yield to Senator JAVITS.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, I am pleased that Senator WARNER has raised this issue. I notice that in his written remarks, he calls on the leadership of the Senate, the chairman and the ranking minority member of the Committee on Foreign Relations—to wit, myself—to advise the Senate with respect to the application of the war powers resolution.

Mr. President, for myself, I can assure the Senator that the act does apply and that it was intended to apply precisely in this situation, and that the provision for consultation which is contained in

section 3 of the law fits this situation perfectly.

It is my belief that the Senate will be consulted about this matter, but the question of time is left open by the law. It enjoins the President to consult with the Congress before introducing U.S. forces into hostilities. "Before" could mean an hour or 30 days or months. Timing is a very important question because "informing" just before the event is not consultation. Therefore, I construe the call of the Senator from Virginia to relate to that timing. He feels that the time has come, that we should do it now, and I would join him in that, because I feel that that is the purpose and intent of this law.

One very important thing, however, must be emphasized; that is, that by consulting, the President does not authorize, nor do we, nor should there be any presumption that we ever will authorize or that he will. But, he consults in a timely way when a situation shapes up that conceivably might involve such a decision by him and by us. The timeliness factor is important, as I said, because last minute notice of intent is not consultation within the meaning and spirit of the law. I say this as the principal drafter of the bill.

There is no question about the President's contemplation of a future military option. There is nothing secret about that. The President has said that if there is interference in the Persian Gulf with the oil supply, he feels that it would be a proper case to consider the application of a military remedy.

Also, he has said that sometime, somewhere, somehow, the military option cannot be rejected in respect of these hostages.

Under those circumstances, and considering the inordinate elapse of time in which the hostages have been held, under conditions which are deeply repugnant to the American people, including not only the violation of the law but also the common decencies among men, it seems to me that we are at a time when there should be such consultation.

I hasten to add that a group has been briefed and consulted very frequently about the Iran situation and the hostages in every phase of the matter, without exclusion. Those consultations and briefings were arranged by the majority leader weeks and weeks ago. They have been most faithfully carried through with the utmost frankness and candor on the side of the administration and, I believe, on the side of those who participated. Our views, the views of Chairman CHURCH and myself, have been communicated to the members of the Foreign Relations Committee.

In addition, we have had occasional briefings of the committee by Secretary Vance or Deputy Secretary, Warren Christopher. On occasion, Senators have talked with the President, when he felt the time required it.

It is a fact that the consultations which are called for by the war powers resolution relate to "introducing U.S. Armed Forces into hostilities or into situations where imminent involvement in the hostilities is clearly indicated by the circumstances."

Therefore, the consultation which the Senator from Virginia now calls for is that kind of consultation. I feel, as he does, that this is the time when that kind of consultation should start—again making it crystal clear that that has no implication whatever as to action or the timing of action or its nature or whether it will occur or will not occur.

We are dealing with the most serious things there are in Government and in life, when we are talking about this particular subject.

In our deep concern about the economy of our country and the economy of the world, I think there has been a tendency—at least for the moment—not to realize that the No. 1 priority of any nation and of any people is their security and survival. When you begin to talk about the use of military force, you touch the first priority of our country. I think that is very important, because we want to give this subject the solemn recognition it fully deserves.

The war powers resolution is a methodology. It does not do anything about the constitutional power of the President or the constitutional power of Congress.

The point was made very clearly in the debates on the resolution and in the debates relating to the adoption of the conference report and the overriding of the President's veto by Congress.

But we were determined at long last to give a procedure by which it could be determined when he slipped from the power of the President as Commander in Chief to assign, deploy, withdraw, reinforce, this vast range of powers, into a situation where it was the President who was bringing us into a war without any declaration of war and in modern circumstances no such declaration is sought. We can get in a war just as effectively without a formal congressional declaration of war, despite the intent of the Founding Fathers.

So all the war powers bill does is lay down a procedure by which when one flips over from one aspect of the President's power to the other you have the intercession of Congress which says, "Here now, at this point this is the kind of a war which if it is going to be fought we have to authorize it. Otherwise, there ain't none and you have no power and you have to get out."

That has never been done and it will take the discipline of Congress and the discipline of the President and high respect for the constitutional powers of each to see that this runs right.

I questioned the Secretary of State on that matter at his confirmation hearing. I ask unanimous consent that those questions and answers be printed in the RECORD.

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

Senator JAVITS. I just have two questions. We will, I am sure, be seeing a lot of you.

OBSERVANCE OF WAR POWERS ACT

One is a line of questioning I pursued before. After all, the end of foreign policy is to keep the peace, and the failure of foreign policy is to resort to war. Therefore, I call your attention to what you already know, the War Powers Act, a totally new law since you were previously on the scene here.

Mr. VANCE. Yes.

Senator JAVITS. Section III reads as follows—

The President in every possible instance shall consult with Congress before introducing the United States Armed Forces into hostilities or situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until the U.S. Armed Forces are no longer engaged in hostilities, or have been removed from such situation.

Do you or the new administration see any problem with the good-faith observance of that law?

Mr. VANCE. I do not.

Senator JAVITS. Do you challenge it under the Constitution as to the President's power?

Mr. VANCE. No.

Senator JAVITS. Would you, therefore, undertake to confer with this committee as to what methodology and guidelines have already been worked out with the State Department and what the new administration would like to work out in respect of the implementation of this generally regarded very critical aspect of the new policy of our country?

Mr. VANCE. I will.

Mr. JAVITS. Mr. President, I think with this Secretary it will work well, and I believe, however, that we come to a test when we say to the President that "we think this is the time to consult under the war powers resolution," expressly as it is called.

I must tell my colleague from Virginia, there is a grave danger that those who choose to be malicious about seeking to put the United States on some kind of an embarrassing spot or who seek to get people to misunderstand our policy or to paint us into the corner of being the militarists of the world, will seek to abuse the speech which was made here today by the Senator from Virginia in order to make those charges. But I believe they are without warrant.

The law is clear. The law has not the intentment of any such implication that we are going to resort to military force. On the contrary, the law is a great restraint on military force because when Congress has to act with the President. Considering our responsibilities directly to the people I think no one can doubt the care, reserve, and constraint which we would feel under those circumstances.

In the debate on the adoption of the war powers resolution it was made clear that consultation meant meeting formally with the established and the accredited committees of Congress having the jurisdiction over the declarations of war and this legislation, that is, the Foreign Relations Committee of the Senate and the Foreign Affairs Committee of the House of Representatives. Informal meetings, briefings, discussions, et cetera, are something apart from the institutional consultations with the appropriate committees called for in the war powers legislation.

In closing, I again commend the Senator from Virginia for his initiative in bringing this matter before the Senate.

I hope that I have been able to give him the explanation he requested as to the meaning and intent of the consultation requirements of the war powers resolution.

Mr. President, all of these constructions, to which I have just referred, certainly in my judgment support the call made by my colleague from Virginia in respect of the consultation which is called for by the war powers resolution.

I hope that two things may happen: One, that anyone in the world, friend or foe, may understand that that consultation does not mean action, does not even mean a decision. It simply means that both of the bodies in our three-echelon Government are going to talk together so that if there is a policy it will be a common policy commonly agreed upon.

The second thing, Mr. President, I think is critically important is that our own people should recognize the seriousness of the Iran hostage crisis, the seriousness of the crisis brought on by the Soviet Union's effort to overwhelm Afghanistan with its own troops, the first time that any such effort has been made by the Soviet Union outside the Warsaw Pact, and the very serious condition of the world in terms of its hopes for peace.

If those two purposes are accomplished, then I think the call of the Senator from Virginia will have had a highly beneficial result as well as being an appropriate effort by a distinguished Member of this body.

The PRESIDING OFFICER. Is there further morning business?

Mr. WARNER. Mr. President, I wish to both congratulate and thank my distinguished colleague from New York.

As I said earlier, I previously consulted with him in preparation of these remarks. We have witnessed today a superb example of his wisdom and corporate knowledge of this body's action with respect to the laws of the United States as they relate to foreign affairs.

I am privileged to serve in the U.S. Senate with such a well-informed American.

Mr. President, at this time I yield to my distinguished colleague from Arizona (Mr. GOLDWATER).

The PRESIDING OFFICER. The Senator from Arizona.

Mr. GOLDWATER. First, I want to congratulate my colleague from Virginia for the excellent presentation he made at a most propitious time; and, second, because my good friend from New York is here, I would remind my friend from Virginia that in my years in this body I do not think I ever had a more serious, prolonged, or tougher debate than I had on this war powers resolution. I opposed it, the Senator from New York was for it, and he won.

It is the law of the land. I want to make that clear. Even though I disagree with it, it is the law, and I am going to insist, along with others, that it be observed.

Mr. President, we are in the midst right now of writing authorization acts for the arming of our military forces, and I do not mind standing here on the floor of the Senate and telling my colleagues that I am frightened at the condition of our forces.

The fact is that for the last 20 years, through Republican administrations and Democrat administrations, our military has been allowed to go down, down, down. The question today this body has to answer, along with the important questions raised here on the floor already about whatever military actions the President might consult with us on, is the providing of funds to rearm our military.

I cannot go into these things on the floor of the Senate because they are highly classified, but they are available to my colleagues.

We are going to have to provide more money, and I am so happy that the Senator from New York said what to me is the absolute fundamental consideration that we must have, and I have told this to the people who have come to me and said, "Well, what are we going to do about education? What are we going to do about welfare? What are we going to do about health, about our big corporations that are going broke?"

I want to repeat exactly what Senator JAVITS said: That it is the first duty of this country to protect the security and freedom of its people, and that comes above everything else.

I hold what good does it do to have eliminated poverty, what good does it do to have eliminated ignorance, if we have to live in slavery? Do not sit and laugh at that possibility. We see today the Russians playing footsie with the Iranians. Why? They want Iran. Why? So they can own the Indian Ocean. Why? So they can deny to us and to every other country in this world that depend on ocean shipping the right to have that shipping.

What does that do? It destroys our economy. It disallows oil to our allies around the Pacific, oil to ourselves.

We are watching this happen. We do not see much of it. We are frightened about the hostages in Iran and what might happen from that.

We hear statements out of the White House that we will go to war. The next few days we hear statements from the White House saying, "Well, that was a mistake."

But let me remind my colleagues that if we mine the harbor, if we blockade, that is an act of war, and either Iran can retaliate or they can very rapidly find an ally in the Soviets who can really retaliate.

I would beg of my President to take a long, long time before he decides to perform an act of war that could drag this country into war at a time when we are not ready to go to war.

I hope and pray that in the wisdom that he must have he would come to this body and consult with the Members of this body with respect to not 2 or 3 years of foreign policy but 20 years or 30 years of foreign policy, and what to do with the strength of America.

I want to just terminate my few remarks by again saying that although I disagreed with the war powers resolution, it is the law, and I am going to see to it that it is observed.

Some day I may try to get it changed. I have not been able to do so thus far. In fact, I am a very unlucky guy in the courts, and I think I will stay out of them. But I want to congratulate my friend from Virginia for having brought this up.

I hope that every Member of this body will pay attention to what he has said and to what Senator JAVITS has said, and I would particularly appeal to those candidates who are running for President, both on the Republican ticket and the Democrat ticket, to pay particular attention to what they say.

It is a very easy thing in the excitement of a campaign to get a little bloody, to get a little warlike. I guess I have the reputation of being the worst hawk in this body. But I am standing here not as an angel by any means, not as a dove, but I just do not want to see my country go to war until I am pretty darned sure we can win a war, and even then I do not want to go to war. We will not have to because the only time this world stands in peace is when some one country dominates in military power and economic power. We can still do that.

I want to thank both of my friends for their remarks. That is all I have to say.

Mr. WARNER. Mr. President, I wish to express my humble appreciation to my senior colleague from Arizona.

We have been privileged to hear from two of the great elder statesmen in the Senate, and in their own candor, men who have in the past differed, but today agree that now is the hour to invoke the law of the land and to follow the consultative process.

On the question of the readiness of our Armed Forces of this country—and there are differences of opinion—I am of the opinion that I know our armed services will respond valiantly and courageously to any orders issued by the President of the United States of America, as they have always done in the past.

As an aside, I only urge my colleagues that, as we this year look at the funding for our Military Establishment, we take to heart the crisis we are in and the crisis we could be in, in the future, if we ever let the readiness and the capabilities of our Armed Forces slip to a point where no longer are we No. 1 in the world.

I still have the hope that we are today No. 1 in the world. Perhaps I have a somewhat different opinion from that of my distinguished colleague from Arizona but, nevertheless, I have ultimate faith that where we may be lacking in equipment and in money we are not lacking in the resolve of the men and women of the Armed Forces to defend this Nation.

I thank my colleagues.

The PRESIDING OFFICER. Is there further morning business?

Mr. GOLDWATER. One more statement. Will the Senator yield to me, Mr. President?

Mr. WARNER. Yes.

Mr. GOLDWATER. I am not questioning by any means the loyalty and devotion of our Armed Forces. I spent too many years of my life in uniform to have

any question about that. But what I am questioning is the power they need over and above their willingness to try.

Mr. WARNER. By no means was I interpreting my colleague's remarks to the contrary. It is just that both of us, having worn the uniform of the country, know that sometimes a good soldier can make up for an empty messkit and a few short rounds of ammunition.

I thank the Chair.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 20 minutes and that Senators may speak therein up to 5 minutes each.

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

TODD GIBBS, CYSTIC FIBROSIS POSTER REPRESENTATIVE

Mr. FORD. Mr. President, today it was my privilege and pleasure to host as a guest of the Senate Todd Gibbs of Scottsville, Ky. I call the attention of my colleagues to his visit not only because he is such a capable and enthusiastic youth but also because he represents the positive attitude that triumphs over adversity.

Todd Gibbs is the 1980 National Poster Representative for the Cystic Fibrosis Foundation. At age 15, he has endured hardships and physical pain far beyond what most of us will face in a lifetime. Thanks to the work of the Cystic Fibrosis Foundation, however, he and the others who suffer from cystic fibrosis have been given the chance to live longer and more normal lives.

Many people are not aware that cystic fibrosis is the No. 1 genetic killer of youth in the United States. It attacks the lungs and digestive system, requiring that the victim battle daily to stay alive.

If my colleagues could sit down to talk with Todd, they would find that he is a typical teenager in spirit. He has played little league baseball and, like many other Kentucky young people, is an avid basketball fan. He has served as a page for the Kentucky House of Representatives and is active in school and community affairs.

But he has an interest in a subject that most teenagers—and most adults—do not have. That subject is, of course, the disease which has played such a crucial part in his way of life.

Todd has spent his school-age years studying about the disease which has affected his body and learning how to be his own treatment specialist. He faces a demanding regimen each day of medical attention that will help him to digest his food, to avoid infections that could be disastrous.

And he does that with an optimistic outlook that anyone who knows him admires. Having been a fighter all his life, he is not even aware of the courage he has inspired in other people through his daily living. Like so many other cystic fibrosis victims, he takes each day as it comes and looks to the future with high hopes and expectation.

Todd's visit today was a personal inspiration. I know my Senate colleagues join me in welcoming him to the Nation's Capital and wish him much happiness and success in the future.

S. 414, THE UNIVERSITY AND SMALL BUSINESS PATENT PROCEDURES ACT

Mr. FORD. Mr. President, legislation to establish a uniform patent policy for the Federal Government is sorely needed. Fragmented and burdened by bureaucratic redtape, patent procedures for Government-supported research and development are delaying commercialization of potentially beneficial discoveries.

The procedures for issuance of patents for discoveries under Government financed research are so bureaucratic and unreasonable that any small businesses are reluctant to deal with federally funded research. Moreover, present patent policy leaves too much uncertainty as to ownership of most inventions resulting from federally financed research thereby, discouraging small innovative companies from becoming involved in this area.

Presently, Federal agencies are using as many as twenty different patent procedures, with most agencies processing patent rights on a case by case basis, very often causing great delays in the processing of patent rights. As a result, approximately 28,000 patents are in the hands of the Government. Many of these patents should have been successfully licensed and made to benefit the public.

A GAO study conducted in 1979 found that the Department of Energy frequently takes up to 15 months to process patent ownership requests from its contractors. Such delays are unnecessary and may result in some valuable energy discoveries being kept out of the marketplace, something that we cannot afford at this time.

The Federal Government has traditionally supported research which is deemed to be in the public interest or to be related to national goals. In fact, the Federal Government spends billions annually on research and development, making it extremely important that we insure the greatest return on such expenditures of public funds.

However, existing Federal policy discourages such commercialization, providing us with something less than the maximum return on public funds spent for research and development. Thus, Congress should amend present law to eliminate the various barriers and delays to commercialization of these discoveries.

S. 414, the University and Small Business Patent Procedures Act, will promote the utilization of inventions arising from federally supported research or development. This legislation is intended to deliver the full benefits of Government-supported research to the public by eliminating many of the existing barriers to commercialization. Most importantly, this legislation is also intended to give nonprofit organizations, universities, and small businesses sufficient incentives to bring new innovation to the marketplace, where it will benefit the consumer and the taxpayer alike.

This legislation was one of the recommendations of the White House Conference on Small Business, and as a result was placed on the agenda of the Senate Small Business Task Force. As a member of the task force and a cosponsor of S. 414, I wish to commend Senators BAYH and DOLE, chief sponsors of this legislation, for their commitment to improving Government patent policy.

IMPENDING CRISIS IN FOOD STAMP PROGRAM FOR FISCAL YEAR 1980

Mr. DOLE. Mr. President, for some time now we have all been hearing about the impending crisis in food stamp funding for fiscal year 1980. The States are extremely concerned about the possibility of having to suspend benefits, beginning June 1, 1980, because the program will have run out of funds by that date if Congress has not taken appropriate action in coping with this situation before May 15, 1980.

I think this is a matter that deserves consideration. Those Americans who find it necessary to participate in that program are also suffering from inflation.

We have been hearing about the impending crisis in food stamp funding for fiscal year 1980. The States are extremely concerned about the possibility of having to suspend benefits beginning June 1, and I think yesterday my distinguished colleague from South Dakota, Senator McGOVERN, made a statement urging Congress to take appropriate action. We are talking about a substantial supplemental. At the same time, I think we are talking about a very important program and I hope that all Members of Congress will understand that if we do not do something before May 15, benefits will be suspended commencing June 1. It will affect about 22 million Americans and I just believe it is a matter that deserves the attention of Congress, the Members on both sides of the aisle.

AVERTING DISASTER IN TIME OF NEED

Today, I take the floor in support of my colleague, the Senator from South Dakota (Mr. McGOVERN), to alert the Senate of consequences to the States we represent if Congress does not act in time to provide the additional funding through the third concurrent budget resolution.

There is no reason why the legislative process cannot meet deadlines for action that would have dire consequences in the States. Unless action is taken now, one of our most crucial domestic programs in combating hunger and malnutrition will come to a complete standstill—all because Congress did not see fit to act in time.

USDA'S ALERT TO THE STATES

The Department of Agriculture has already sent out letters alerting the States to possible ways of handling this situation should it occur. If at any time before May 15, Congress indicates that ad-

ditional food stamp funding will not be forthcoming, there will be an immediate reduction in food stamp benefits. The second budget resolution for fiscal year 1980 does not provide for additional appropriations of sufficient magnitude, and the current level of food stamp appropriations will sustain full food stamp benefits only through the month of May.

USDA does not have enough confidence in the current appropriations process to relax in its concern. Unless authorization and appropriation bills to increase food stamp funding are passed by May 15, USDA will proceed to notify the States that benefits will be cut off as of June 1.

THE PEOPLE'S LOW OPINION OF CONGRESS

Recent opinion polls indicate that Congress is generally held in low esteem, for its inability to take effective action in time of need. If we do not do something soon to indicate that we have the food stamp crisis under control, and are acting responsibly to avert a funding catastrophe that will otherwise affect 22 million Americans on June 1, we will only reinforce these negative impressions of our legislative representatives.

WHY FUNDING ESTIMATES PROVE WRONG

Since 1977, when Congress placed a cap on food stamp expenditures in an attempt to control this rapidly expanding program, estimates as to the level of funding that would be required proved to be highly inaccurate. During the period of 1977 through 1979, rising inflation in the cost of food exceeded the 9 to 12 percent that had been projected and soared to heights of 22 percent. Such food costs continue to rise out of sight and are projected to be 46 percent over the 1977 figures by 1981. The implications for such erroneous estimates are quite obvious. Therefore, it is little wonder that a third concurrent budget resolution is necessary to come to the rescue of one of our Government's leading social programs.

However, food costs account for only one-half of the shortfall. In addition, there is the rising unemployment factor which accounts for another one-fourth of the additional cost of the program. Unemployment was projected at 6 percent for fiscal year 1980 and 1981, but it is expected to be closer to 7.5 percent by 1981.

Additional expenditures in the food stamp program arise from underestimating the increased participation due to elimination of the purchase requirement. Previously, there were many poor people—among these high percentages of elderly in rural areas—that simply did not have the money to purchase food stamps initially.

POSSIBLE COURSES OF ACTION

I support my colleague, Senator McGOVERN in his recommendations to avert this impending disaster to our Nation's poor people. One possible course of action that might be taken is to separate the revision of the second concurrent budget resolution from the fiscal year 1981 first budget resolution. This would permit us to take action on a supplemental appropriation as a way of dealing with this emergency situation while the House completes its action on S. 1309, which the Senate passed last year.

The other course of action which we think appropriate would be to waive the rules to enable us to pass an emergency supplemental appropriation of $750 million for food stamps to tide us over until June, in order to let Congress have enough time to act appropriately through its usual channels. Such an emergency provision would also give us the necessary leeway to carefully consider the provisions of the first budget resolution for fiscal year 1981.

IMPORTANCE OF TAKING ACTION NOW

There are only 23 days between now and the time that letters will go out to the States from the Department of Agriculture. By taking decisive and effective action now, we can send a message to the people of the United States that will help restore confidence in the ability of their elected representatives to act in time of need, in order to avert unnecessary hardship to people who are at the mercy of the system.

It is because of our administration's fiscal policies that economic factors combine to produce the necessity for such action to begin with. We have within our means the capability of responding to the need of over 22 million Americans who await our answer.

I urge my colleagues to join with Senator McGOVERN and myself in taking the necessary steps to assure that the food stamp program will continue without interruption. Otherwise, the nutrition and health needs—and even the survival—of millions of Americans will be placed in serious jeopardy. We all know that we cannot let this happen. Let us act responsibly to resolve the current food stamp crisis now.

ORDER FOR RECESS UNTIL 2 P.M. AT THE CONCLUSION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of routine morning business the Chair recess the Senate until 2 p.m., at which time under the order of yesterday the Senate will go into executive session, will resume the debate on the nomination of Mr. Lubbers, and under the order of yesterday will vote at 2:30 p.m. on that nomination.

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

ORDER FOR THE RESUMPTION OF CONSIDERATION OF S. 414

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent during debate on the Lubbers nomination no other motion be in order, and that upon the disposition of that nomination the Senate return to legislative session at which time it resume consideration—and I have consulted with the distinguished Republican leader on this matter—of the patent bill, Calendar Order No. 515, S. 414.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

RECESS UNTIL 2 P.M.

The PRESIDING OFFICER. The Senate stands in recess until the hour of 2 p.m.

The Senate, at 12:50 p.m., recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. STENNIS).

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, the Senate will now go into executive session and resume consideration of the nomination of William Lubbers to be General Counsel of the National Labor Relations Board, with time for debate on the nomination to be limited to 30 minutes, to be equally divided and controlled by the Senator from New Jersey (Mr. WILLIAMS) and the Senator from Utah (Mr. HATCH).

The Senate proceeded to the consideration of executive business.

NOMINATION OF WILLIAM A. LUBBERS

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I believe the Lubbers' nomination should be rejected. Let me list a few of the reasons why it should be.

I do not think that Mr. Lubbers is an independent, as required by section 3(D) of the National Labor Relations Act, and I do not think anyone can make an effective argument that he is independent.

Section 3(d) expressly mandates a separation of powers between the NLRB General Counsel and the NLRB or any member thereof.

For more than 20 years, Lubbers served as a top legal advisor to Board Chairman Fanning—the most "prounion" decisionmaker on the Board today.

Lubbers helped to write may of those decisions and admitted he agrees with the conclusions of Fanning in deciding cases. He would not tell the Senate committee even the number of cases he participated in which reflects an unhealthy secret attitude.

Virtually all of Lubbers' promotions throughout his 27-year career with the Board have been secured by Fanning—to solicitor of the Board and its executive secretary, and, finally, I might add, to this position.

Mr. Fanning said he would have to reassess his own situation on the Board if Lubbers did not make it (reflecting the degree of his personal involvement)—and you would have to have been in the committee to have appreciated the frenetic degree to which Mr. Fanning involved himself in this particular appointment.

Mr. Fanning has advocated the Lubbers appointment with the White House

and others—and he refuses to consider any other candidates for the job even though many others are better suited for the job.

Mr. Lubbers admitted at his confirmation hearing that he and Fanning are very close and this closeness can only become more intense if Mr. Lubbers has a statutory 4-year protection.

I might add that Mr. Lubbers lacks impartiality.

Lubbers has helped write "prounion" decisions for NLRB Chairman Fanning for more than 20 years.

During labor law reform, Mr. Lubbers acknowledged offering "technical assistance" to union leaders, even though in violation of neutrality and the National Labor Relations Board custom and policy.

Mr. Lubbers has denied both to the Senate committee and in a special letter to its chairman, even having made the statement that he would, if confirmed, bring about the changes Mr. Fanning and the union leaders he was "technically assisting" were seeking in the labor law reform bill. I find his denial hollow. And I find his pledge in the letter unpersuasive.

With the skill of a side-stepping dancer he pledged "his best efforts to discharge the responsibilities of the office in faithful obedience to the will of Congress as embodied in the act." He made no promise to refrain from seeking to bring about the changes contained in the labor law reform bill by his own administrative fiat. His promise here is meaningless—especially where he himself has stated that he already considers this to be within the Board's power. He stated this in a labor-law forum at the American Bar Association Convention in New York in August of 1978. I quote from the transcript of his statement:

And if it (the Board) exercises its policy-making powers in the proper way and rationalizes its decisions properly, that it is the agency to make national labor relations policy. I think that this is something which the Board will assimilate, and some of these powers which I think Congress was trying to direct the Board to use in the Labor Law Reform Act are some powers that the Board has. And in that respect, I think that maybe in the future, as the Board assimilates the message from the Supreme Court, they will deal with some of the problems along the lines that Arthur indicated. They may have the power to do so.

I think it is easy to see why I feel his letter to this august body was a hollow shell.

Lubbers urged the NLRB in one of his official acts (Dalmo Victor Co.), to increase the power of union officials to impose fines against workers who resign union membership during strikes—thus altering the economic labor-management balance and denying employees the fundamental right to refrain from union activities.

I think Mr. Lubbers lacks experience to fulfill this responsibility.

He is an "ivory-tower" bureaucrat having no practical labor relations experience as well as extremely limited Board experience.

He has had no regional office experience where unfair labor practices are litigated and secret ballot elections are held.

The opponents of the Lubbers nomination have been fair in an attempt to avoid a confrontation.

There are many others including competent union affiliated lawyers that management is willing to support.

In particular, they mentioned Arthur Goldberg, a prounion lawyer; they mentioned Karl Frankel, a prounion lawyer; and they mentioned the Regional Director of the National Labor Relations Board for the Atlanta region, Curtis Mack. All of these were acceptable to the business community in this country, all of whom would be favorable to the labor unions as independent chairmen of the Board.

I think that the opponents have acted properly in this matter and they have made it clear that they feel that this is a travesty to have Lubbers rammed down their throats when they were willing to compromise and to accept others who would be just as prounion as Mr. Lubbers, but would have at least the appearance of impartiality and independence.

The matter is essentially the same as the Agriculture Committee's handling of the Hugh Cadden nomination who was opposed because:

He came from the staff of a current commissioner in violation of the independence required by the Commodities Futures Trading Commission Act; and

He had absolutely no practical experience or knowledge of commodity markets or trading; and

He was, according to the letter, an ivory-tower bureaucrat.

Mr. President, this position is probably more important than one which was rejected by the Agriculture Committee and by 16 of our Senators who will be voting today, because this involves the ability to bring or not bring suits, and to delay suits and to delay prosecution of unfair labor practice charges without any court review. And it involves a tremendous impact on labor-management relations in this country.

Therefore, I predict a few things here today.

Mr. President, while I do not pretend to be psychic—I predict that if Mr. Lubbers is confirmed he will develop labor policy in these following directions over the course of the next 4 years of his reign:

I believe he will seek to change the interpretation of current law to make it more difficult, or perhaps impossible, for union and nonunion workers to work on the same construction jobsite. This can be accomplished through the General Counsel's redefining the "reserved gate" theory so that disputes involving only a single contractor and union on a construction site will be spread to other neutral contractors on the site, who have nothing to do with the dispute.

In essence—common situs picketing will be enacted not by Congress, but by the Board through its decisional law. Employers who have nothing to do with the dispute, and their employees who have nothing to gain from the dispute will be dragged into it unwillingly. And I predict that the regional offices of the Board will be far slower in seeking court action to prevent illegal secondary boycott activities. The result will be a tremendous increase in construction costs and labor chaos at construction sites. The Board will also slow its efforts to cease this harmful secondary boycott activity and will seek fewer injunctions under section 10(l) of the act.

I see future Board decisions which will have as their effect the silencing of employers and the immobilization of their efforts to inform their employees about the negative aspects of joining unions during union organizational campaigns. Specifically, I see new case law geared to helping unions seeking to organize "sunbelt" employers by making it much more difficult and much more costly, and even impossible in some cases with smaller businesses to resist the union's organizing assault. This will come through rules and decisions that will:

First, stiffen and make more expensive the penalties against employers found to be in violation—even technical violation—of the law;

Second, make it more expensive, and hence more difficult to defend oneself against a charge, or to take a stand against either the Board or a union in litigation or in union campaigns; and

Third, force employers either to remain silent in organizing campaigns or help subsidize the union's campaign by paying employees to listen to union sales pitches during working days. This is already being done by the Board in some cases. But I predict it will happen much more often if the General Counsel seeks such remedies more frequently.

Decisions will issue that will bog down the bargaining process by forcing employers to bargain over more issues—through the expansion of the area of mandatory subject of bargaining. This will include issues which in the past have been considered management prerogatives. Decisions will issue that will limit the employer's ability to say no to union bargaining demands by defining such refusals as bad faith bargaining.

Decisions will be issued that will prevent employees from exercising their right to work during a strike by giving their unions the power to penalize them and by preventing them from quitting the union in order to escape the penalties. Mr. Lubbers has already indicated an intent to see this happen in his position in the Dalmo Victor case which he urged the Board to allow a union to prevent a union member from quitting the union during a strike. These decisions will in the not-too-distant future—substantially change the economic balance of power between unions and employers which this Congress intended would be subject only to the inherent economic and moral power that each side possesses, without any governmental intrusion.

Mr. President, how much time have I remaining?

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Utah has 4 minutes remaining.

Mr. HATCH. And last, I fear an attempt by the Board, with the active aiding and abetting of its prolabor General Counsel, to resume expansion of the NLRB's jurisdiction to cover every pos-

sible private or public sector employment situation which is currently exempted from the act. For instance, I would not be surprised to see attempts to expand coverage to farms and public employees as a part of the conscious effort of this "Fanning-Lubbers" Board to further the economic and political horizons of the big labor unions to whom they owe so much.

These are some of the developments I see which will have the effect making the labor law an oppressive measure and introducing "the OSHA syndrome" into the collective-bargaining process.

CONCLUSION

What the Congress achieved by the 1947 Taft-Hartley amendments has withstood the test of time. The General Counsel and the Board have been substantially independent in the enforcement of the law—one the prosecutor, the other the judge. Clearly, that independent relationship may also be reduced or even eliminated by another means—the relationship between the person who is Chairman of the National Labor Relations Board and the person who is its General Counsel.

The duration and intensity of that relationship between Chairman Fanning and Acting General Counsel Lubbers has the potential for destroying the statutory duality of those offices.

There are many men and women, blacks and other minorities—NLRB Regional Director Curtis Mack was considered by the White House—who are as qualified as Mr. Lubbers to fill the office of General Counsel.

I submit that the public, labor, and management are entitled to an appointee free of even the appearance of impropriety.

In the name of fairness and impartiality, I urge the Senate to reject the nomination of William Lubbers. Let us consider in his place the name of someone in whom both labor and management can have confidence.

I reserve the remainder of my time.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Utah has 2 minutes remaining.

Mr. HATCH. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. WILLIAMS. I thank the Chair.

Mr. President, the Senator from Utah has taken out his crystal ball and has looked into the future. He has made some predictions of things to come when Mr. Lubbers is confirmed. I can take out a crystal ball and look at it, too. Maybe I will. I can tell the Senator from Utah that my crystal ball has none of these grand and grave apprehensions of the Senator from Utah. On the question of situs picketing, my crystal ball shows having been that it was the subject of legislative action, and that there will be no General Counsel action; or Board action on anything brought by the General Counsel, that will create what was not created by specific legislation.

This is one area where Congress did speak. It was not a matter of not getting a chance to vote. We had a vote which was definitive and which rejected proposals to treat craft and industrial workers equally.

I can just tell the Senator that he need not lose a lot of sleep on that one.

As far as the labor law reform bill, and the repeated suggestion that it was rejected, we all know that the Senate never had a chance to accept or reject it because we only had 58 votes that would direct us to a vote, and we needed 60, of course, to stop the filibuster directed against labor law reform.

I think the Senator from Utah, in effect, stacks things by looking ahead to the Fanning-Lubbers board, by suggesting that the unions are going to have their way from Fanning and Lubbers who owe the unions so much.

If the Senator would only analyze where these men have been for nearly 30 years, they have not been involved on either side of the labor-management relations equation. They have been in that neutral status, in Fanning's case as a member of the Board and in Lubbers' case working for the National Labor Relations Board.

This is pertinent to another point I have made, that the unions have been consistent over the whole period of the existence of the National Labor Relations Board. The unions have not wanted anybody from labor, from the unions, in these positions of authority, on the Board or as General Counsel. Mr. Meany laid it down long ago and most consistently. He said the AFL-CIO would not have an employer lawyer there on the Board, and also would not want a union lawyer there in these positions or on the Board.

So here we have Mr. Fanning and Mr. Lubbers who the Senator from Utah points to as symbolically being the Board, which, of course, is so inaccurate, well above the controversy by being not part of labor, not part of management, but by being in the public service working on the Board and its staff for all these years.

Again, the Senator from Utah has concluded that a pro-union attitude on the part of Mr. Lubbers may be inferred from his position in the Dalmo-Victor case.

Just the contrary is the fact. In that case, he said he would have, if he had been in a position as General Counsel when the cases were germinating, brought the complaint against the union. That is the proof positive that his is not the union position.

We could go through all of these things, as we have done for several days, and really put at ease the mind of the Senator from Utah, that the disasters he sees are not going to happen. As a matter of fact, as I look over to him, he does not seemed that troubled after all. He has a smile on his face, he has good color, good health. I guess as one reads the statements of the Senator from Utah, one gets the picture of a very deeply troubled man. I do not see that. I see from his expression now, not fear of all of these disasters. Really, I see in my crystal ball down the road a fair man, the Senator from Utah, looking at the actions of General Counsel Bill Lubbers and applauding him because he is a man of integrity, competence, ability who will be doing a great job after the Senate has played its role in this confirmation proceeding.

Mr. President, years from now, students of labor-management relations in this country will wonder how the Senate debate on confirmation of this nomination could possibly have extended for 6 days.

It is a virtual certainty, in my opinion, that Mr. Lubbers will be a distinguished and noncontroversial General Counsel of the National Labor Relations Board. Based upon his background, and his outstanding and well-balanced performance during his nearly 4 months in office as General Counsel, I can confidently predict that he will win the praise and admiration of both labor and management for his ability and his impartiality as General Counsel.

Although we have been over it before, I want briefly to summarize Mr. Lubbers' record so my colleagues will share my admiration for him and be as comfortable as I am that this nominee will give excellent service in the position of General Counsel.

I wish to yield at this point and shall come back to my statement. I see the Senator from Arkansas is present.

Mr. BUMPERS. Will the Senator yield me 2 minutes?

Mr. WILLIAMS. I do.

Mr. BUMPERS. Mr. President, I have voted for cloture both times on this nomination, because I have always, except once, voted for cloture due to my normal revulsion for filibusters.

This nomination seems to be rather controversial. So, last night and this morning, I took the time to read the full record of the hearings.

I found that in the hearing, Mr. Lubbers was very candid, very forthcoming, and very honest. He supplied the committee with all the information it asked for.

I do not know him. I never met him. My comments here are not designed to be a ringing endorsement of Mr. Lubbers. But I do think there is a principle involved here, because the record is replete with objections, not to Mr. Lubbers, but to his association with the Chairman of the Board, Mr. Fanning.

Mr. WILLIAMS. The only record of objection to Mr. Lubbers arises not out of the work he has done or his character, integrity, or competence; it is that for some period of time—a relatively long period of time—he has worked in positions where he has reported to Mr. Fanning, who is the Chairman of the National Labor Relations Board.

Mr. BUMPERS. That was my understanding.

Mr. President, it is because I find that principle repugnant, and I am one who remembers the McCarthy days very well—I do not think that my sons or my daughters ought to suffer from my sins and omissions. I do not think staffers, who often strongly disagree with my votes here in the Senate, ought to be held accountable, simply because they worked with me, and be deprived of a job somewhere down the pike, regardless of what their feelings might have been about me and my service. I say it is because of that

principle and because I find nothing in the record to disqualify him that I intend to support Mr. Lubbers for this position.

Mr. WILLIAMS. Mr. President, I just want to comment that we have had enough days for Members to examine this record and, on examination, I hope others will cut through a lot of the anxiety and apprehension, and see this just as the Senator from Arkansas has; that if a person has integrity, that person is not going to violate his oath to curry favor with a former boss. That individual is going to do his job and not, for any reason of former association, be acquiring or continuing that association.

I applaud the Senator from Arkansas for looking at this record with such clarity and coming to the conclusion that he has.

Mr. President, Mr. Lubbers is a nominee with a distinguished record as a public servant, serving for 28 years with the National Labor Relations Board.

His steady record of achievement and accomplishment at the Board includes service as a legal assistant to two Board members, as a Supervisory Attorney, and then as Deputy Chief Counsel to Board member Fanning. More recently, the five-member Board voted to appoint Mr. Lubbers as solicitor of the Board—a position of high trust and responsibility, which made Mr. Lubbers the chief legal advisor and consultant to the entire Board on all questions of law arising in connection with the Board's general operations and on major questions of law and policy, as well as the representative of the Board to other Federal agencies, to Congress, and to the public.

That was a unanimous vote of the Board—those who came as Democrats and those who came as Republicans.

Finally, Mr. Lubbers was selected, again by a vote of the full Board, to be the Board's Executive Secretary—their top administrative officer. It was from that position that Mr. Lubbers was selected by the President to be General Counsel.

And, to reiterate, it was the full Board that voted to select Mr. Lubbers to be, first, Solicitor and, then, Executive Secretary of the Board.

Furthermore, I am told that it was Republican Board member Betty Murphy, whose record many of us know and respect, who first suggested to Mr. Lubbers that he make application to be Executive Secretary; and he had the support of both of the Republican Board members for that position.

Mr. Lubbers' early career, as a student and as a serviceman during World War II, show signs of the same intelligence, steadiness, and excellent achievement which have marked his later career. In fact, his entire career has been marked by his outstanding performance and the grateful recognition of his associates.

During World War II, Mr. Lubbers interrupted his undergraduate education to serve as a combat infantryman in the Pacific. His wartime service earned him the Purple Heart, a Good Conduct ribbon, a Philippine liberation ribbon with two bronze stars, and the Asiatic-Pacific campaign ribbon.

After the end of the war, Mr. Lubbers returned to college and completed his bachelor of arts and law degrees in 5 years.

After brief employment in several different capacities, Mr. Lubbers spent one year on the staff of the Wage Stabilization Board, and then joined the National Labor Relations Board as a legal assistant in 1952.

Much has been said about his record of accomplishment at the Board, but I would just like to add a few more facts from the abundant store of his accomplishments. In 1960, 8 years after he had joined the Board, he was awarded a "sustained superior performance award." In addition to the promotions which have already been mentioned and made a part of the record, I observe that he also received quality within-grade increases, based upon the excellence of his performance, in 1963, 1964, 1970, 1972, and 1974.

It is no wonder that the full Board chose to make him their solicitor and then their Executive Secretary. And it is no wonder that the President chose to nominate him as General Counsel of the Board. By any measure, by any standard, Mr. Lubbers has established a record of excellence and outstanding service to his Government, first in the Armed Forces during the war and now as a civil servant.

Mr. President, I wish to return for a moment to the point that the President decided to select Mr. Lubbers for the position of General Counsel to the Board. As my colleagues know, I approve and applaud that selection. But I think the significance of Presidential selection—and the importance of giving the President his full constitutional authority to select high-level officials of the Federal Government—deserve further emphasis.

This is particularly true in this instance where, as we have already discussed, there has been an attempt to dictate to the President that he should select a specific named individual other than the nominee of his choice. Yesterday, we had occasion to discuss in broad, philosophical terms—including quotations from the Federalist Papers—the importance of the Presidential appointment power. But I would like to make this argument considerably more specific.

The point is that the President has surprisingly little opportunity to make the important appointments that are necessary to take control of the executive branch and have an impact on public policy.

As we will no doubt be discussing at greater length in the near future, the Federal Government is a huge enterprise. As of January 1980, it had 2,886,584 employees. There were 121 executive agencies, and 11 legislative agencies.

The President's power to run this huge Government by making nominations to high public offices, subject to the advice and consent of the Senate, extends to only 500 full-time regulatory, Cabinet and sub-Cabinet officials. In addition, the President can nominate to the following positions: 125 Ambassadors, 95 Federal marshals, 95 U.S. attorneys, 526 Federal judges, and 200 other positions not subject to confirmation by the Senate. In any particular area of Government, there is only a relative handful of high-level appointments. Mr. Lubbers is one of these appointments.

This is what we are dealing with when we tell a President that we cannot advise and consent to his selection. I submit that we should, therefore, refuse to advise and consent only for very important reasons.

In this case, as the record of these proceedings has made abundantly clear, we are considering a nominee who is a man of superb legal ability, unquestionable integrity, and outstanding achievement. The President has selected a nominee who meets every basic test for confirmation.

William A. Lubbers should unquestionably be confirmed as General Counsel of the National Labor Relations Board, and I am confident that he will be confirmed.

Finally, Mr. President, while I regret the fact that we had to have this many days of debate on this confirmation, I applaud the manner in which the opponents of Mr. Lubbers handled their way of debating and their opposition. While I disagreed with so much and had to analyze it in terms of their apprehensions being unfounded, there was dignity and it was a constructive period of debate. It has been not an unwelcome experience for this Senator to have had these days in what I hope will be viewed as constructive debate with my good friend from Utah and those who joined with him.

I would also like to add a word of praise for the committee staff general counsel Steve Sacher, and the other staff members who have worked on this, Darryl Anderson, Gerald Lindrew, Harriet Bramble, and Deny Medlin, have put in long hours of excellent work on this matter.

Mr. HATCH. Mr. President, I thank my dear friend from New Jersey for his kind remarks. I feel the same way about him. He has conducted this debate in a very fine way.

It still comes down to this one point, Mr. President, that the statute mandates that this position be independent. Frankly, this man cannot be independent, because he says he has agreed with the Chairman of the Board for 25 years, with all of his decisions. I think our chairman (Mr. WILLIAMS) has put his finger on the real problem in one of his statements. He said, "Just examine where Fanning and Lubbers have really been for the past 30 years," or words to that effect. I have: They have been together on everything. I suspect they will be together henceforth and forever, even though this man is confirmed today in the U.S. Senate.

I do hope that my distiguished Labor Committee chairman will stand with me, if my dire predictions come true, in fighting against any usurpation of the Senate's prerogatives by the Board and by the General Counsel of the Board with regard to common situs picketing, labor law reform, and other matters I have mentioned in my remarks here today.

Mr. President. I think we have had a good and healthy debate I think it has

been worthwhile. I think that all of us have probably benefited from it. I hope that my colleagues in the Senate today will consider the important points that we have made.

I thank my dear friend from New Jersey for his kindness and I thank the Chair.

● Mr. HELMS. Mr. President, I am obliged to oppose the nomination of William F. Lubbers as General Counsel of the National Labor Relations Board.

I have no objection to Mr. Lubbers personally. In fact, I am informed that he is a fine man, and that his honesty, integrity, and dedication to his work are beyond reproach. I challenge Mr. Lubbers' nomination purely, on the basis of the point of view that he will bring to one of the most powerful posts in Government—that of General Counsel of the National Labor Relations Board.

The National Labor Relations Board was established in 1935 to serve two major functions. One, to conduct and supervise representative elections, the statutory process by which individuals determine whether or not they desire to be represented by a union; and two, to prevent and remedy unfair labor practices.

From 1935 until 1947, the NLRB served as prosecutor, judge, and jury of cases falling within its jurisdiction. As could be expected, the Board was continually embroiled in controversy as a result of its multiple functions.

This situation was remedied supposedly, with enactment in 1947 of the Taft-Hartley Act, which created the Office of General Counsel to the NLRB, a prosecutorial position separate and independent of the Board and appointed by the President with Senate confirmation.

The job of the General Counsel is to investigate charges of labor law violations, regardless of whether the charges come from employers, employees, or unions. If the General Counsel has reasonable cause to believe a violation has occurred, he must issue a complaint to the Board, and prosecute the complaint before the Board. The Board can take no action unless and until it receives a complaint from the General Counsel.

The General Counsel has "final authority" regarding investigation of charges and issuance and prosecution of complaints. Let me repeat that, "final authority." The General Counsel has the final say on these matters, and his decisions are unreviewable.

It is readily apparent that the General Counsel has enormous power. If no complaint is issued, the complaining party has no other means of seeking redress, either in the courts or before the NLRB.

The intent of Congress in establishing the office of General Counsel was to make the complaint issuance and prosecution functions independent from the Board. It is important, therefore, that the General Counsel be independent from the Board members, not just in fact, but in appearance as well.

Now let us take a look at Mr. Lubbers' record.

William Lubbers joined the staff of the NLRB in 1952 as legal assistant to Board member Murdock. In 1957, Mr. Lubbers became legal assistant to Board member Fanning—now Chairman Fanning—and served under Mr. Fanning in various capacities until 1977.

That amounts to a 20-year relationship, and you can bet the relationship became closer as the years wore on.

In 1977, Mr. Lubbers became solicitor to the NLRB. He was recommended to this position by Mr. Fanning, and he achieved this position with Mr. Fanning's support.

Most recently, Mr. Fanning recommended Mr. Lubbers to President Carter for the post of General Counsel to the NLRB; and, as we all know, President Carter acted on this recommendation by nominating Mr. Lubbers for this position.

Indeed, Mr. Fanning testified at Mr. Lubbers' confirmation hearings before the Senate Committee on Labor and Human Resources, and he urged the committee to approve the nomination of Mr. Lubbers as General Counsel of the NLRB.

So we have a relationship between Mr. Lubbers and Mr. Fanning spanning over 27 years. And by Mr. Lubbers' own admission, the relationship grew particularly close during the past 13 years.

Mr. President, in my opinion, these facts are sufficient to demonstrate that Mr. Lubbers cannot possibly serve as General Counsel of the NLRB without being unduly influenced by Chairman Fanning.

John Fanning's ascension in 1977 to the chairmanship of the NLRB brought with it an alarming shift in NLRB philosophy. Mr. Fanning is presently the most prounion Board member, as evidenced by his opinions in numerous cases. This trend has received attention in the Federal courts—ordinarily not a repository of conservative viewpoints—which have been reversing Mr. Fanning's decisions with increasing frequency. Now the reputation of the NLRB as a biased prounion Federal agency is in jeopardy of being further tarnished by Mr. Lubbers' nomination.

Mr. President, seldom in considering confirmation of a Presidential nominee do we have the luxury of knowing how the nominee might perform in the position for which he is being considered. In the case of Mr. Lubbers, however, we can evaluate his performance as General Counsel since the beginning of this year.

Simply put, in one of his first official acts as interim General Counsel, Mr. Lubbers confirmed suspicions of his prounion bias.

In a dramatic reversal of position involving a key labor law question—the right of union members to resign from their union during a strike—the newly appointed General Counsel upheld a union rule forbidding resignation of union members during a strike.

Mr. Lubbers departed from the legal position taken by his predecessors when, on January 16, 1980, two attorneys on his staff argued before the five-member NLRB, in the Dalmo Victor case, that union members may be fined by a union for midstrike resignations. Previously, in the same case, the Office of General Counsel had taken the position that "a labor organization has no statutory right to solidarity" and that "national policy is to make individual rights paramount." Mr. Lubbers, however, adopted the union's argument that their implied right of union solidarity supersedes an NLRB dictate that an individual may refrain from union activity.

The right of a union to fine ex-members has never been definitively settled; in fact, the NLRB has held that a union does not have this right. The novel position taken by Mr. Lubbers precludes this determination, because the General Counsel has the unreviewable power to prevent claims being heard by the Board or the courts. Under the Lubbers rationale an individual employee will be unable to challenge the union fines (Dalmo Victor), even though there is legal precedent that the union violated the law.

William Lubbers' nomination constitutes a major step toward establishing a prounion philosophy on the National Labor Relations Board. What organized labor has been unable to do through legislation, it now attempts through appointment. Is this what we want?

There are plenty of fair-minded and qualified individuals who would be better candidates than Mr. Lubbers. There are many persons who, in this vastly important position, will not take one side to the exclusion of the other.

Mr. President, management in this country is up in arms over this nomination. At the same time, labor strongly supports it. Confirmation of Mr. Lubbers' nomination would tip the delicate balance that now exists between labor and management in favor of labor.

I say let us be objective. Let us keep the balance that exists today, and has existed over the past decade. Let us tell the President we want a neutral, even-minded General Counsel with his own ideas. Someone whom both sides can look to and respect. Someone who will carry out the independent purposes of his office and the fairness of the National Labor Relations Act. That someone is not William Lubbers.

No doubt some will suggest that the Senate's rejection of the Lubbers nomination would be a defeat for labor and a victory for business. The alternative to defeating this nomination, however, is to cast serious doubt on the impartiality of the NLRB. Neither business nor labor will emerge victorious as a result of an action jeopardizing the credibility or the independence of that agency.

Mr. President, commonsense commands us to reject this nomination.●

Mr. WILLIAMS. I believe, Mr. President, that the hour has arrived. I have nothing further and no further requests. Indeed, I think I have no further time.

The PRESIDING OFFICER. All time having expired, under the previous order, the hour of 2:30 p.m. having arrived, the Senate will now proceed to vote on the nomination of William Lubbers to be General Counsel of the National Labor Relations Board.

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

The PRESIDING OFFICER. Is there

a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Louisiana (Mr. LONG), are necessarily absent.

Mr. BAKER. I announce that the Senator from Alaska (Mr. STEVENS), and the Senator from Wyoming (Mr. WALLOP), are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. STEVENS), and the Senator from Wyoming (Mr. WALLOP), would each vote "nay."

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

The result was announced—yeas 57, nays 39, as follows:

[Rollcall Vote No. 83 Ex.]

YEAS—57

Baucus	Exon	Moynihan
Bayh	Ford	Muskie
Bentsen	Glenn	Nunn
Biden	Gravel	Packwood
Boren	Hart	Pell
Bradley	Hatfield	Percy
Bumpers	Huddleston	Proxmire
Burdick	Inouye	Randolph
Byrd, Robert C.	Jackson	Ribicoff
Cannon	Javits	Riegle
Chafee	Leahy	Sarbanes
Chiles	Levin	Sasser
Church	Long	Stafford
Cranston	Magnuson	Stevenson
Culver	Mathias	Stewart
Danforth	Matsunaga	Talmadge
DeConcini	McGovern	Tsongas
Durkin	Melcher	Weicker
Eagleton	Metzenbaum	Williams

NAYS—39

Armstrong	Hayakawa	Pryor
Baker	Heflin	Roth
Bellmon	Heinz	Schmitt
Boschwitz	Helms	Schweiker
Byrd,	Hollings	Simpson
Harry F., Jr.	Humphrey	Stennis
Cochran	Jepsen	Stone
Cohen	Johnston	Thurmond
Dole	Kassebaum	Tower
Domenici	Laxalt	Warner
Durenberger	Lugar	Young
Garn	McClure	Zorinsky
Goldwater	Morgan	
Hatch	Pressler	

NOT VOTING—4

Kennedy	Stevens	Wallop
Nelson		

So the nomination was confirmed.

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

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

The motion to lay on the table was agreed to.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nomination.

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

Mr. ROBERT C. BYRD. Mr. President, the Senate has just voted to confirm the nomination of William A. Lubbers to be General Counsel of the National Labor Relations Board. Discussion of this nomination began 1 week ago on April 16 and throughout the lengthy debate, Senator WILLIAMS, chairman of the Committee on Labor and Human Resources, managed this nomination with great dedication, perseverance and patience.

During the course of the debate, Senator WILLIAMS was required to respond to a number of arguments against the confirmation of Mr. Lubbers. His responses were always to the point and complete. I want to take this opportunity to commend him for his efforts and cooperation throughout the debate on this nomination.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

UNIVERSITY AND SMALL BUSINESS PATENT PROCEDURES ACT

(This measure was laid before the Senate on February 5, 1980, and was set aside on February 6, under a unanimous-consent agreement that the Senate return to its consideration on or after February 18.)

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 414, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 414) to amend title 35 of the United States Code, to establish a uniform Federal patent procedure for small businesses and nonprofit organizations, to create a consistent policy and procedure concerning patentability of inventions made with Federal assistance, and for other purposes.

The Senate proceeded to consider the bill.

Mr. ROBERT C. BYRD. Mr. President, there will be rollcall vote on final passage of this measure. I ask for the yeas and nays on final passage.

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

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, may we have some indication as to when that rollcall vote will occur?

Mr. LONG. Mr. President, I have a statement here that I will take about 10 or 12 minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote occur on the bill at 3:30 p.m. today or before if the time is yielded back.

Mr. LONG. I wish 15 minutes.

Mr. ROBERT C. BYRD. And Mr. LONG will have control over 15 minutes of the time.

Mr. DOLE. Mr. President, I am manager on this side and split the remainder.

Mr. ROBERT C. BYRD. All right. The other 25 minutes are to be equally divided between Mr. BAYH and Mr. DOLE.

Mr. BIDEN. And vote at 3:30?

Mr. ROBERT C. BYRD. We have 30 minutes and the vote to occur at 3:30 if the time is all taken.

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

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. If the Senator will suspend momentarily until the Senate comes to order, the Senate will please be in order.

AMENDMENT NO. 1652

(Purpose: To amend section 200 relating to the policies and objections to Chapter 18)

The PRESIDING OFFICER. The pending question is the amendment proposed by the Senator from Louisiana.

Who yields time?

Mr. LONG. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. This has been vitiated by the order just entered.

Mr. LONG. Then I have 15 minutes, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. LONG. I will speak on my time.

The PRESIDING OFFICER. The Senator may proceed.

Mr. LONG. Mr. President, the sponsors of S. 414 state that current Federal policy with respect to the allocation of rights to the results of federally sponsored research and development deters contractor participation in Government contracts, delays technological progress, stifles the innovative process and in one way or another will be a major factor in the decline in U.S. productivity.

During the many years I have studied this subject there has not been even a shred of evidence to support these claims.

DISPOSITION OF GOVERNMENT RIGHTS

The disposition of rights resulting from Government research and development can increase monopoly and the concentration of economic power or, alternatively, can spread the resulting benefits throughout society with consequent benefit to the maintenance of a competitive free enterprise system and more rapid economic growth.

Congress has always recognized these principles. Whenever it has spoken, it has always provided that the U.S. Government should acquire title and full right of use and disposition of scientific and technical information obtained and inventions made at its direction and its expense. Some cases are subject to waiver of Government title when the equities of the situation so require. The basic premise is that inventions should belong to those who pay to have them created. Congress has asserted on numerous occasions that title should be held by the United States for the benefit of all the people of the United States if made in the performance of a Government contract. Despite the vigorous opposition from industry groups and from the organized patent bar, Congress has applied this principle to the following agencies of Government:

The Atomic Energy Commission, the Department of Agriculture, the Tennessee Valley Authority, the National Aeronautics and Space Administration, the Office of Coal Research and Development, the Department of Health Education and Welfare, the Veterans' Administration. In addition, what came to be known as the Long amendment is an integral part of a host of laws, such as the Federal Coal Mine Health and Safety Act of 1969, the National Traffic and

Motor Vehicle Safety Act, the Helium Act Amendment of 1960; the Solid Waste Disposal Act; the Disarmament Act; the Saline Water Act; the Solar Energy Act, and others. The purpose was to insure that no research would be contracted for, sponsored, cosponsored, or authorized under authority of a particular piece of legislation unless all information, uses, products, processes, patents, and other developments resulting from such research will be available to the general public. Only a few years ago, the late Senator Hart, Senator NELSON and I convinced the Senate that such a provision should be included in the Energy Research and Development Act.

PROPOSED LEGISLATION

It is dismaying, therefore to find that S. 414 provides for contractors, in this case small business firms, universities and nonprofit organizations, to receive gifts of ownership of taxpayer-financed research, and according to S. 414's chief sponsor, this is to be only a first step. The Congress and the public should not be fooled. The Senator from Indiana in his February 5, 1980 remarks appearing on page S960 of the RECORD admits "Passage of S. 414 will be a good first step." An enthusiastic sponsor of this proposal, Senator THURMOND, notes in his statement of February 6, 1980, appearing on page S1039, that although he is sympathetic to expansion of this giveaway to large businesses, "any expanded coverage of S. 414 will result in it being killed in the House."

S. 414 applies not only to those areas uncovered by legislation but it also seeks to weaken and ultimately repeal every law on the books which reserves for the public the results of the research it pays for.

It aims at the ultimate repeal of the provisions of the Atomic Energy Act.

It aims at the repeal of the provisions of the National Aeronautics and Space Act.

It aims at the repeal of the provisions of the Department of Agriculture, of TVA, of Department of Interior, in the National Science Foundation, Disarmament Agency, Energy Research and Development Agency, Consumer Product Safety Agency and every other piece of legislation enacted by Congress to protect the public.

In addition—and this is especially startling—once the monopoly is given to the contractor, the public will be unable to find out what has happened to the results of the research it paid for. The bill provides:

> Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office.

So what it amounts to is this: Not only will the contractor get the 17 year monopoly of the patent but the public can not even find out what has been discovered with its money for many years. It takes an average of 3½ years to secure a patent, and this means that new scientific and technological information could well be suppressed for a long time.

IMPLICATIONS OF PROPOSED LEGISLATION

In the United States, patents have traditionally been held out as an incentive "to promote the progress of science and the useful arts"—an incentive to private persons, willing to assume the necessary risks to earn the stipulated reward. They were never intended to reward persons who perform research at someone else's expense as part of a riskless venture. Therefore, as Prof. Wassily Leontief, a Nobel laureate, points out, to allow contractors to retain patents on research financed by and performed for the Government "is no more reasonable or economically sound than to bestow on contractors who build a road financed by public funds, the right to collect tolls from cars that will eventually use it" or the right to close down the road altogether.

Extensive hearings held by the Small Business Committee's Monopoly Subcommittee while I was its chairman and then under Senator NELSON's chairmanship, inevitably lead to the conclusion that the provisions of S. 414 and similar bills are deleterious to the public interest. Witnesses at these hearings, which started as far back as December 1959, included distinguished economists, a Deputy Attorney General of the United States, an Assistant Attorney General in charge of the Antitrust Division of the Justice Department, two chairmen of the Federal Trade Commission and former staff members of the Council of Economic Advisors.

Without any exception these witnesses testified that when a private company finances its own research and development, it takes a risk and deserves exclusive right to the fruits of that risk. Government research and development contracts, however, are generally cost-plus with an assured market—the U.S. Government. There is, thus, absolutely no reason why the taxpayer should be forced to subsidize a private monopoly and have to pay twice: First for the research and development and then through monopoly prices. When a contractor hires an employee or an agent to do research for him, the standard common law rule is that the contractor gets the invention. Surely the Government should have no less a right.

In addition to the problem of equity, economic growth and increased productivity require the most rapid dissemination of scientific and technical knowledge. Allowing private firms to file private patents would do just the opposite.

If a policymaking technological advance available to all without charge were adopted and maintained for a considerable period, other things being equal, it would make a positive contribution to the efficiency of the economic system and the rate of growth, according to Dr. Lee Preston.

Nobel prize winner Dr. Wassily Leontief, to whom I previously referred the developer of the input-output techniques and analysis, testified in 1963 that a Government-wide policy whereby the results of research financed by the public would be freely available to all would increase the productivity of labor and capital, and estimated that the difference between restrictive (allowing the contractor to retain title) and open patent policies should account for one half of 1 percent in a 4–5 percent growth rate of the average productivity of labor. "I have no doubt," he stated, "that an open door policy in respect to inventions resulting from work done under governmental contract would speed our technological progress considerably."

John H. Shenefield, Assistant Attorney General, Antitrust Division, Department of Justice and Michael Pertschuk, Chairman of the Federal Trade Commission, categorically stated in December 1977 that there is no factual basis for the claims that giving away title to private contractors promotes commercialization of Government-financed inventions and that the available evidence shows just the opposite. They also stated that even if an exceptional circumstance arises—and no specific example could be found—that would justify a waiver of the Government's rights, it should never be done unless the invention has been identified and a study made of the impact of the waiver on the public interest. In addition, such proposals as "march-in rights" would be ineffective and valueless to protect the public against misuse.

At the same hearing in December 1977, Stanley M. Clark, chief patent counsel of the Firestone Tire and Rubber Co., said that:

> I believe in free enterprise and in a competitive system. But the proposal that the Government spend large sums of money for research and development and then hand the patents stemming from such research over to the private contractors is not consistent with free enterprise.
>
> Some have told you and will tell you that unless the research contractors are given title to patents which are produced at Government expense, the contractors will not accept Government research and development contracts. Don't you believe it.

This is a spokesman for a very large company speaking. Continuing:

> They want those Government funds and the rewards and advantages that come with such contracts and they won't turn them down. What they get, in many instances, can be very rewarding even without the patents; and in any event there are no risks involved; the Government assumes all of those.

This bill (S. 414) does not deal with patent problems at all; it is not concerned with the mechanics of securing a patent or the administration of the Patent Office. It involves simply the disposition of public funds—about $30 billion at present—and it is dismaying to find that the same old claims—discredited years ago—to justify the giveaway of the public's rights are still being made today.

S. 414 would wipe out every law on the books which reserves for the public the results of the research it pays for, at the expense of billions of dollars.

It would hamper the rapid dissemination of scientific and technological information and hence will retard economic growth and increased productivity.

This bill, which sets an unfortunate precedent and other bills which are sure to follow, would promote monopoly and concentration of economic and political power.

This proposed legislation is one of the most radical, far-reaching giveaways that I have seen in the many years that I have been a Member of the U.S. Senate.

I hope the Senate will vote against this bill.

Mr. DOLE. Mr. President, as we resume debate on S. 414, the University and Small Business Patent Procedures Act, I would like to review some of the points that have been made during previous discussions of this legislation.

In support of this bill Senator SCHMITT referred to the Department of Defense and the National Aeronautics and Space Administration as examples of two Government agencies that had effective, reasonable, patent policies. The Senator from Kansas cannot overemphasize the fact that these two agencies are the exceptions. In general, the patent policies that govern the area of Federal research have been ineffective, unreasonable and had disastrous results. It might be useful to examine some of the reasons that contribute to the success of the patent policies of these two agencies.

NASA AND THE DEPARTMENT OF DEFENSE

The Department of Defense adheres to a policy of relinquishing patent rights in favor of the contractors, while NASA uses a waiver policy. That waiver policy is similar to institutional patent agreements—or IPA's—that were used successfully for a while by HEW, until they were arbitrarily abolished. IPA's are still used by the National Science Foundation. IPA's give universities the option to retain title at the time of grant, with the right to grant exclusive licenses for a limited period. IPA's are credited with the fact that a record 75 medical inventions reached the public, between 1968 and 1977, when HEW used IPA's. Among these 75 medical inventions are the rabies vaccine and the silver sulphur diazine treatment of burns. Following the policy change that occurred at HEW in 1977, no less than 29 medical inventions failed to be processed within the next 2 years. Thus, a revolutionary blood test for the detection of breast cancer, and potential cures for hepatitis and arthritis became the casualties of bureaucratic caprice. This example illustrates an important problem. The policies of the Department of Defense, the waivers that are issued by NASA, and IPA's are all satisfactory with one major exception: Each was administratively created, and therefore subject to possible elimination on the basis of a change of administration, or even at the whim of a bureaucrat. This is precisely what happened in 1977 at HEW. This is precisely why this legislation is needed.

The success of the patent programs of the Department of Defense and of NASA, lies in part with the fact that both these agencies are primarily involved with procurement. This factor accounts for these agencies' interest in the development of the inventions they fund. From the outset, the goal of the research is a usable product. This is not the case with other Government agencies' research. Other agencies stop short of taking the necessary steps to guarantee that development and marketing take place. Therefore the result is that only about 5 percent of all federally-funded research is actually used.

In the past Congress has had many concerns with previous patent legislation. Fear of monopolies, and the belief that the Government should not "give away" the patent rights for which it paid were two of the primary issues. S. 414 is a determined effort to solve a serious problem that exists, without the Government "giving away" its patent rights or contributing to the growth of monopolies. March-in rights diffuse the danger of monopolies. The Government payback provision guarantees that the Government's investment, paid for by the taxpayers of this country, is returned to the Federal coffer. The incentive provision for private industry for the development of inventions, is designed to insure that the American public gets a return on the investment that has been made in research.

The Senator from Kansas feels compelled to reiterate the fact that when Federal research money fails to result in the production of items that can be used by the consumer, in essence, the Government has broken its commitment to the American people, since our citizens could be reaping a significant return on the investment of their tax dollars.

S. 414 meets the objectives that were enumerated by President Carter. In his 1979 state of the Union to Congress, the President urged a "reduction in Government interference" so that the "American economic system (is) given a chance to work."

The Senator from Kansas wishes to stress the importance of this legislation in terms of increase in productivity, increase in technology transfer—two concepts that would result in jobs and decreasing the inflation rate. I urge my colleagues to support S. 414.

Mr. BAYH addressed the Chair.

The PRESIDING OFFICER (Mr. BAUCUS). The Senator from Indiana.

Mr. BAYH. Mr. President, over the past several months, with increasing intensity, the Members of the Senate, the Congress, the Government, and various financial and economic leaders throughout the Nation have become increasingly concerned about the health of the Nation's economy. Everyone is concerned about how we can decrease inflation, increase the rate of our gross national product and, basically, put America's economy in a better state of health.

Anyone who has examined the present condition carefully realizes that the doctor is not going to be able to prescribe just one pill and suddenly find a remedy to the various ills that confront the American economy.

However, most all of us are aware and convinced of the fact that one of the major goals this country has to accomplish is to increase its productivity. We are behind every other Western industrial nation in the world save Sweden in the growth rate of our productivity. Now, that is a sad commentary for the Nation that showed the whole world how to produce a better mousetrap.

The recent White House Conference on Small Business discussed this problem at some length not only from the perspective of the small businesses that were represented there but from the perspective of the national economy as a whole.

It was somewhat of a surprise to the Senator from Indiana that two of the major recommendations of that White House Small Business Conference were measures dealing with the need to dramatically revise the Nation's patent system. In fact, two of the top recommendations of this Small Business Productivity Subcommittee were this present bill and a patent reexamination bill that has already passed the Senate.

I suggest to my colleagues, and it is a difficult position to be in opposing my distinguished colleagues from Louisiana, that what we are talking about here is not only providing small businesses and universities a right to own patents, but we are talking about what we can do to start that long trip back up the ladder so that the United States can again be uncontested at the top where it should be.

Today we resume consideration of S. 414. This bill was unanimously reported out of the Judiciary Committee after careful consideration of its merits, and deserves the support of my colleagues at this time of lagging American innovation and productivity.

We no longer can afford to sit back and watch many of the results of our multibillion dollar research and development efforts wasting away because of bureaucratic red tape.

The bill addresses a serious and growing problem. Hundreds of valuable medical, energy, and other technological discoveries are sitting unused under Government control because the Government which sponsored the research that led to the discoveries lacks the resources necessary for development and marketing purposes, yet is unwilling to relinquish patent rights that would encourage and stimulate private industry to develop discoveries into products available to the public.

I see no benefit to be derived from the expenditure of the hundreds of millions of dollars we have spent in the discovery of the 28,000 patents that are presently drawing dust down at the Patent Office because no one wants to commercialize them. Discovering the idea is only the first step, an important step to be sure. But as long as that patent is not developed and made available in the marketplace, the public is receiving no benefits for the research money that has been expended in support of the invention.

The cost of product development exceeds the funds contributed by the Government by a factor of at least 10 to 1. This, together with the known failure rate for new products, makes the private development process an extremely

risky venture which industry is unwilling to undertake without some incentive to justify this risk. Patents represent this incentive.

When Government agencies insist on taking away patent rights, this incentive is destroyed. The result has been that many promising inventions are left to gather dust on the shelves of our agencies because private industry will not develop and market them without patent rights.

It was interesting to the Senator from Indiana, as we held the hearings, to note the tremendous role that small businesses and universities play in developing new ideas. In fact, if one looks back from the end of World War II to the present date, a majority of all the new creative ideas have been made by either small businesses or universities. We also find small businesses providing most of the new jobs.

So we are talking about a factor in our economic health that cannot be ignored.

I was impressed, as we held the hearings, to actually talk to small business presidents, and to hear them testify about whether they would be willing to get involved in the Government-supported research.

The fact of the matter is there is a decreasing number of high technology small businesses, that are willing to get involved in Government research.

If you look at the percentage of Government research going to small businesses, it is going down. It may be well and good for a representative of a large corporation to try to represent what small businesses will do as far as Government research is concerned. But if you look at the record, the fact is that the percentage of research money going to small businesses is less than 4 percent. Small businesses do not want to get involved with the Government because they do not know whether they are going to get ownership of the inventions they make. They do not know whether there is going to be any profit at the end of the line. And they are deeply concerned about the ability of Government to go in and gain access and make public the background rights that they had before they even accepted the Government research.

So I must suggest that the record will show that small businesses have been kept out of Government research and that we are really cutting off a vast storehouse of innovation which is uniquely available in many of our small businesses and our university campuses.

Nowhere is this problem more disturbing than in the biomedical research programs. Many people have been condemned to needless suffering because of the refusal of agencies to allow universities and small businesses sufficient rights to bring new drugs and medical instruments to the marketplace.

For example, the Department of Health, Education, and Welfare routinely takes up to 15 months even to decide who should own patent rights to innovations made under its research. During this period, the invention is in limbo because no one knows who will finally own it. Many companies give up and simply look for other inventions because of this type of delay.

Senator DOLE and I have compiled a list of over 30 promising medical discoveries that have run into this problem.

I ask unanimous consent that those specific examples be printed in the RECORD.

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

PETITIONS FOR INVENTION RIGHTS

Sponsoring institute (NIH)	Date sent to General Counsel	Inventor and university	Invention
Employee—Bureau of Standards	Sept. 28, 1977	Cetas—University of Arizona	Birefringement crystal thermometer for measuring heat of cancerous tissue during electromagnetic-wave treatment.
National Institute of Allergy and Infectious Diseases (NIAID).	Oct. 6, 1977	Remers/Kumar—University of Arizona	New mitomycin anticancer agents.
National Institute of General Medical Sciences (NIGMS), National Heart, Lung and Blood Institute (NHLBI).	Oct. 14, 1977	Powers—Georgia Institute of Technology	Compounds to treat emphysema and arthritis.
NIGMS	do	Fox—Columbia University	Aqueous mypertonic solution for treatment of burns.
NIGMS	Nov. 1, 1977	Everett—University of Houston	Apparatus and synthesis of film transfer characteristics.
NHLBI	Dec. 8, 1977	Normann—Baylor University	Remote monitoring of blood pumps.
NCI	Dec. 20, 1977	Goldstein—University of Texas	Hormone (thymosin) treatment of immune system diseases (cancer, arthritis, muscular dystrophy).
NCI	Dec. 29, 1977	Salmon/Hamburger—University of Arizona	Bioassay for the treatment of cancer.
NCI	Jan. 26, 1978	Townsend/Earl—University of Utah	Synthesis of anticancer compounds.
National Cancer Institute	Jan. 27, 1978	Pogell/McCann—Saint Louis University	Pamamycin—a new broad spectrum antibiotic.
National Institute of Dental Research (NIDR), Division of Research Resources (DRR).	Jan. 31, 1978	Latham/Georgiade—University of North Carolina	Appliance to be placed in the mouth of infants to correct bilateral cleft of the lip and palate.
NIAID, NHLBI	do	Goetzel/Austin—Harvard University	Synthetic therapeutic agents for anaphylaxis, asthma, etc.
NHLBI	Feb. 10, 1978	Mahoney—University of Colorado	Device to examine hemoglobins to detect abnormalities.
National Institute of Arthritis, Metabolism, and Digestive Diseases (NIAMDD).	Feb. 13, 1978	Walser—Johns Hopkins University	Salts of keto acids for purpose of alleviating hyperammonemia due to liver damage caused by such disorders as cirrhosis, hepatitis or genetic liver damage.
Employee	Feb. 28, 1978	Vurek—NIH employee	Measurement of Carbon dioxide in blood plasma for diagnostic purposes.
Do	April 5, 1978	Walker—NIH employee	Needle valve detent attachment for controlling cuff deflation during the taking of blood pressure.
NCI	April 7, 1978	Apple/Formica—University of California	Anticancer drug—Azetomicins.
NCI	April 11, 1978	Spiegelman—Columbia University	Method for detecting cancer.
NIGMS	April 20, 1978	Marshall/Rabinowitz—University of Miami	Synthetic carbohydrate-protein conjugates for extending conditions under which enzyme can be used in biochemical processes.
NCI	April 20, 1978	Farnsworth—University of Illinois	Anticancer drug—Jacaranone.
NCI	May 1, 1978	Turcotte—University of Rhode Island	Anticancer drug.
National Institute of Neurological and Communicative Disorders and Stroke.	May 8, 1978	Jobsis—Duke University	Method for noninvasive monitoring of oxygen sufficiency in human tissues and organs by infrared radiation.
NIGMS	May 24, 1978	Montalvo—Gulf South Research Institute	An invention to selectively measure substances in the blood to diagnose blood disorders.
NCI	May 26, 1978	Pettit/Ode—Arizona State University	Anticancer drug.
Employee	June 21, 1978	Leighton—Employee	Intracranial pressure gage.
NCI	June 29, 1978	Kuehne—University of Vermont	A method for synthetically preparing a useful naturally occurring substance. The natural substance is used in making a drug for treatment of high blood pressure.
NICHD	July 17, 1978	Gray—Illinois Institute of Technology	Prolong release of antifertility drugs.
NCI	do	Gosalvez—University of Madrid	Novel anticancer compounds—analogs of adriamycin.

Mr. BAYH. Mr. President, I might point out, for example, a new burn ointment and a promising diagnostic test for cancer which can detect whether a given patient will have an adverse reaction to certain kinds of chemotherapy agents without having to go through that traumatic experience of hair loss and convulsions and some of the unfortunate reactions to those drugs that are used to fight cancer.

It is also interesting to note that the Government owned the rights to penicillin and tried to make it available to private industry for 11 years without patent rights—11 years. During this long period, there were no takers. If it had not been for the emergency conditions caused by World War II, in which the Government actually got into the business of developing penicillin itself, it is likely that penicillin would still be there with the 28,000 other patents that are just collecting dust and people would not be benefiting from that tremendous lifesaving discovery.

The Senate Judiciary Committee held extensive hearings on this bill. Indeed, the Senate Small Business Committee has recently looked into this and has reached the same conclusion.

I would like to suggest that the chairman of the Small Business Committee,

Senator NELSON, is a supporter of this particular measure and, although he was called away on official business elsewhere, I would like to have the record show that had he been here he would have voted for it.

The committee heard many examples of the need for this. I would like to point out that the Comptroller General of the United States, Mr. Elmer B. Staats, testified forcefully in favor of S. 414 because of the adverse effects of the confusion caused by the present patent policies. The Comptroller General testified that the present policies are not even consistent—the GAO had identified 20 different patent arrangements in place in the various agencies. And that has to be stopped.

The present policies were originally based on the presumption that the agency would retain ownership of any patent that came from its reported research even when the agency had no intention or ability to develop and use it. This policy has proven to be so ineffective that it has been gradually revised since President Kennedy's Memorandum and State of Government Patent Policy issued in 1963.

I would like to point out that the bill which is presently before the Senate says that if the Government feels that a patent they supported is something that they want to develop in the name of the people of the United States, then they have a right to do it. We are not denying that right in S. 414. What we are saying is that if the Government makes the assessment that they do not intend to develop this idea, then let a small business or let a university have a chance to develop it and make that idea available to the people of the country in the marketplace.

The present burden of this patent policy confusion is placed primarily on universities—which are presently conducting 70 percent of the basic research in the country—and on small businesses. Because inventions made by these contractors are coming from basic research they do not represent marketable products and require substantial time and money before they are ready to be sold. It has been estimated that the cost of this product development exceeds the cost of initial research by a factor of 10 to 1. When Government agencies retain ownership to these inventions the result is simple—no one markets them because there is no incentive to do so without patent protection. The end result is that many promising inventions—especially medicines—are never delivered to the public. It should also be noted that the agencies are rarely funding 100 percent of this research but under present policies even if their share is a small percentage of the total funding the agency can insist on retaining patent rights.

S. 414 is based on the favorable experiences of the institutional patent agreement (IPA) program which has been in effect since 1968. These are agreements made with universities and nonprofit organizations that allow these contractors to retain patent ownership to the inventions that they make while working for the Government. This program has been so successful in delivering new products to the public that the General Services Administration adopted a rule making IPA's available to all agencies. There is absolutely no evidence of any economic concentration having resulted from this program—but there is impressive evidence that the IPA program has delivered many important medical discoveries to many suffering people.

S. 414 takes this very successful program and extends it to small businesses who are working for the Government. There is abundant evidence that greater economic competition will result from a closer relationship between our small businesses and the agencies. In those instances where the agency desires to fully develop and use the patent the agencies will be able to retain ownership under the provisions of S. 414. The thrust of this bill is that in those instances where the Government cannot develop these products they should not be left to gather dust in some agencies' shelves; they should be left to the inventor so that they can reach their potential in the marketplace where the public can benefit from them.

S. 414 also includes a payback requirement that would require the reimbursement of the Government from the profits that a successful invention makes. No one is getting a free ride from this bill.

This concept has been endorsed by President Carter in his innovation speech of October 31, 1979, supported by the President Carter's Domestic Policy Review on Innovation and Productivity, has been endorsed by Mr. Ky P. Ewing, Deputy Assistant Attorney General, Antitrust Division in his testimony to the House Committee on Science and Technology, is supported by the Comptroller General of the United States, Mr. Elmer G. Staats, is supported by recent White House Conference on Small Business, the National Small Business Association, the Society of University Patent Administrators, and with the exception of Adm. Hyman Rickover by every witness who appeared—or asked to appear—before the Senate Judiciary Committee. It should be pointed out that every representative of a Government agency who has appeared before the Judiciary Committee, the Commerce Committee, or the House Science and Technology Committee has advocated revising the present policies because of their ineffectiveness.

It is for these reasons that I urge my colleagues to join me in supporting S. 414.

Mr. President, I ask unanimous consent that Senator NELSON's statement be printed in the RECORD.

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

STATEMENT BY SENATOR NELSON

I support S. 414. After careful consideration of this legislation and the arguments that have been made for and against it, it is my conclusion that the public interest would be served by its passage by the Senate and its enactment into law.

Before reviewing the contents of this bill, it would be useful to sketch out some of the underlying reasons why reform of federal patent ownership policy is urgently necessary. It is universally conceded that the United States is facing an unprecedented innovation and productivity crisis, which in turn is increasing our disastrous rate of inflation. The number of patents issued every year has gone down steadily since 1971. In 1979, almost 40 percent of the 55,418 patents issued by the U.S. Patent Office were issued to citizens of foreign countries. We invest less in research and development in constant dollars now than we did ten years ago. Last year, the productivity of our country actually declined by 1.1 percent. This deterioration in the economic position of the United States is one of the greatest dangers this country faces.

Although government patent policies are obviously not the sole cause of the problem, or even a primary cause of it, they do represent a serious impediment to the effective transferral of new technologies and discoveries from multi-billion dollar federal research and development efforts to the private sector where they can best serve the public interest. Today, the government retains title to nearly all new technologies and discoveries from government-sponsored research. Of the more than 28,000 patents in the government patent portfolio, less than 4 percent are successfully licensed.

Universities, on the other hand, which can offer exclusive or partially exclusive licenses on their patents if necessary, have been able to successfully license 33 percent of their patent portfolios.

What S. 414 will do is establish a presumption that universities and small businesses shall retain title to inventions they develop with government financial assistance. The bill would establish one uniform federal policy for all federal agencies, replacing the bewildering variety of title and licensing policies which now exist in different federal agencies.

Under S. 414, there would be exceptions to this general rule. If the funding agreement between an agency and a contractor related to the operation of a government-owned research facility or in "exceptional circumstances" or when a proper authority deemed it necessary to safeguard the confidentiality of intelligence activities, the government would be empowered to retain title to an invention. An "exceptional circumstances" determination would have to be forwarded to the Comptroller General for review, and the Comptroller General would be charged with the duty of reporting to the House and Senate Judiciary Committees concerning any perceived abuses of discretion.

Any funding agreement with a small business firm or nonprofit organization would have to contain appropriate provisions to protect the public interest. The existence of the invention must be made known to the federal agency involved. The decision to acquire title by the small business or nonprofit organization must be made within a reasonable time. The federal agencies may receive title to any inventions for which the contractor has not filed a patent application. Federal agencies may require periodic reporting by the contractor or his licensees on the utilization of the patent.

Assignment of rights under the patent is prohibited in most circumstances without the consent of the agency involved, and the granting of exclusive licenses to persons (including corporate persons) other than small business firms is generally prohibited for a period in excess of the earlier of five years from first commercial sale or use of the invention or eight years from the date of the exclusive license.

All federal agencies shall possess "march-in" rights, allowing them to require their title-holding contractor to grant any type of license of an invention if the contractor has not taken proper steps to achieve the "practical application" of the invention or when action is necessary to alleviate health or safety problems or when federal regulations specify public use requirements which are not being met by the contractor.

The bill contains meaningful "payback" requirements. The federal government will receive 15 percent of all the gross income over $70,000 obtained by a contractor from the licensing of an invention during a given calendar year. Further, the United States shall receive five percent of all income in excess of $1 million received by a contractor for sales of products making use of one or more of the subject inventions. In no event will the federal government receive back more money than it contributed to the development of the invention. If the invention proves valuable, the federal government will receive additional income tax revenues from increased contractor profits.

Finally, with elaborate safeguards, federal agencies are authorized by S. 414 to license federally-owned inventions on a non-exclusive, partially exclusive or exclusive basis.

Although I have had some reservations about this bill and the concepts it embodies, I have concluded it will help promote the utilization and commercialization of inventions made with government support and encourage the participation of smaller firms in the government research and development process.

Current patent policy is a major impediment to increased research and development by smaller firms. It has been well documented that an important ingredient missing in federal research and development programs is the large-scale participation of the small business community. A distressingly low percentage of federal research and development contracts are awarded to small companies. In fact, according to the Office of Management and Budget's study, "Small Business Firms and Federal Research and Development," only 3.4 percent of all federal R & D contracts go to small business.

The Small Business Committee has heard from a number of small business people who have said that the present government policies requiring them to give up patent rights to inventions made under federally-sponsored research is one of the greatest impediments to their participation in federal R & D efforts. But some policies go even further by requiring them to license their "background rights" to large business competitors who later work under federal R & D programs. Technological edges are the one advantage that small companies have, and when they are forced to license them out to competitors, their very ability to compete is fundamentally penalized.

There are several important objections which have been raised concerning this bill.

First, it is asserted that S. 414 would, under some circumstances, enable a single company to "monopolize" a product invented with the aid of public funds. This is a serious point. The granting of a patent or of an exclusive license is not the same thing as a 17th century "monopoly" but there is no question that it does grant to selected institutions a privileged position. It is the Committee's belief that the negative aspects of this grant of privilege are outweighed by the public benefits gained from the rapid development of inventions. It is undisputed that 96 percent of all federally-owned patents are not successfully licensed, i.e., the inventions sit on the shelf because nonexclusive licenses do not furnish sufficient incentive for any single company to take the financial and legal risks attendant on full development of an invention. Comptroller General Elmer Staats, whose devotion to the public interest is unquestioned, was particularly emphatic on this point during the hearings on the bill. In his testimony of May 16, 1979, Comptroller Staats stated:

"The proposed act would place initial responsibility for commercializing research results on the inventing contractor—the organization or individual with the most interest in and knowledge of the invention. It would provide the Government with "march-in" rights. These rights limit the administrative burden because they would be exercised only in specified situations, such as when the agency determines that the contractor has not taken effective steps to achieve practical application of the invention.

"Studies have shown that of the 8.000 inventions disclosed annually to the Government, only a handful attained commercial importance. It would be hoped that an easing of the redtape leading to determinations of rights in inventions would bring about an improvement of this record."

A related objection is that universities will invariably grant exclusive licenses to large companies for the development of inventions. However, the testimony before my Select Committee on Small Business indicated that universities generally prefer non-exclusive licenses because they are more lucrative to the universities and make use of exclusive licenses only when that is the only way to get inventions developed. I believe that we can trust universities to know what is in their own best interest and can rely on their judgment about the necessity for occasionally granting exclusive licenses.

In 1978 I held five days of hearings on existing Institutional Patent Agreements. I concluded that they generally served the public interest. For example, under current HEW time schedules, universities may issue exclusive licenses for a period of three years from the first commercial sale of a product or five years from the date of the license agreement, whichever occurs first, and most universities find this time schedule to be perfectly adequate. There is no reason to believe that under S. 414 universities and small businesses would make agreements more disadvantageous to themselves than universities now make under IPA's.

And the present public interest in granting universities title to inventions and the right to license them exclusively must be borne in mind. As is stated in the Committee Report:

"Agencies which acquire these patents generally follow a passive approach of making them available to private businesses for development and possible commercialization through non-exclusive licenses. This has proven to be an ineffective policy as evidenced by the fact that of the more than 28.000 patents in the Government patent portfolio, less than 4 percent are successfully licensed. The private sector simply needs more protection for the time and effort needed to develop and commercialize new products than is afforded by a non-exclusive license. Universities, on the other hand, which can offer exclusive or partially exclusive licenses on their patents if necessary, have been able to successfully license 33 percent of their patent portfolios."

Second, it is suggested that the problems of equity, economic growth and increased productivity require the rapid dissemination of scientific and technical knowledge, and the present patent policies better promote this dissemination than would S. 414. I must disagree.

The theoretical availability of a non-exclusive license does not mean that anyone will actually develop an invention into something useful. The fact remains that 96 percent of all federally-owned inventions, approximately 27,000 out of 28,000, are not licensed, and thus are of no use to the public. The huge majority of small business and university witnesses have testified that the option of exclusive licensing is necessary in order to achieve greater actual development of inventions. We do not now know for certain what would happen under S. 414. However, it is reasonable to assume that it will improve the situation.

Third, it is argued that there is no "factual basis" for the claim that giving private contractors title to inventions will promote rapid commercialization of those inventions. To this contention, there are, I think, two replies. First, private contractors do not now have title to inventions they make with federal assistance. So it is difficult to tell what would happen if they did. Second, the IPA experience with universities precisely indicates that the granting of title and exclusive licensing rights to private contractors does promote the rapid commercialization of inventions.

Fourth, it is maintained that there are potential dangers to small business in the bill. It is argued that if a small business were to possess patents or exclusive licenses, it might be an attractive takeover target. Further, it is maintained that small businesses might not be able to resist patent infringements by larger firms because of the high legal costs involved.

With all due respect to those who make them, these arguments do not strike me as being very weighty. Small business people overwhelmingly support this bill and are willing to take their chances with potential corporate raiders and patent infringers. This bill confers a benefit on small business, and it is not reasonable to oppose the bill because someone may attempt to illegally remove the benefit. Furthermore, the Senate has adopted S. 1679, which was sponsored by Senator Bayh, myself and others. This legislation will reduce the average patent litigation cost from $250,000 to $1,000.

Again, it is useful to return to the favorable experiences under the IPA program, which has been in effect since 1968. The IPA is a series of agreements made with universities and nonprofit organizations that allow these contractors to retain patent ownership to the inventions that they make while working for the government. This program has been so successful in deliverying new products to the public that the General Services Administration has adopted a rule making IPA available to all agencies. Five days of Small Business Committee hearings, which I chaired in 1978, failed to reveal evidence of any economic concentration having resulted from this program. While I agree that there is at least a theoretical potential for abuse, to date we have found none. If S. 414 becomes law, I intend to hold hearings on it after a reasonable period of time has elapsed, to see if any abuses do in fact result from its enactment.

Mr. President, the concepts embodied in S. 414 are part of the key recommendations of the President's Domestic Policy Review on Innovation. I would like to quote President Carter on what he said pertaining to issues relevant to this bill:

"The Policy Review identified strong arguments that the public should have an unrestricted right to use patents arising from federal sponsorship. These patents were derived from public funds, and all the public have an equitable claim to the fruits of their tax dollars. Moreover, exclusive rights establish a monopoly—albeit one limited in time—and this is an outcome not favored in our economy.

"Several competing considerations, however, urge that exclusive rights to such patents should be available. First, government ownership with the offer of unrestricted public use has resulted in almost no commercial application of federal inventions. Without exclusive rights, investors are unwilling to take the risk of developing a federal invention and creating a market for it. Thus, ironically, free public right to use patents results, in practical terms, in a denial of the opportunity to use the invention. Second, many contractors, particularly those with strong background in and experience with patents, are unwilling to undertake

work leading to freely available patents because this would compromise their proprietary position. Thus, some of the most capable performers will not undertake the government work for which they are best suited. As a result of the strength of these considerations, most agencies have the authority in some circumstances to provide exclusive rights. But because of the difficulty of balancing competing considerations, this issue has been unsettled for over 30 years, and the various agencies operate under different and contradictory statutory guidance. The uncertainty and lack of uniformity in policy has itself had a negative effect on the commercialization of technologies developed with federal support."

I believe the President has fully and succinctly presented the issue before us, and I agree with the findings.

The bill has been endorsed by Mr. Ky P. Ewing, Deputy Assistant Attorney General, Anti-Trust Division, in testimony before the House Committee on Science and Technology. As noted above, it is supported by the Comptroller General of the United States, Elmer Staats, by the National Small Business Association, and by the Society of University Patent Administrators. Only last month, 1,600 delegates to the White House Conference on Small Business endorsed it as an integral component of S. 1860, the Small Business Innovation Act which I introduced last year. As a matter of fact, S. 1860 was the sixth highest priority of the conference delegates.

The problems of rising inflation and slumping productivity require immediate congressional attention. Passage of S. 414 will help spur innovation and new discoveries by small business. Smaller enterprises were responsible for half of all major industrial innovations since World War II and produced 24 times as many major innovations per research dollar spent as did large firms. As such, S. 414 will play a small, but important role in solving the inflation problem.

Our country is in deep economic trouble. Ideological rigidities should not prevent us from exploring new approaches to the problems of how we revive a stagnating economy. After a careful review of this legislation, I have concluded that S. 414 constitutes an approach worth trying, and I am pleased to support it.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Kansas has 12 minutes remaining and the Senator from Louisiana has 1½ minutes remaining. Who yields time?

Mr. LONG. Mr. President, I ask unanimous consent to have printed in the RECORD a synopsis from Admiral Rickover, who has been very active on this subject down through the years.

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

SYNOPSIS OF ADMIRAL RICKOVER'S VIEWS ON GOVERNMENT PATENT POLICY

1. In recent years, Members of Congress have introduced various bills which, contrary to the thrust of existing statutes, would give contractors the exclusive rights to inventions arising under their contracts with the U.S. Government. In support of these bills, the patent lobby contends that unless the Government grants its contractors such rights, companies will not have sufficient financial incentive to develop and market the ideas that grow out of Government-funded research.

2. Admiral Rickover has had more than a half century's experience in engineering, technology and contracting. For many years he has strongly opposed bills which would give contractors exclusive rights to inventions developed at Government expense. He believes that each citizen should have equal rights to use these inventions and that the monopoly rights conveyed by a patent should be reserved for those who develop inventions at private expense.

3. In support of his views, Admiral Rickover makes these points:

a. In the vast majority of cases, patent considerations neither attract companies to Government work nor repel them from it. Contractors seek Government work because it generates profit; it helps support their scientific and engineering staffs; and they obtain valuable know-how from performing the work. The idea that the Government cannot attract good companies without giving away patent rights is simply rhetoric by the patent lobby.

b. The technology growing out of most Government R&D efforts is not reflected by the patents generated, but is in the form of data, know-how, concepts, and design features which, although of great technical importance, generally are not patentable.

c. Truly good ideas arising under Government contracts tend to be adopted and used elsewhere without having to grant someone monopoly patent rights. Nuclear technology in this country has flourished under a policy in which Government contractors have not been given exclusive rights to inventions developed at public expense.

d. By generally claiming the rights to inventions their employees develop on the job, industry endorses a principle that patent rights should belong to the employer. But when the Government is the employer, and the contractor the employee, the patent lobby wants to reverse this principle.

e. Large corporations would benefit most from a giveaway Government patent policy because the vast majority of Government research and development funds is spent in contracts with large corporations.

f. It would be wrong to give a company a 17-year monopoly to some technological breakthrough, in the energy area, for example, that was paid for with public funds.

4. Based on this first-hand experience encompassing many years, Admiral Rickover contends that the dissemination of technology and the public good are both best served when the Government retains title to inventions developed at public expense and the public retains the unrestricted right to use them. Because of a proliferation of sometimes conflicting statutes dealing with patent matters, he recommends that Congress enact legislation which would ensure that each citizen has equal rights to use inventions developed at Government expense.

Mr. BAYH. Mr. President, I ask unanimous consent that the Senator from Indiana be permitted to use 2 minutes of the time of the Senator from Kansas, who is a cosponsor of this legislation.

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

Mr. BAYH. The Senator from Kansas has been an avid supporter of this legislation. I want to compliment him, as well as our other sponsors, for their assistance.

I have great sympathy with the thrust of the arguments of the Senator from Louisiana. I would just like to point out two of the factors in this bill that have not been contained in other provisions which go to the question of the Government being fleeced and the taxpayers losing the dollars that they have invested. Let me just point out two things:

First of all, I do not see how the taxpayers benefit at all if money they spent in research results in ideas just drawing dust. The people have to get the idea commercialized and made available to them as new products before the taxpayers get any return on their investment.

The second point—and I think this is a new point that needs to be considered, and I think it goes to the concerns expressed by the distinguished gentleman, Admiral Rickover, who I have great faith and respect for. I just disagree with his logic on this point.

We have a formula in this bill that says when a small business or a university takes advantage of the provisions of S. 414, begins to market an idea, and that idea, begins to make money, then there is a formula in which the money is repaid to the agencies.

So, in the final analysis, the taxpayer will not be out the cost of the research and they also will have the benefit of the product.

I see my good friend from Kansas is here. He can express these ideas much better on his time than I can.

The PRESIDING OFFICER. The Senator from Kansas has 10 minutes remaining.

UP AMENDMENT NO. 1049

(Purpose: To exempt from the provisions of the bill the Tennessee Valley Authority)

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

The PRESIDING OFFICER. Is the amendment an amendment to the pending amendment?

Mr. LONG. Mr. President, is the pending amendment the amendment by the Senator from Louisiana?

The PRESIDING OFFICER. That is correct.

Mr. LONG. Mr. President, I withdraw my amendment so that Senator BAYH may offer his amendment.

The PRESIDING OFFICER. The Senator from Louisiana has withdrawn his amendment. The clerk will state the amendment of the Senator from Indiana.

The legislative clerk read as follows:

The Senator from Indiana (Mr. BAYH) proposes an unprinted amendment numbered 1049:

On page 27, line 5, insert ", other than the Tennessee Valley Authority," after "agency".

On page 41, line 4, insert ", other than inventions owned by the Tennessee Valley Authority," after "invention".

Mr. BAYH. Mr. President, what this does is to exempt TVA from the provisions of the bill inasmuch as TVA does not do their research with appropriated funds.

Mr. DOLE. Mr. President, the Senator from Indiana has correctly described the amendment.

Mr. President. I rise in support of the amendment that has been offered by Senator BAYH.

This amendment addresses the built-in characteristics of the Tennessee Valley Authority. Indeed, while S. 414 was never intended to apply to the TVA, which does not make use of Federal appropriations in funding their research and development, the bill's definition of funding agreements which reads as "any agreement entered into between * * *" (page 27, lines 3 and 4), was

ambiguous since it did not mention the source of these funds. As we are all aware, even though the TVA is a Federal agency, their equipment is financed by floating funds from bonds on income they have earned by generating electricity.

The Tennessee Valley Authority, while not making use of appropriations, does however use Federal funds for in-house research by employees, for which the TVA has its own regulations. They expressed concern that section 208 of the bill, which authorizes the General Services Administration to promulgate regulations, might result in the TVA having to comply with GAO regulations.

Mr. President, this amendment would affirm the fact that S. 414 does not affect the present status of the Tennessee Valley Authority, and that the TVA will continue to be exempt from GSA regulations.

As a cosponsor of this worthwhile amendment, I urge my colleagues to support this effort.

Mr. BAKER. Mr. President, I am happy to see that the Committee on the Judiciary has accepted an amendment designed to enable the Tennessee Valley Authority to develop its own approach for implementing the requirements of S. 414, rather than subjecting it to the uniform regulations which would be developed under this legislation by the Office of Federal Procurement Policy and the General Services Administration. I am convinced that this amendment is necessary to preserve the flexibility and independence which TVA needs to continue to carry out its program responsibilities associated with these patents in an effective manner.

I am proud of the fact that some of the most effective Federal research and development work on the production and use of new and better fertilizers has been done by TVA at its National Fertilizer Development Center at Muscle Shoals, Ala. During the 47 years that TVA has been working at Muscle Shoals, TVA chemical engineers and agricultural research specialists have developed new technology which serves as a basis for the production of 75 percent of the fertilizer used by our Nation's farmers.

TVA owns all the patents for these processes—approximately 230—but, through simple procedures, has issued 622 nonexclusive, royalty-free licenses for the use of this TVA technology at 554 plants in 39 States. The best part about all this is that nearly three-quarters of these plants are owned by small businesses and local farmers' cooperatives.

TVA has been successful in this regard because it has been able to assess the commercial environment on a case by case basis and tailor the manner in which it grants licenses to achieve the fullest possible commercial acceptance and usage of TVA developed technology. I am uncertain whether this success story could continue, however, if these TVA practices were subjected to the uniform, Government-wide regulations developed by FFF and GSA to implement the requirements of S. 414. While these uniform regulations might be appropriate for the bulk of Federal agencies, they might actually increase the amount of bureaucratic paperwork and complexity of TVA's licensing process or otherwise be ill-suited or detrimental to TVA's programs.

I believe it would be inexcusable to risk the success of these highly efficient TVA technology transfer programs when there is no compelling reason to do so. In short, "if it ain't broke, don't fix it." I emphasize, however, that this amendment would not exempt TVA's patent-related activities from the uniform patent policy requirements of S. 414. The amendment simply enables TVA to implement these requirements in the manner most compatible with TVA's program needs.

Furthermore, TVA is not just involved with agricultural research and development. In carrying out President Carter's directive to be in a model in energy-related research and development, TVA is delving into many areas which promise to produce new important technologies which may provide us with better tools to help resolve our Nation's energy problems. Most of the funding for these activities does not come from the Nation's taxpayers, however, but is financed with funds of TVA's self-financing power program, which ultimately are provided by TVA customers when they pay their electric bills.

Given its statutory responsibility to the ratepayers in the Tennessee Valley to keep electric rates as low as feasible, in each of the wide variety of energy-related research and development agreements entered into by TVA an individual determination is made as to the ownership and rights of the parties to any patents which might result from the agreement. This determination is just one of numerous business judgments the TVA Board must make in the course of operating the Nation's largest electric system in a cost-effective manner. TVA needs to continue to have this flexibility to manage the TVA power program efficiently.

This amendment exempts research and development contracts which involve the use of the nonappropriated funds of TVA's self-financing power system from the strict coverage of the provisions of sections 202 through 205 of S. 414. It is not appropriate to require in all cases that TVA contractors automatically receive title to all inventions which they develop under agreements funded with TVA power system funds.

Nor is it always appropriate for TVA to retain all of the "march-in" and other rights which the bill would require. In TVA's case, it is not uncommon for a business firm to spend its own money on developing a technology and coming to TVA only in the last stage of development to help prove its commercial feasibility in conjunction with the operations of the TVA power system. TVA's contribution in this instance may be relatively small. The business firm may be understandably reluctant to give up the rights this bill would require in such a situation. The net effect would be a reduction in the willingness of firms to try out new technology on the TVA system or to charge TVA more for doing it.

The requirements of the bill would not, therefore, function as an incentive financed by the Nation's taxpayers, but could be an added expense borne solely by the ratepayers of the Tennessee Valley region.

At the same time this amendment would require TVA to follow the provisions of section 202 through 205 of S. 414 with regard to its funding agreements funded with nonappropriated funds to the extent the TVA Board determines they are feasible and consistent with TVA's responsibilities under the TVA Act.

I believe this amendment to S. 414 would provide an effective and equitable approach to enable TVA to continue carrying out its programs in an efficient manner, and I urge its adoption.

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

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. DOLE. Mr. President, as I understand the consent agreement, we are to vote no later than 3:30, or prior to that time if possible.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. Mr. President, I have listened to some of the discussion today. I believe this bill is a small step in the right direction. I know some Members have concerns about the policy. I am aware of the concerns of the distinguished chairman of the Finance Committee, Senator LONG.

● Mr. STEVENSON. Mr. President, S. 414 is a test of the Senate's concern about America's capacity to produce and compete in a fiercely competitive world. It is not a panacea. It is, in truth, a small part of the solution. But if we are unable to address a problem that has been widely recognized for more than two decades, what can we do? Are we doomed to play out the conventional wisdom, as we did in the twenties, until its futility is inescapable and the moment too late?

Today there is scarcely an industrial sector or technology in which the United States does not face a vigorous challenge. For the United States to hold its own, let alone prosper, in this environment requires redoubled efforts to encourage investment, promote exports, and make economic adjustments, as well as to advance technology and stimulate innovation.

Instead, fiscal and monetary policies lurch from one month's Consumer Price Index and employment figures to the next, compounding economic uncertainty. We provided $1.5 billion in loan guarantees for the geriatric Chrysler Corp., as President Carter, after an 18-month study involving scores of agencies and hundreds of advisers, proposed a mere $55 million for industrial innovation. The new initiatives announced in the President's message to Congress on innovation last October actually cost $44.6 million. Now that pitiful sum has been whittled to $26.1 million in succes-

sive rounds of budget cutting. The victims of economic orthodoxy include National Science Foundation grants to industry-supported research in universities, grants to small businesses for innovative research and development, and an NSF-sponsored Cooperative Technology Center. Apart from this legislation and S. 1250, to authorize industrial technology centers, very little remains of the President's modest innovation package.

Mr. President, the University and Small Business Patent Procedures Act is far from an ideal bill. Witnesses in 4 days of hearings before the Commerce, Science, and Transportation Committee urged a uniform Government patent policy that did not discriminate on the basis of company size or institutional tax status. The Judiciary Committee report on S. 414 does not present any rationale for granting title to inventions only to small firms and nonprofit organizations. Small businesses do not account for our stagnant productivity, accelerating inflation, and eroding competitiveness in world markets. They continue to generate a large share of major inventions and innovations. Small businesses and universities are not alone in experiencing the disincentives and frustrations of restrictive Government patent policies. Even the administration has recommended comprehensive reform.

S. 414 will be difficult to administer rationally and fairly. It arbitrarily penalizes successful companies that cross the employment or sales limits of one or another of the Small Business Administration's sets of eligibility criteria, all of them devised to suit different administrative purposes.

The legislation discriminates against its proposed beneficiaries. If they are successful in commercializing or licensing their inventions, they will be required to pay back the Government contribution. Neither of these requirements is imposed by the Defense Department, which for many years has granted unrestricted title to contractors in more than two-thirds of military R. & D. contracts, a large proportion of them with the Nation's biggest corporations. Under this bill, DOD must recoup its expenditures from its smallest but not from its largest contractors.

S. 414 would maintain Government ownership of inventions made by a broad range of firms engaged in energy, transportation, and other civilian research and development enterprises whose success depends upon private commercialization of new technologies and for which the Nation's needs are pressing. The Federal research budget includes nearly $10 billion for civilian R. & D. Congress has authorized a massive investment in the development of synthetic fuels and is considering a cooperative program to advance automotive technology. We cannot afford inhibitory patent policies in these areas while we encourage companies to exploit military R. & D. results, routinely and without controversy.

Nonetheless, S. 414 is a small step in the right direction. It recognizes that, on the whole, a policy of granting exclusive rights in return for commercial development stands the best chance of securing the benefits of Federal R. & D. for the public and the economy. It extends the DOD precedent and brings us closer to a uniform patent policy. It gives small research firms a needed incentive to participate in Federal R. & D. programs and encourages the transfer of technology from university laboratories to commercial markets. For these reasons, I support the University and Small Business Patent Procedures Act.

I believe the limitations of S. 414 will soon become apparent, if they are not already apparent to the House committees considering similar legislation. I am confident that Senator SCHMITT and other members of the Commerce Committee will continue their leadership on this issue, and I suspect that many of the sponsors of this bill will support them. In the meantime, the Senate should pass S. 414.●

Mr. SCHMITT. Mr. President, I wish to commend the Senators from Indiana and Kansas for their able leadership on beginning the process toward a comprehensive Government-wide patent policy. The bill under consideration today, S. 414, is a worthwhile measure designed to stimulate the commercialization of inventions made by small business and universities with the assistance of Federal funds.

I recognize that the stated purpose of S. 414 is similar to that of my own bill, S. 1215, the Science and Technology Research and Development Utilization Policy Act, which has been referred to the Senate Commerce Committee. That committee has concluded 4 days of hearings on this bill and the general subject of Government patent policy. The testimony we received during the course of these hearings from industry, business—both large, small and medium size—and academia was overwhelming in support of a uniform Government patent policy that placed title in the hand of the contractor, subject to appropriate safeguards of the public interest.

While I support the basic objectives of S. 414, I am concerned that the bill does not go far enough. This bill would establish a uniform Federal patent policy for small business and nonprofit organizations. The bill would not extend the same rights to other Federal contractors with much greater quantitative impact on the marketing of new technologies. Undoubtedly, however, S. 414 would alleviate many of the special problems facing the important innovative sections of our national R. & D. base, namely, small business and universities.

Yet the problems this Nation is experiencing in technological innovation go well beyond small business and universities which together comprise but a small percentage of all Federal contracts. We cannot afford to ignore that segment of private enterprise consisting of medium-sized and larger businesses which account for 90 percent of our federally sponsored R. & D. effort, more than half of U.S. industrial employment, and 85 percent of U.S. exports.

My bill, S. 1215, would allow all contractors, regardless of size or profit status, to acquire title to their inventions made under Federal contracts while retaining the structure and essential provisions of S. 414. It is essential to achieve the widest possible application of Government-supported technology at a time of lagging innovation, stagnant productivity growth and declining U.S. competitiveness in the international and domestic marketplaces.

Mr. President, I continue to believe that S. 1215 is in the real public interest, and I am hopeful that when reported out of the Commerce Committee it will receive favorable consideration by the Senate as a whole.

● Mr. CANNON. Mr. President, the symbolic importance of S. 414 surpasses what I expect to be its practical benefits. At a time of grim economic statistics and even grimmer prospects, it is a test of the Senate's commitment to renewed productivity and economic growth through technological innovation.

Last year exports grew, the trade balance improved. But the United States continued to register huge deficits in steel, automobiles, and other so-called non-R. & D.-intensive manufactured goods. Our shipments of electrical machinery, aircraft, chemicals, and instruments have not prevented an overall trade deficit in manufactures in 4 of the last 9 years. Even our high technology surplus is slipping, and we have a growing deficit with Japan in electronic and other sophisticated products.

Growth in domestic output per worker in the United States—a key source of our economic growth in the early sixties—declined gradually after 1967, dropped sharply after 1973, and failed to revive in the 1975–78 recovery. Now U.S. productivity gains have come to a standstill. Last year labor productivity actually dropped by nearly 1 percent—only the second such decline since World War II. Other industrialized countries also experienced lower growth rates in the seventies, but none was as poor as ours. We trail all of our major trading partners, including Britain.

The solutions lie in increased investment in new plant and equipment, new products, and new firms. They lie in reform of economic regulation. They lie in cooperative efforts to develop new manufacturing technologies, as Senator STEVENSON and I propose in S. 1250, which the Commerce Committee will soon report to the Senate.

But in no small part the solution also lies in encouraging the widest possible use of Government-supported technologies, removing disincentives to participation in Federal R. & D. programs, and promoting cooperation rather than antagonism between Government and industry. Precisely because of tight budget and fiscal constraints, it is vital to move in the areas where we have flexibility.

As Senators are aware, when this bill was first considered by the Senate in February, I cosponsored an amendment to extend its provisions to all Government contractors in the interest of finally achieving a uniform Government pat-

ent policy. I believe that should remain the goal, and I note that several sponsors of S. 414 agreed in principle. It detracts nothing from the case for small business and university patent rights to observe that they perform a modest share of Federal R. & D. The Commerce Committee had held 4 days of hearings on comprehensive Government patent policy legislation introduced by Senator SCHMITT. With a single exception, our witnesses strongly endorsed the principle of allowing exclusive commercial use of Government-financed inventions as a necessary incentive, in most cases, to private development and commercialization. Overwhelmingly, they favored a policy of granting title to contractors without discrimination on the basis of size or tax statute. The risk of monopolization was judged to be minimal or nonexistent.

I recognize, however, the underrepresentation of small research companies in Federal R. & D. contracting in spite of their disproportionate contribution to industrial innovation generally. Commercial development of inventions made in university laboratories is especially dependent on their being available for licensing on attractive terms. Allowing these institutions to acquire title to their inventions builds upon the precedent followed by the Defense Department in nearly three-quarters of its R. & D. contracts and brings us closer to a uniform patent policy. For these reasons, I urge my colleagues to support the University and Small Business Patent Procedures Act.●

Mr. DOLE. Mr. President, I yield back any time I have remaining.

Mr. LONG. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 12 minutes remaining.

Mr. LONG. Mr. President, the arguments that have been made by the sponsors of this legislation——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Louisiana?

Mr. LONG. Mr. President, I meant to ask how much time I had remaining.

The PRESIDING OFFICER. The Senator from Louisiana has no time remaining.

Mr. DOLE. The Senator from Louisiana can have my time.

Mr. LONG. One minute, please.

The arguments made by the sponsor of this legislation are that you can develop a product better if someone has a monopoly than you can if it is in a competitive situation. Basically, Mr President, that is an argument that monopoly is better for the country than is competition. In my judgment it is ridiculous on the face of it.

The idea where the public spends tens of millions of dollars or maybe a hundred million dollars to develop a product and you can give someone a monopoly so he can charge anywhere from 10 to 100 times the cost of manufacturing the thing is ridiculous on the face of it. That is the mercantile theory, when the king would authorize someone to manufacture a product and nobody could compete.

If this Senate thinks that mercantilism is better than capitalism, let them vote for this bill. If they believe that competition is better than monopoly, then they ought to vote against the bill.

Mr. DOLE. The Senator from Kansas, on that note, will yield back the remainder of his time.

The PRESIDING OFFICER. All time has been yielded back. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Wisconsin (Mr. NELSON) are necessarily absent.

Mr. BAKER. I announce that the Senator from Alaska (Mr. STEVENS) and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

The PRESIDING OFFICER (Mr. BURDICK). Have all Senators voted?

The result was announced—yeas 91, nays 4, as follows:

[Rollcall Vote No. 84 Leg.]

YEAS—91

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

NAYS—4

Byrd, Harry F., Jr.	Johnston	Randolph
	Long	

NOT VOTING—5

Church	Nelson	Wallop
Kennedy	Stevens	

So the bill (S. 414), as amended, was passed, as follows:

S. 414

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 "University and Small Business Patent Procedures Act".

SEC. 2 (a) AMENDMENT OF TITLE 35, UNITED STATES CODE, PATENTS.—Title 35 of the United States Code is amended by adding after chapter 17, a new chapter as follows:

"CHAPTER 18. PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE

"Sec.
"200. Policy and objective.
"201. Definitions.
"202. Disposition of rights.
"203. March-in rights.
"204. Return of Government investment.
"205. Preference for United States industry.
"206. Confidentiality.
"207. Uniform clauses and regulations.
"208. Domestic and foreign protection of federally owned inventions.
"209. Regulations governing Federal licensing.
"210. Restrictions on licensing of federally owned inventions.
"211. Precedence of chapter.
"212. Relationship to antitrust laws.

"§ 200. Policy and objective

"It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of small business firms in federally supported research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations, including universities; to ensure that inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise; to promote the commercialization and public availablity of inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area.

"§ 201. Definitions

"As used in this chapter—

"(a) The term 'Federal agency' means any executive agency as defined in section 105 of title 5, United States Code, and the military departments as defined by section 102 of title 5, United States Code.

"(b) The term 'funding agreement' means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as herein defined.

"(c) The term 'contractor' means any person, small business firm or nonprofit organization that is a party to a funding agreement.

"(d) The term 'invention' means any invention or discovery which is or may be patentable or otherwise protectable under this title.

"(e) The term 'subject invention' means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a funding agreement.

"(f) The term 'practical application' means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its

benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

"(g) The term 'made' when used in relation to any invention means the conception or first actual reduction to practice of such invention.

"(h) The term 'small business firm' means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

"(i) The term 'nonprofit organization' means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)).

"§ 202. Disposition of rights

"(a) Each nonprofit organization or small business firm may, within a reasonable time after disclosure as required by paragraph (c)(1) of this section, elect to retain title to any subject invention: *Provided, however,* That a funding agreement may provide otherwise (i) when the funding agreement is for the operation of a Government-owned research or production facility, (ii) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of this chapter or (iii) when it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities. The rights of the nonprofit organization or small business firm shall be subject to the provisions of paragraph (c) of this section and the other provisions of this chapter.

"(b)(1) Any determination under (ii) of paragraph (a) of this section shall be in writing and accompanied by a written statement of facts justifying the determination. A copy of each such determination and justification shall be sent to the Comptroller General of the United States within thirty days after the award of the applicable funding agreement. In the case of determinations applicable to funding agreements with small business firms copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

"(2) If the Comptroller General believes that any pattern of determinations by a Federal agency is contrary to the policy and objectives of this chapter or that an agency's policies or practices are otherwise not in conformance with this chapter, the Comptroller General shall so advise the head of the agency. The head of the agency shall advise the Comptroller General in writing within one hundred twenty days of what action, if any, the agency has taken or plans to take with respect to the matters raised by the Comptroller General.

"(3) At least once each year, the Comptroller General shall transmit a report to the Committees on Judiciary of the Senate and House of Representatives on the manner in which this chapter is being implemented by the agencies and on such other aspects of Government patent policies and practices with respect to federally funded inventions as the Comptroller General believes appropriate.

"(c) Each funding agreement with a small business firm or nonprofit organization shall contain appropriate provisions to effectuate the following:

"(1) A requirement that the contractor disclose each subject invention to the Federal agency within a reasonable time after it is made and that the Federal Government may receive title to any subject invention not reported to it within such time.

"(2) A requirement that the contractor make an election to retain title to any subject invention within a reasonable time after disclosure and that the Federal Government may receive title to any subject invention in which the contractor does not elect to retain rights or fails to elect rights within such time.

"(3) A requirement that a contract or electing rights file patent applications within reasonable times and that the Federal Government may receive title to any subject inventions in the United States or other countries in which the contractor has not filed patent applications on the subject invention within such times.

"(4) With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world, and may, if provided in the funding agreement, have additional rights to sublicense any foreign government or international organization pursuant to any existing or future treaty or agreement.

"(5) The right of the Federal agency to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or his licensees or assignees: *Provided,* That any such information may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code.

"(6) An obligation on the part of the contractor, in the event a United States patent application is filed by or on its behalf or by any assignee of the contractor, to include within the specification of such application and any patent issuing thereon, a statement specifying that the invention was made with Government support and that the Government has certain rights in the invention.

"(7) In the case of a nonprofit organization, (A) a prohibition upon the assignment of rights to a subject invention in the United States without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee shall be subject to the same provisions as the contractor); (B) a prohibition against the granting of exclusive licenses under United States Patents or Patent Applications in a subject invention by the contractor to persons other than small business firms for a period in excess of the earlier of five years from first commercial sale or use of the invention or eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance unless, on a case-by-case basis, the Federal agency approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use shall not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention shall not be deemed to end the exclusive period to different subsequent products covered by the invention; (C) a requirement that the contractor share royalties with the inventor; and (D) a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, be utilized for the support of scientific research or education.

"(8) The requirements of sections 203, 204, and 205 of this chapter.

"(d) If a contractor does not elect to retain title to a subject invention in cases subject to this section, the Federal agency may consider and after consultation with the contractor grant requests for retention of rights by the inventor subject to the provisions of this Act and regulations promulgated hereunder.

"(e) In any case when a Federal employee is a coinventor of any invention made under a funding agreement with a nonprofit organization or small business firm, the Federal agency employing such coinventor is authorized to transfer or assign whatever rights it may acquire in the subject invention from its employee to the contractor subject to the conditions set forth in this chapter.

"(f)(1) No funding agreement with a small business firm or nonprofit organization shall contain a provision allowing a Federal agency to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the head of the agency and a written justification has been signed by the head of the agency. Any such provision shall clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The head of the agency may not delegate the authority to approve provisions or sign justifications required by this paragraph.

"(2) A Federal agency shall not require the licensing of third parties under any such provision unless the head of the agency determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the funding agreement and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination shall be on the record after an opportunity for an agency hearing. Any action commenced for judicial review of such determination shall be brought within sixty days after notification of such determination.

"§ 203. March-in rights

"With respect to any subject invention in which a small business firm or nonprofit organization has acquired title under this chapter, the Federal agency under whose funding agreement the subject invention was made shall have the right, in accordance with such procedures as are provided in regulations promulgated hereunder to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such a license itself, if the Federal agency determines that such—

"(a) action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

"(b) action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

"(c) action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

"(d) action is necessary because the agree-

ment required by section 205 has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtatined pursuant to section 205.

"§ 204. Return of Government investment

"(a) If after the first United States patent application is filed on a subject invention, a nonprofit organization, a small business firm, or an assignee of a subject invention of such an organization or firm to whom such invention was assigned for licensing purposes, receives $70,000 in gross income for any one calendar year from the licensing of a subject invention or several related subject inventions, the United States shall be entitled to 15 per centum of all income in excess of $70,000 for that year other than any such excess income received under nonexclusive licenses (except where the nonexclusive licensee previously held an exclusive or partially exclusive license).

"(b) (1) Subject to the provisions of paragraph (2), if after the first United States patent application is filed on a subject invention, a nonprofit organization, a small business firm, or an asignee of a subject invention of such an organization or firm, receives gross income of $1,000,000 for any one calendar year on sales of its products embodying or manufactured by a process employing one or more subject inventions, the United States shall be entitled to a share, the amount of which to be negotiated but not to exceed 5 per centum, of all gross income in excess of $1,000,000 for that year accruing from such sales.

"(2) In no event shall the United States be entitled to an amount greater than that portion of the Federal funding under the funding agreement or agreements under which the subject invention or inventions was or were made expended on activities related to the making of the invention or inventions less any amounts received by the United States under subsection (a) of this section. In any case in which more than one subject invention is involved, no expenditure funded by the United States shall be counted more than once in determining the maximum amount to which the United States is entitled.

"(c) The Director of the Office of Federal Procurement Policy is authorized and directed to revise the dollar amounts in subsections (a) and (b) of this section at least every three years in light of changes to the Consumer Price Index or other indices which the Director considers reasonable to use.

"(d) The entitlement of the United States under subsections (a) and (b) shall cease after (i) the United States Patent and Trademark Office issues a final rejection of the patent application covering the subject invention, (ii) the patent covering the subject invention expires, or (iii) the completion of litigation (including appeals) in which such a patent is finally found to be invalid.

"§ 205. Preference for United States industry

"Notwithstanding any other provision of this chapter, no small business firm or nonprofit organization which receives title to any subject invention and no assignee of any such small business firm or nonprofit organization shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency under whose funding agreement the invention was made upon a showing by the small business firm, nonprofit organization, or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

"§ 206. Confidentiality

"Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office.

"§ 207. Uniform clauses and regulations

"The Office of Federal Procurement Policy, after receiving recommendations of the Office of Science and Technology Policy, may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 205 of this chapter and the Office of Federal Procurement Policy shall establish standard funding agreement provisions required under this chapter.

"§ 208. Domestic and foreign protection of federally owned inventions

"Each Federal agency is authorized to—

"(1) apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or interest;

"(2) grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of this title as determined appropriate in the public interest;

"(3) undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal Government either directly or through contract; and

"(4) transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

"§ 209. Regulations governing Federal licensing

"The Administrator of General Services is authorized to promulgate regulations specifying the terms and conditions upon which any federally owned invention, other than inventions owned by the Tennessee Valley Authority, may be licensed on a nonexclusive, partially exclusive, or exclusive basis.

"§ 210. Restrictions on licensing of federally owned inventions

"(a) No Federal agency shall grant any license under a patent or patent application on a federally owned invention unless the person requesting the license has supplied the agency with a plan for development and/or marketing of the invention, except that any such plan may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code.

"(b) A Federal agency shall normally grant the right to use or sell any federally owned invention in the United States only to a licensee that agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

"(c) (1) Each Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a federally owned domestic patent or patent application only if, after public notice and opportunity for filing written objections, it is determined that—

"(A) the interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

"(B) the desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

"(C) exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

"(D) the proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public.

"(2) A Federal agency shall not grant such exclusive or partially exclusive license under paragraph (1) of this subsection if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws.

"(3) First preference in the exclusive or partially exclusive licensing of federally owned inventions shall go to small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

"(d) After consideration of whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced, any Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a foreign patent application or patent, after public notice and opportunity for filing written objections, except that a Federal agency shall not grant such exclusive or partially exclusive license if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

"(e) The Federal agency shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

"(f) Any grant of a license shall contain such terms and conditions as the Federal agency determines appropriate for the protection of the interest of the Federal Government and the public, including provisions for the following:

"(1) periodic reporting on the utilization or efforts at obtaining utilization that are being made by the licensee with particular reference to the plan submitted: *Provided*, That any such information may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code;

"(2) the right of the Federal agency to terminate such license in whole or in part if it determines that the licensee is not executing the plan submitted with its request

for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Federal Agency that it has taken or can be expected to take within a reasonable time, effective steps to achieve practical application of the invention;

"(3) the right of the Federal agency to terminate such license in whole or in part if the licensee is in breach of an agreement obtained pursuant to paragraph (b) of this section; and

"(4) the right of the Federal agency to terminate the license in whole or in part if the agency determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee.

"§ 211. Precedence of chapter

"(a) This chapter shall take precedence over any other Act which would require a disposition of rights in subject inventions of small business firms or nonprofit organizations contractors in a manner that is inconsistent with this chapter, including but not necessarily limited to the following:

"(1) section 10(a) of the Act of June 29, 1935, as added by title 1 of the Act of August 14, 1946 (7 U.S.C. 427i(a); 60 Stat. 1085);

"(2) section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090);

"(3) section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951 (c); 83 Stat. 742);

"(4) section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721);

"(5) section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360);

"(6) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943);

"(7) section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457);

"(8) section 6 of the Coal Research Development Act of 1960 (30 U.S.C. 666; 74 Stat. 337);

"(9) section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b; 74 Stat. 920);

"(10) section 32 of the Arms Control and Disarmament Act of 1961 (22 U.S.C. 2572; 75 Stat. 634);

"(11) subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e); 79 Stat. 5);

"(12) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901; 88 Stat. 1878);

"(13) section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 86 Stat. 1211);

"(14) section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191);

"(15) section 8001(c)(3) of the Solid Waste Disposal Act (42 U.S.C. 6981(c); 90 Stat. 2829);

"(16) section 219 of the Foreign Assistance Act of 1961 (22 U.S.C. 2179; 83 Stat. 806);

"(17) section 427(b) of the Federal Mine Health and Safety Act of 1977 (30 U.S.C. 937(b); 86 Stat. 155);

"(18) section 306(d) of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1226(d); 91 Stat. 455);

"(19) section 21(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218(d); 88 Stat. 1548);

"(20) section 6(b) of the Solar Photovoltaic Energy Research Development and Demonstration Act of 1978 (42 U.S.C. 5585(b); 92 Stat. 2516);

"(21) section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. 178(j); 92 Stat. 2533); and

"(22) section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1360).

The Act creating this chapter shall be construed to take precedence over any future Act unless that Act specifically cites this Act and provides that it shall take precedence over this Act.

"(b) Nothing in this chapter is intended to alter the effect of the laws cited in paragraph (a) of this section or any other laws with respect to the disposition of rights in inventions made in the performance of funding agreements with persons other than nonprofit organizations or small business firms.

"(c) Nothing in this chapter is intended to limit the authority of agencies to agree to the distribution of rights in inventions made in the performance of work under funding agreements with persons other than nonprofit organizations or small business firms in accordance with the Statement of Government Patent Policy issued by the President on August 23, 1971 (36 Fed. Reg. 16887), agency regulations, or other applicable regulations or to otherwise limit the authority of agencies to agree to allow such persons to retain ownership of inventions.

"(d) Nothing in this chapter shall be construed to require the disclosure of intelligence sources or methods or to otherwise affect the authority granted to the Director of Central Intelligence by statute or Executive order for the protection of intelligence sources or methods.

"§ 212. Relationship to antitrust laws

"Nothing in this chapter shall be deemed to convey to any person immunity from civil or criminal liability, or to create any defenses to actions, under any antitrust law.".

(b) The table of chapters for title 35, United States Code, is amended by adding immediately after the item relating to chapter 17 the following:

"18. Patent rights in inventions made with Federal assistance.".

SEC. 3. AMENDMENTS TO OTHER ACTS.—The following Acts are amended as follows:

(a) Section 156 of the Atomic Energy Act of 1954 (42 U.S.C. 2186; 68 Stat. 947) is amended by deleting the words "held by the Commission or".

(b) The National Aeronautics and Space Act of 1958 is amended by repealing paragraph (g) of section 305 (42 U.S.C. 2457(g); 72 Stat. 436).

(c) The Federal Nonnuclear Energy Research and Development Act of 1974 is amended by repealing paragraphs (g), (h), and (i) of section 9 (42 U.S.C. 5908 (g), (h), and (i); 88 Stat. 1889–1891).

SEC. 4. EFFECTIVE DATE.—This Act and the amendments made by this Act, shall take effect one hundred and eighty days after the date of its enactment, except that the regulations referred to in section 2, or other implementing regulations, may be issued prior to that time.

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

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

The motion to lay on the table was agreed to.

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS—CONFERENCE REPORT

Mr. BAYH. Mr. President, I submit a report of the committee of conference on H.R. 10 and ask for its immediate consideration.

Mr. ROBERT C. BYRD. Mr. President there will be some discussion of this conference report throughout the remainder of the day. It is hoped that on tomorrow, a conclusion of the debate can be reached, or perhaps an agreement as to when a vote can occur on the conference report; but I do not anticipate any rollcall vote on the conference report today.

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 amendment of the Senate to the bill (H.R. 10) to authorize actions for redress in cases involving deprivations of rights of institutionalized persons secured or protected by the Constitution and laws of the United States.

Mr. BAYH. Mr. President, I ask unanimous consent that the remainder be considered as read.

Mr. BOREN. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue.

Mr. BOREN. Mr. President——

The PRESIDING OFFICER. The clerk is reading the conference report.

The assistant legislative clerk continued to read the conference report.

Mr. ROBERT C. BYRD. Mr. President, if all Senators will allow me, I should like to call off the reading for just a moment, and then they can object again, if they wish.

I ask unanimous consent that the reading be dispensed with for 1 minute.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. When I said there would be no rollcall votes today, I meant on the adoption of the conference report. I do not foresee a rollcall vote on the adoption of the conference report. There could be a rollcall vote, however, on a procedural matter. So I suggest that Senators not stray too far.

The PRESIDING OFFICER. The clerk will continue reading the conference report.

The assistant legislative clerk continued to read the conference report.

Mr. BAYH. Mr. President, a parliamentary inquiry. Is it proper to request that the clerk sit while reading?

The PRESIDING OFFICER. There is nothing in the rules that indicates whether the clerk should sit or stand.

Mr. THURMOND. Mr. President, we have no objection to his sitting. He will be more comfortable.

The PRESIDING OFFICER. The clerk will continue to read while sitting.

The assistant legislative clerk continued to read the conference report.

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

The PRESIDING OFFICER (Mr. STEWART). 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 o'clock tomorrow morning.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are none.

ORDER FOR THE RECOGNITION OF SENATOR STEVENSON ON TOMORROW AND TO RESUME CONSIDERATION OF THE CONFERENCE REPORT ON THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow after the two leaders or their designees have been recognized under the standing order, Mr. STEVENSON be recognized for not to exceed 15 minutes, after which the Senate resume its consideration of the conference report on the civil rights of institutionalized persons.

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

Mr. ROBERT C. BYRD. Mr. President, has there been any morning business today?

The PRESIDING OFFICER. There has been.

Mr. ROBERT C. BYRD. Has the Journal been approved?

The PRESIDING OFFICER. It has.

THE JOURNAL

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

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

WOOL PRODUCTS LABELING ACT AMENDMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order 700.

Mr. BAKER. Mr. President, reserving the right to object—and I will not—the reservation is to advise the majority leader that Calendar 700 is cleared on our side and we have no objection to its consideration and passage.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

The bill (H.R. 4197) to amend the Wool Products Labeling Act of 1939 with respect to recycled wool, was considered. ordered to a third reading, read the third time, and passed.

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

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-655), explaining the purposes of the measure.

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

PURPOSE

H.R. 4197 would amend the Wool Products Labeling Act of 1939 by substituting the term "recycled wool" for the terms "reprocessed wool" and "reused wool" where these terms appear in the act. H.R. 4197 would also combine the definitions of "reprocessed wool" and "reused wool" into one definition for the term "recycled wool," and appropriately renumber subsections of the act accordingly. The amendments made by H.R. 4197 would become effective 60 days after the date of enactment.

BACKGROUND AND NEED

The Wool Products Labeling Act of 1939, enacted October 14, 1940, provides for a system of labeling wool products introduced, manufactured for introduction, sale, transportation, or distribution in commerce. The failure to label wool products in accordance with the terms of the act is unlawful and is an unfair method of competition and an unfair and deceptive act or practice under the Federal Trade Commission Act.

The labeling terms required in the act are "wool," "reprocessed wool" and "reused wool." The term "wool" as used in the act means the fiber from the fleece of the sheep or lamb, or hair of angora or cashmere goat (and may include the so-called specialty fiber from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from woven or felted wool products. The term "reprocessed wool" as used in the act means the resulting fiber when wool has been woven or felted into a wool product and which, without ever having been utilized in any way by the ultimate consumer, has subsequently been made into a fiber state. The term "reused wool" means the fiber which results when wool or reprocessed wool has been spun woven, knitted or felted into a wool product and which, after having been used in any way by the ultimate consumer, has subsequently been made into a fiber state again.

Since the fiber used in the production of "reprocessed wool" or "reused wool" goes through similar mechanical processes in order to be used in the remanufacture of wool products, the term "recycled" would be substituted for the terms "reprocessed" and "reused" since it more accurately describes the process involved.

The raw material for reprocessed wool comes from wool clippings and other wool products left over from manufacturing processes which is then recycled to its fibrous state. The raw material for reused wool stock comes from wool used in a wool product which has been used by the consumer and is then recycled to its fibrous state. The resulting fibers in each case are fibers of wool which are then made again into cloth, felt or some other wool product. As with wool or other fibers, that recycled wool fiber is frequently blended or combined with other fibers to produce the final product.

The steps in the recycling of wool are as follows:

Wool clippings and wool clothing or other wool products are sorted into more than 200 classifications before they are made into new cloth, felt, or other products. To prepare fibers for recycled wool, discarded wool products are first divided into those in good condition and those in poor condition. Products which are not suitable for fabrics are used for industrial purposes for roofing material.

The processed or used wool products are further graded. Knitted materials are separated from woven goods, woolens from worsteds. Pockets or linings of cotton or other materials are removed. The material is then sorted by color to permit its use where feasible without removing dyes. The material is usually carbonized which removes fibers and is thoroughly scoured to remove all soil and dirt. This makes the material sanitized.

After sorting has been completed, the products are placed in a machine that picks out the fibers used to produce wool stocks. Clippings from cutting tables in garment plants are likewise sorted and graded in preparation for recycling.

Wool cloth, whether of 100-percent wool or recycled wool, is woven or otherwise fabricated in the same way. Wool stocks, both new wool and recycled wool, are blended to produce yarn which is then woven, knitted or blended for felt or other products. Fabrics are washed repeatedly to remove oil that is used to lubricate the fibers and all dirt that may be in the fabrics. The fabric is then dried in an oven at 240°F and sheared, finished, pressed, and ready for the manufacturer or home user.

After this processing, the wool fibers have been recycled, that is, entirely rebuilt into yarn, fabrics, and felt and subsequently into products for apparel or industrial use. Recycled wools are used primarily in heavy winter clothing, gloves, caps, felts and blankets.

The Committee finds that the terms "reused wool" and "reprocessed wool" are unnecessary and often misleading to the consumer. Further, the terms also give a competitive advantage to foreign textile manufacturers who frequently do not comply with the rigid labeling requirements of the Wool Act.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:47 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 521. Joint resolution making additional funds available by transfer for the fiscal year ending September 30, 1980, for the Selective Service System.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

At 2 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 6464. An act to authorize the Secretary of the Army to convey to the Michigan Job Development Authority the lands and improvements comprising the Michigan Army Missile Plant in Sterling Heights, Macomb County, Michigan, in return for two new

office buildings at the Detroit Arsenal, Warren, Michigan; and

H.J. Res. 474. Joint resolution to authorize and request the President to issue a proclamation designating April 21 through April 28, 1980, as "Jewish Heritage Week".

The enrolled bill and joint resolution were subsequently signed by the President pro tempore (Mr. MAGNUSON).

HOUSE JOINT RESOLUTION REFERRED

The following joint resolution was read twice by its title and referred as indicated:

H.J. Res. 521. Joint resolution making additional funds available by transfer for the fiscal year ending September 30, 1980, for the Selective Service System; to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUYE (for Mr. BAYH), from the Select Committee on Intelligence, without amendment:

S. 2597. An original bill to authorize appropriations for fiscal year 1981 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. No. 96-659).

By Mr. INOUYE, from the Committee on Commerce, Science, and Transportation and the Committee on Agriculture, Nutrition, and Forestry, jointly, with an amendment:

S. 1650. A bill to provide for the development of aquaculture in the United States, and for other purposes (Rept. No. 96-660).

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 INOUYE (for Mr. BAYH) (from the Select Committee on Intelligence):

S. 2597. A bill to authorize appropriations for fiscal year 1981 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes. Original bill reported and placed on the calendar.

By Mr. DOLE (for himself, Mr. HATFIELD, Mr. BRADLEY, Mr. MCGOVERN and Mr. BOREN):

S. 2598. A bill to require petroleum produced from the Naval Petroleum Reserves to be sold in exchange for crude oil to be deposited in the Strategic Petroleum Reserve; to the Committee on Armed Services.

By Mr. INOUYE:

S. 2599. A bill to incorporate the Pearl Harbor Survivors Association; to the Committee on the Judiciary.

By Mr. BELLMON (for himself, Mr. MAGNUSON, and Mr. BOREN):

S. 2600. A bill to amend the charter of the U.S. Olympic Committee in order to clarify the provisions thereof relating to resolution of disputes involving national governing bodies; to the Comittee on Commerce, Science, and Transportation.

By Mr. CRANSTON:

S. 2601. A bill to amend section 1(5) of the act of July 2, 1956, entitled "An act relating to the administration by the Secretary of the Interior of Section 9, subsections (d) and (e), of the Reclamation Project Act of 1939" (70 Stat. 483); to the Committee on Energy and Natural Resources.

By Mr. GRAVEL:

S. 2602. A bill to require that a preference be afforded to local residents in employment in certain Federal assisted activities in areas with substantial unemployment, and for other purposes; to the Committee on Labor and Human Resources.

S.J. Res. 166. Joint resolution designating the first week of August 1980 as "National Salmon Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE (for himself, Mr. HATFIELD, Mr. BRADLEY, Mr. MCGOVERN and Mr. BOREN):

S. 2598. A bill to require petroleum produced from the naval petroleum reserves to be sold in exchange for crude oil to be deposited in the Strategic Petroleum Reserve; to the Committee on Armed Services.

(The remarks of Mr. DOLE when he introduced the bill appear earlier in today's proceedings.)

By Mr. INOUYE:

S. 2599. A bill to incorporate the Pearl Harbor Survivors Association; to the Committee on the Judiciary.

● Mr. INOUYE. Mr. President, today I am introducing a bill to incorporate the Pearl Harbor Survivors Association. This measure would bestow Federal recognition on this private nonprofit association but would not affect its legal, corporate, or other status.

The association is comprised of men and women who defended our nation against the historic Japanese attack on the U.S. Pacific Fleet and bases around Pearl Harbor on December 7, 1941. Since 1941, survivors of the Pearl Harbor attack have formed many local and regional groups, and there are now 127 active chapters located in almost every State. Their national organization, the Pearl Harbor Survivors Association, was incorporated in Missouri in 1958.

An estimated 15,000 surviving members of the U.S. Armed Forces served at Pearl Harbor and in the area of Oahu during the December 7, 1941 attack. Of that number, the Pearl Harbor Survivors Association has an active membership of 7,990 men and women. Anyone who was a member of the Armed Forces on Oahu or was stationed aboard a ship located within 3 miles of the island on December 7, 1941, is eligible to join. Members must either have been honorably discharged or still be a member of the Armed Forces. The association conducts regular chapter, district, and State meetings. and a biennial national convention.

The motto of the organization is "Keep America Alert," which the association seeks to accomplish by: First, preserving historical momentos and chronicles of the Pearl Harbor attack; second, protecting graves of Pearl Harbor victims; and third, stimulating Americans to take a more active interest in the affairs and future of the United States. The association has been particularly active in veterans causes and national preparedness.

The association is unique because it will exist only as long as there are Pearl Harbor survivors. In order for the association to be more effective, it is imperative that it be recognized through the granting of a Federal charter. I believe the association fulfills all of the necessary requirements.

I am proud to sponsor this legislation. I wish to insert in the RECORD a statement by the Pearl Harbor Survivors Association. I believe it best summarizes the purposes of the organization:

On that peaceful Sunday morning, December 7th, 1941, an enemy attack force hit Pearl Harbor with all its fury of death and destruction. In only thirty short minutes the attackers accomplished their most important mission; they had wrecked the battle force of the United States Pacific Fleet. We also lost half of the military aircraft on the island. We accounted for ourselves as military, by fighting back, not yet aware that history had been thrust upon us. Pearl Harbor was the actual beginning of the great war which was to change the entire structure of the world. We Americans who were there demonstrated that we were prepared to give our lives, and did give them when necessary. Our sacrifices at Pearl Harbor united the nation and gave rise to a determination to protect and keep the American freedom. Our sacrifice alerted a relaxed nation, brought it to its feet and caused it to win World War II. The lesson we learned by our sacrifice will not be easily forgotten. Many of us are no longer of use as sailors, soldiers, marines, and airmen. We must make ourselves useful at home, by dedicating ourselves to the principles of freedom; by doing everything within our power to bring about a commitment of patriotism. We survivors who are still alive, for those who did not survive, can never permit ourselves to become vulnerable again. Remember Pearl Harbor.●

By Mr. BELLMON (for himself, Mr. MAGNUSON, and Mr. BOREN):

S. 2600. A bill to amend the charter of the U.S. Olympic Committee in order to clarify the provisions thereof relating to resolution of disputes involving national governing bodies; to the Committee on Commerce, Science, and Transportation.

● Mr. BELLMON. Mr. President, I am today introducing with my colleagues, Senator MAGNUSON and Senator BOREN, proposed legislation to amend the Amateur Sports Act of 1978, in order to bring greater finality to the arbitration process which is a central feature of the provisions of the act.

At the time the act was passed by the Congress 18 months ago, it was understood that the arbitration process, mandated by the act, would bring to an end many of the disputes which have plagued the amateur sports scene for years, by providing a domestic forum in which these disputes could be decided on a final and binding basis.

It now appears, however, that there exists a major deficiency in the terms of

the act, and that certain of these arbitrations are not binding or final at all. I refer specifically to the arbitration which recently occurred to determine which of two organizations was entitled to act as the national governing body in this country for the sport of amateur wrestling. After hearings before the American Arbitration Association, lasting for 17 days and involving 2,900 pages of transcript, the arbitrators declared that the U.S. Wrestling Federation, which is headquartered on the campus of Oklahoma State University, was entitled to replace the Wrestling Division of the AAU as the national governing body for wrestling. This arbitral decision was subsequently confirmed by both the Federal District Court and Court of Appeals in Chicago.

Notwithstanding this arbitration award, the AAU has simply ignored the decision, and neither the U.S. Olympic Committee nor the international federation for wrestling, FILA, today recognizes the award. Essentially, the USOC has left the matter up to the FILA, and FILA has said that neither the arbitrators, nor the U.S. courts are competent to decide matters of this kind. This simply is not the kind of result that the Congress had in mind, when it passed the act in 1978.

My amendment to the act would strengthen the arbitral process, by requiring that if an incumbent national governing body loses an arbitration to a challenging organization, it will promptly resign from the international federation—thereby clearing the way for membership by the challenger. There is obviously no way that the Congress can exercise jurisdiction over an international sport federation located abroad, but by requiring a losing incumbent to resign, we would go a long way in bringing greater efficacy to the arbitral process.

I have been advised that on two occasions since passage of the act—most recently last weekend—the incumbent national governing bodies who control the USOC have refused to amend the USOC constitution to accomplish this step. It thus seems to me, Mr. President, that the time has come for Congress to act on the matter.●

By Mr. CRANSTON:

S. 2601. A bill to amend section 1(5) of the act of July 2, 1956, entitled "An Act relating to the administration by the Secretary of the Interior of Section 9, subsections (d) and (e), of the Reclamation Project Act of 1939" (70 Stat. 483); to the Committee on Energy and Natural Resources.

● Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to amend section 1(5) of the act of July 2, 1956, entitled "an act relating to the administration by the Secretary of the Interior of Section 9, Subsections (d) and (e) of the Reclamation Project Act of 1939," (70 Stat. 483).

The effect of this bill would be to expand the options available to the Secretary of the Interior in requiring advance payment for water delivered from Federal reclamation projects.

The 1956 statute requires that the payment for such water be made "in advance of delivery of water on an annual or semiannual basis." This requirement creates tremendous cash flow problems for water districts in some areas, particularly in California. I understand that it also complicates marketing problems for the Water and Power Resources Service of the Department of the Interior.

Recognizing this problem, the Water and Power Resources Service has, for the past several years, required bimonthly advance payments for districts within the service areas of the Federal Central Valley Project in California. It has worked well from the standpoint of both the water districts and the Department of the Interior.

The bill I am introducing today would reconcile the current advance water payment practice in California by expanding the current options of annual and semiannual payment to include bimonthly payment. It is my understanding that the bill would have no negative effect on revenues to the Department of the Treasury.

Both the Water and Power Resources Service and the affected California water districts have expressed a desire for this change in the 1956 law.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 2601

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1(5) of the Act of July 2, 1956, 70 Stat. 483, is hereby amended to read as follows:

"(5) Provide for payment of rates under any contract entered into pursuant to said subsection (e) in advance of delivery of water on an annual, semiannual or bimonthly basis as specified in the contract."●

By Mr. GRAVEL:

S. 2602. A bill to require that a preference be afforded to local residents in employment in certain Federal assisted activities in areas with substantial unemployment, and for other purposes; to the Committee on Labor and Human Resources.

● Mr. GRAVEL. Mr. President, today I am introducing legislation to maximize the impact of Federal spending by requiring local hire on federally financed projects in areas of high unemployment.

In my State, I have often heard complaints that the Federal dollars spent in Alaska in the name of economic development rarely produce jobs for Alaskans. It is difficult to explain to out-of-work men and women why local jobs produced by Federal spending are not available to them. Often these are the only jobs within a 50-mile radius, and yet labor is imported from elsewhere while these able-bodied people sit and watch.

I think the lack of a Federal local hire policy on Government-financed projects has been an oversight. Such a policy would certainly be consistent with other Federal objectives as is illustrated by Federal procurement policy.

The Federal procurement programs assist small communities and depressed communities to achieve economic stability. Many procurement contracts are set aside for minority or small business firms working in labor surplus areas. The set-aside program not only provides the Federal Government with the product or service it needs, but it targets the spending to areas or businesses which will most benefit from the economic activity.

These programs are worthwhile and successful as far as they go. But I believe they have neglected a basic component of real community economic development—local job opportunities. The bill I am introducing takes the Federal procurement policy one step farther by assuring local residents jobs on federally financed projects in areas suffering from acute unemployment.

Mr. President, job development is a critical issue this year. The Congressional Budget Office estimates that unemployment may be as high as 7.5 to 8.5 percent later this year. This increase in unemployment will result in a $25 to $29 billion increase in the Federal deficit. Unless we act to offset the rise in unemployment the deficit will grow at the very time we are feverishly working to eliminate it. By extending our policy of achieving social and economic goals through our spending programs to include national employment objectives we can attack the most acute unemployment without new spending and with no expansion of bureaucracy.

This legislation has been drafted to minimize the bureaucracy necessary to implement the provisions; in fact, the mechanisms are already in place. The Department of Labor which has responsibility for enforcing Federal contracting would be the appropriate lead agency for coordinating local hire through State Employment Offices and Comprehensive Employment and Training Act (CETA) prime sponsors and the various Federal spending agencies. Although the bill requires the submission of an annual report from the executive agencies to the Secretary of Labor regarding the success of the program and recommendations to improve its effectiveness, the success of this program, as with so many programs, will in large measure be dependent on the local Federal officials who enforce local hire on federally assisted projects.

I am not suggesting a new comprehensive employment program; I am not recommending a new spending program; I am suggesting that we can no longer be satisfied with programs created to achieve one goal and one goal only—whenever possible, spending should also create jobs for the severely unemployed.

Local hire on federally assisted projects is an employment initiative we can pursue this year as we seek to reduce Federal spending.●

By Mr. GRAVEL:

S.J. Res. 166. A joint resolution designating the first week of August 1980 as "National Salmon Week;" to the Committee on the Judiciary.

NATIONAL SALMON WEEK

● Mr. GRAVEL. Mr. President, today I am introducing a Senate joint resolution designating the first week in August 1980 as "National Salmon Week."

Salmon is a food source rich in protein, highly nutritious and low in calories. Recent forecasts predict near record returns of adult salmon this season and increased harvests are anticipated.

This resolution will help to focus public attention on the year-round advantages of consuming salmon.

I ask unanimous consent that this resolution be printed in the RECORD.

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

S.J. RES. 166

Whereas in 1979 salmon accounted for $413 million or almost 35 percent of the total value of all finfish landed in the United States; and

Whereas in 1979 almost 535 million pounds of salmon were landed in the United States; and

Whereas more than 2.6 million fresh-water and salt-water anglers in the United States annually spend more than 16 million days fishing for salmon; and

Whereas almost 40 percent of the recreational harvest of fish from salt-water along the Pacific Coast north of Point Conception, California is salmon; and

Whereas in 1979 $403.5 million or 40 percent of the total value of U.S. exports of edible fisheries items was salmon; and

Whereas salmon are highly nutritious, low in calories; and provide a complete protein high in essential amino acids; and

Whereas salmon require much less expenditure of energy per gram of protein produced than many other competing protein sources; and

Whereas salmon, being anadromous and returning from the ocean to freshwater when mature, incorporate the resources of the open ocean where they feed and deliver this protein to our coasts where it can be harvested with reduced expenditure of energy; and

Whereas archaeological evidence indicates that salmon have nourished generations of Americans in the Pacific Northwest and Alaska for thousands of years: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first week of August 1980 is hereby designated as "National Salmon Week" and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week.●

ADDITIONAL COSPONSORS

S. 2335

At the request of Mr. BOREN, the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2335, a bill to amend the Powerplant and Industrial Fuel Use Act to alter certain provisions relating to natural gas.

S. 2487

At the request of Mr. BELLMON, the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 2487, a bill to amend the Internal Revenue Code of 1954 to provide more equitable treatment of independent oil producers, including royalty owners, under the crude oil windfall profit tax.

S. 2503

At the request of Mrs. KASSEBAUM, the Senator from Nebraska (Mr. ZORINSKY), the Senator from Nebraska, (Mr. EXON), the Senator from Iowa (Mr. CULVER), the Senator from North Dakota (Mr. YOUNG), the Senator from South Carolina (Mr. THURMOND), the Senator from Alabama (Mr. STEWART), and the Senator from Minnesota (Mr. DURENBERGER) were added as cosponsors of S. 2503, a bill to amend the Internal Revenue Code of 1954 to provide a refundable credit against income tax for certain interest on agricultural operating loans.

SENATE JOINT RESOLUTION 159

At the request of Mr. DOLE, the Senator from Rhode Island (Mr. CHAFEE), the Senator from Minnesota (Mr. DURENBERGER), and the Senator from Idaho (Mr. MCCLURE) were added as cosponsors of Senate Joint Resolution 159, a joint resolution disapproving the action taken by the President under the Trade Expansion Act of 1962 in imposing a fee on imports of petroleum or petroleum products.

SENATE RESOLUTION 392

At the request of Mr. MAGNUSON, the Senator from Montana (Mr. BAUCUS), and the Senator from Iowa (Mr. CULVER) were added as cosponsors of Senate Resolution 392, a resolution expressing the sense of the Senate that the Board of Governors of the Federal Reserve System should immediately take steps to reduce interest rates.

SENATE RESOLUTION 406

At the request of Mr. EAGLETON, the Senator from New Mexico (Mr. DOMENICI), the Senator from Iowa (Mr. CULVER), and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of Senate Resolution 406, a resolution relating to the need of farmers for emergency credit assistance on reasonable terms and conditions.

SENATE RESOLUTION 408

At the request of Mr. MCGOVERN, the Senator from North Carolina (Mr. MORGAN) was added as a cosponsor of Senate Resolution 408, a resolution to express the sense of the Senate regarding the need to reduce the Federal debt.

AMENDMENTS SUBMITTED FOR PRINTING

FIRST CONGRESSIONAL BUDGET RESOLUTION, 1981—SENATE CONCURRENT RESOLUTION 86

AMENDMENT NOS. 1719 THROUGH 1721

(Ordered to be printed and to lie on the table.)

Mr. BRADLEY (for himself, Mr. JACKSON, Mr. DOLE, Mr. MCGOVERN, and Mr. BOREN) submitted three amendments intended to be proposed by them, jointly, to Senate Concurrent Resolution 86, a concurrent resolution setting forth the recommended congressional budget for the U.S. Government for the fiscal years 1981, 1982, and 1983 and revising the second concurrent resolution on the budget for the fiscal year 1980.

(The remarks of Mr. BRADLEY when he submitted the amendments appear earlier in today's proceedings.)

NOTICES OF HEARINGS

SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

● Mr. STEWART. Mr. President, I wish to announce that the Agriculture Subcommittee on Agricultural Research and General Legislation has scheduled hearings on the recent price volatility in the silver futures market for May 1 and May 2. The subcommittee plans to investigate all aspects of the wild price fluctuations in the silver market.

The subcommittee will hear from invited witnesses, but a limited number of public witnesses will be accepted within the time constraints of the subcommittee.

The hearings will be held on May 1 in room 324 Russell, and on May 2 in room 1202 Dirksen. The hearings will begin both days at 9 a.m.

Anyone wishing further information should contact Denise Alexander of the Agriculture Committee staff at 244-2035.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate today beginning at 10 a.m. to hear administration officials and non-Government witnesses on S. 2141 Re: China Claims; and beginning at 2:30 p.m. to hear administration officials and non-Government witnesses on executive D 96-2, the International Natural Rubber Agreement of 1979.

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

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Energy Research and Development Subcommittee of the Committee on Engery and Natural Resources be authorized to meet during the session of the Senate today beginning at 2 p.m. to hold a hearing on authorization appropriations for civilian programs of the Department of Energy for fiscal years 1981 and 1982.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the

Committee on Rules and Administration be authorized to meet during the session of the Senate today to hold a hearing on Senate Resolution 207, legislation to establish a Select Committee on Narcotic Abuse and Control.

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

ADDITIONAL STATEMENTS

STARRETT CITY, N.Y., AN ENERGY CONSERVATION MODEL

● Mr. JAVITS. Mr. President, in the last few months this body has held extensive deliberations on our Nation's energy crisis and the proposed solutions to our excessive dependence on oil imports. I have advocated strong, mandatory conservation measures as the most immediate and most effective way to reduce our oil imports. At the moment, however, private citizen action is far ahead of the Federal Government which has been moving too slowly and often in the wrong direction.

Today, I wish to inform my colleagues of the tremendous efforts to conserve energy made by the residents of Starrett City in Brooklyn, N.Y. Starrett City is a State and federally assisted housing development which recently held a 3-month energy conservation contest. For the contest, the community was divided into five units, each unit with approximately 1,200 apartments. The residents achieved their savings by changing their habits, by making the small sacrifices Americans will have to learn to live with.

They achieved their goal by turning off unnecessary lights, running their dishwashers only once a day, washing and drying full loads of laundry and defrosting their freezers often. Energy conservation was promoted through newspaper articles, advertising bulletins and a poster and essay contest in the community's public schools. The winning unit, No. 5, led by Mr. Sol Blate, achieved an overall reduction of 7.844 percent in their energy consumption. For their efforts, each of the 1,144 families in the winning unit received a check for $22.

Starrett City is a leader in other fields of private initiative to increase our Nation's energy security. In addition to its conservation efforts, the community plans to build a waste recovery plant that will save its residents $1 million a year in energy costs. Municipal wastes are one of urban America's greatest untapped energy resources, and the Starrett City program should serve as a national model of what is possible.

The nearby Brooklyn Navy Yard already is producing steam from recovered waste; in fact, New York City's waste could fuel another 8 to 10 plants. This innovative work by the residents of Starrett City to promote conservation and develop alternative energy resources clearly illustrates the willingness of Americans to pitch in and help solve our Nation's energy problems.

The real prize for the citizens of Starrett City and all Americans for solving our Nation's energy problems is a better chance for peace. The threat from the OPEC cartel's monopoly of world oil cannot be overstated. The purpose of using our existing supplies prudently and developing new supplies is to loosen OPEC's grip.

The cartel will be broken when the world has sufficient energy supplies long enough to bring down oil prices. Should our quest to assure vast quantities of energy for the 21st century fail, our bleak alternative is an impoverished world and more international political disorder and confrontation.

The residents of Starrett City figured out a way to beat the system of spiraling energy bills and made it a little more likely that the United States can avoid becoming involved in a major international crisis because of our dangerous dependence on the OPEC cartel. I applaud their efforts, for it is appropriate that citizens who have made genuine contributions to enhancing the Nation's security be given the recognition they deserve by their fellow citizens and by the Congress itself.●

AIR SERVICE UPGRADING

● Mr. CANNON. Mr. President, the attached editorial appeared in the March 21, 1980, edition of the Cedar Rapids, Iowa Gazette. It is yet another positive and reinforcing testimony to the virtues of airline deregulation.

I ask that it be printed in the RECORD.

The editorial follows:

AIR SERVICE UPGRADING

When service cutbacks to Chicago by United Airlines were invoked a while back, disapproving thoughts about deregulation of commercial flying gripped a lot of inconvenienced passengers and shippers out of Cedar Rapids. But with Ozark Airlines' recent word of four new flights from here, plus still more flights by Mississippi Valley Airlines, service in reality will register a gain. And virtues of deregulation once again outweigh the faults.

As patient strugglers through the criticism now appraise the end result, Cedar Rapids will have access to more travel out of here on a direct-flight basis than it ever had before on an indirect basis. A documentary comparison supports that in the service picture slated to become effective April 27.

Seats per day: United flights will total 836, down 160 from before. But Ozark's new 1,080 are a gain of 200, Mississippi Valley's 405 a gain of 255. The net is 295 more daily seats, or 2,321 in all.

Departing daily flights: United's cut of two leaves seven going out. Ozark's new additions give it a total of 11. Mississippi Valley's eight more bring the total to 18. Among all three, the 36 flights altogether represent a gain of eight.

This overall improvement tends to vindicate the process of deregulation that has canceled federal permissive mechanisms for the most part out of commercial flight scheduling.

Even under regulation, dropping flights was not a difficult procedure. A carrier could do that on its own initiative with 60 days' notice without any costly procedure of hearings, testimony and a federal last word. So discontinuance has not appreciably been helped or hindered now. United's cutback could have come, regardless.

To add flights or begin new service links when regulation was the norm, however, it required long, expensive, sometimes futile hearings, pleadings and appeals in the face of heated opposition, often, from unhappy carriers competing for the business. Now an airline wanting to extend its service goes ahead and does it, letting the effects of competition work out as they may.

The benefits in what is shaping up for Cedar Rapids late next month have now become apparent, too. Both patience and persistence on the part of the Airport Commission headed by Chairman John H. Chapman, Jr., have paid off in expanded service as the end result.

Promoting easier and faster passenger connections from the new commuter lines to trunks at O'Hare in Chicago remains a challenge still in need of heavy work.●

SUPPLY-SIDE ECONOMICS

● Mr. BENTSEN. Mr. President, the editor of the Wall Street Journal, Mr. Robert Bartley, has just received a well-deserved Pulitzer Prize for distinguished editorial writing.

Mr. Bartley's high standards carry over into the features, reviews, and staff columns on the editorial page, as the Journal's reporting of the development of supply-side economics shows. The Journal was one of the first newspapers to give wide exposure to the emergence of this new school of economic thought and to the importance of this development for public policy and economic growth.

The Journal's high quality of economic coverage is shown in a recent column on "Supply-Side Economics" by associate editor Paul Craig Roberts. As Mr. Roberts points out, supplyside economics has come of age. It is under widespread study by the economics profession and is rapidly being incorporated into the mainstream of economic thought. The Joint Economic Committee, which I chair, has tried during the past 2 years to move our Nation's economic policies along the paths suggested by supply-side theories, emphasizing the need to stimulate savings and investment in order to improve productivity, get more goods on the shelves, and reduce inflation and fight unemployment at the same time.

Mr. Roberts helped formulate some of these ideas as a Hill staff member and he is performing a valuable service by bringing these ideas to businessmen and concerned citizens through his Journal columns. I ask that the article on "Supply-Side Economics" be printed in the RECORD.

The article follows:

SUPPLY-SIDE ECONOMICS

Before you get too pessimistic about our chances of beating inflation and restoring productivity, consider how much economic thinking has changed in the last few years.

Five years ago when Congressman Jack Kemp began talking about supply-side incentive economics, skeptics called him a snake-oil salesman. Reception to "supply-siders" was still hostile a year later when they criticized the economic models being used by the congressional budget committees for assuming that higher government spending was better for the economy than lower tax rates.

At the time there was only a handful of supply-siders. Supply-side economics wasn't a subject taught in textbooks or discussed by professors at conferences. The prestigious proprietors of the Chase, DRI and Wharton econometric models didn't know a thing about it, and the Treasury, the Office of Management and Budget, and the Congressional Budget Office were more or less sure that the subject was unimportant.

Most economists took it for granted that the economy was regulated by the level of demand. Not enough demand meant recession, and too much meant inflation. In this view tax rate changes and fiscal policy affected the economy only by changing the amount of spending. It was simply ignored that tax rates directly affect the supply of goods and services. And so the authorities were pumping up demand with policies that retarded supply, thus contributing to stagflation.

Today all this is changing. Supply-side economics is rapidly gaining ground and picking up new adherents even from the ranks of leading Keynesians. Michael Evans, who developed the Wharton and Chase models, wrote in the February issue of Challenge magazine that "Keynesian models cannot deal with current economic ills because they concentrate on questions of demand." "We need models that stress the supply side," says Evans who is busy developing one.

All of a sudden people are discovering that cutting taxes doesn't necessarily lose the government revenues. Last October DRI economist Allen Sinai told a Paine-Webber audience that tax cuts to stimulate investment weren't inflationary because they were self-financing.

Supply-side economics was the common thread that ran through the Morgan Stanley Conference in November—"the energizer we need to make the 1980s move forward smartly," as T. Rowe Price's Jean Kirk aptly put it. Larry Kudlow, chief ecoonmist for Bear Stearns, supplies Wall Street with a supply-side perspective. And Robert Keleher of the Atlanta Fed introduced the issue into the Federal Reserve System last June with the publication of his paper, "Supply-Side Effects of Fiscal Policy."

In politics the issue is losing its partisan character. The Joint Economic Committee of Congress has moved to a supply-side perspective, carrying along many Democrats concerned about the productivity decline and low savings rates. The first federally-funded supply-side model has just been completed by Michael Evans under contract to the Senate Finance Committee. Now for the first time the committee will be able to obtain its own estimates of the dynamic effects of tax changes on productivity and incentives, giving the committee staff the upper hand over the Treasury's traditional static analysis.

In spite of these inroads some critics of supply-side economics claim that it is nothing more than a fad flashing in the pan. But various developments are likely to give supply-side economics considerable staying power.

One is the renewed interest, sparked by Soviet military advances, in a stronger national defense. Congressmen are quick to realize that the only way to have more defense without having less of everything else is to have a stronger economy.

Another is the broadly based concern about the decline of the U.S. competitive posture in the world. On April 25-26 Harvard University will host an important national conference organized by New York Stock Exchange chairman William Batten, Senator Abraham Ribicoff (D., Conn.) and Harvard dean Henry Rosovsky. Leaders from business, labor, government and the universities will place taxation, incentives, investment and productivity squarely at the top of the national agenda. President Carter and the other principal presidential candidates have been asked to address the conference. Any contender who is not committed to restoring U.S. competitiveness is unlikely to be regarded as a serious candidate.

While events are moving the new incentive economics to the center of the political stage, the research focus of leading economists like Harvard's Martin Feldstein and Stanford's Michael Boskin are moving it into the academic mainstream. At the annual meeting of the American Economic Association in December, there were several well-attended sessions on supply-side economics. More and more economists are finding that high tax rates cause reductions in labor supply, work effort, the savings rate, investment, productivity and economic growth.

Today students are learning about supply-side economics in university and college courses where leading textbooks like James Gwartney and Richard Stroup's "Economics: Private and Public Choice" acquaint students and professors with the supply-side view.

All of this suggests that supply-side economics is not about to fade anytime soon. With rising energy costs, declining productivity and tax-flation eating into American living standards, voters and policy-makers are turning to a supply-side view in their search for a new economic policy.●

ANALYSIS OF BUDGET COMMITTEE RESOLUTIONS

● Mr. GARN. Mr. President, I submit for the RECORD an analysis of the Senate Budget Committee's third resolution on the fiscal year 1980 budget and the first resolution on the fiscal year 1981 budget as it affects Function 150. This analysis, prepared by the minority staff of the Senate Committee on Appropriations, compares the Senate Budget Committee's recommendations with the administration requests on Function 150, given various assumptions concerning reestimates and the status of the fiscal year 1980 appropriations bill. This analysis does not, nor is it meant to, argue for or against any particular level for this Function.

The analysis follows:

ANALYSIS

Next week, the Senate will consider Senate Concurrent Resolution 86, the Third Budget Resolution for FY 1980 and the First Budget Resolution for FY 1981. This Resolution sets forth the Budget Committee's recommendations for the FY 1981 Congressional Budget, and its recommended increases to the FY 1980 Congressional Budget. The first part of this memorandum is an analysis of the recommendations affecting FY 1980, the second part analyzes the recommendations affecting FY 1981.

FY 1980

The Third Resolution as reported by the Senate Budget Committee would increase funding for Function 150 in FY 1980 by $2.1 billion in budget authority and $1.5 billion in outlays. This compares to the Second Resolution on the FY 1980 budget and the House Budget Committee's Third Resolution for FY 1980 as follows:

	Second Budget Resolution	Senate Budget Committee Third Resolution	House Budget Committee Third Resolution
Budget authority	13.1	15.2	15.8
Outlays	8.4	9.9	10.1

The primary question which needs to be addressed relative to this recommendation is whether or not it allows enough room to enable passage of the Conference Report on the Foreign Assistance Appropriation Bill for FY 1980 and/or the various FY 1980 supplementals which fall under Function 150. This question cannot be answered with any certainty until we know what re-estimates, and when, will be accepted by the Budget Committee and then included by them in the scorekeeping system—until that time (the timing of when re-estimates are included in the scorekeeping system is entirely at the discretion of the Budget Committee) we can only make estimates, albeit good ones, about what may or may not be possible under the Third Resolution for FY 1980. Listed below are various possibilities, with various assumptions, which might occur under Function 150 together with its relation to the Third Resolution. The re-estimates used below are preliminary ones, but it is reasonably sure they will not change by any significant degree.

1. Assume enacted to date passage of Conference Report on FY 1980 Foreign Aid Bill, and passage of pay, P.L. 480, and State Department supplementals without accepting any re-estimates:

	Budget authority	Outlays
Enacted to date	$14,481	$9,639
Add Conference Rept	-------	228
Add Pay Supplemental	1,348	31
Add P.L. 480 Supplemental	-------	197
Add State Department Supplemental	-------	20
Total	15,829	10,115

Under this example the Senate Budget Committee's Third Resolution would be exceeded by $629 million in budget authority and $215 million in outlays. It basically matches the House Budget Committee's Third Resolution.

2. Assume re-estimated enacted to date (Note: these re-estimates are accepted and assumed in the President's current budget estimate, but not yet by the Budget Committee).

	Budget authority	Outlays
Enacted to date	$14,481	$9,639
Re-estimate Ex-Im "Mix"	-------	+548
Re-estimate OPIC	-------	−19
	14,481	10,168

Under this example, with no further Congressional action, the Senate Budget Committee's Third Resolution would be exceeded by $268 million in outlays, leaving room for an additional $712 million in budget authority. The House Budget Committee's Third Resolution would be exceeded by $68 million in outlays, leaving room for an additional $1.319 billion in budget authority.

3. Assume re-estimated enacted to date and passage of Conference Report, re-estimated:

	Budget authority	Outlays
Re-estimated enacted, to date	$14,481	$10,168
Add re-estimated Conf. Report	1,082	327
Total	15,563	10,495

These assumptions would cause the Senate Budget Committee's Third Resolution to be

exceeded by $363 million in budget authority and $595 million in outlays. The House Budget Committee's Third Resolution would be breached by $395 million in outlays, but leave room for an additional $237 million in budget authority.

4. Assume re-estimate enacted to date and passage of Conference Report, re-estimated, plus passage of pay, P.L. 480, and State Department FY 1980 supplementals:

	Budget authority	Outlays
Re-estimated enacted and Conf. Report	$15,563	$10,495
Add Pay Supplemental		31
Add P.L. 480 Supplemental	266	197
Add State Dept. Supplemental		20
Total	15,829	10,743

Under these assumptions the Senate Budget Committee's Third Resolution would be breached by $843 million in outlays and $629 million in budget authority. The House Budget Committee's Third Resolution basically matches the budget authority under this example, but it is breached in outlay terms by $643 million.

It is clear from the examples given above that only the first example, using the House Budget Committee's Third Resolution figures, would allow passage of the Conference Report on the Foreign Assistance Appropriations Bill for FY 1980, and the various supplementals pending under this function. It must be emphasized, however, that example No. 1 ignores the inevitable: Re-estimates that will at some time in the future add substantially to outlays. In fact, even if Congress takes no action (including not passing any rescissions) outlays will increase by at least $529 million (the Budget Committee does not yet accept this, but there is no question they will have to at some point in the future). Therefore, while Congress may indeed choose to follow example No. 1, it must be pointed out that eventually re-estimates will have to be accepted which will significantly breach this function.

FY 1981

The First Concurrent Resolution on the budget for FY 1981 as reported by the Senate Budget Committee provides a funding level for Function 150 of $23.4 billion in budget authority and $9.5 billion in outlays. This compares to the House Budget Committee's First Resolution and the President's unre-estimated March budget as follows:

	President's March budget	House Budget Committee First Resolution	Senate Budget Committee First Resolution
Budget authority	18,241	24,000	23,400
Outlays	10,085	9,600	9,500

While at first glance it would appear that the Senate Budget Committee is recommending a $600 million cut in outlays with the House being $100 million higher, an examination of some of the various assumptions used, or not used, together with what re-estimates are used, or not used, presents a very different picture. As the examples will show, the Senate Budget Committee's recommendation is at least a $742 million reduction from the President's re-estimated March budget, and in fact more likely a reduction totaling nearly $1.1 billion. The problems associated with estimating this particular function are complex, and perhaps most of the other functions are more readily and accurately presented. However, the inference of this analysis is that the budget which will be presented to the Senate next week is not in fact a balanced budget, but when you consider what re-estimates will be made down the road, it is probably in deficit somewhere between $8 and $12 billion, or so was the rough estimate given during the Senate Budget Committee's mark-up of this resolution. It is not my purpose here to discuss the overall budget picture, but the fact that we already know that re-estimates will balloon this budget should be laid on the table so that everyone can more clearly understand what the situation is with respect to a balanced budget.

Detailed below is a series of examples using various assumptions which analyzes where the Function 150 recommendation as reported by the Senate Budget Committee sits with likely action on that Function.

1. Assuming the original January President's budget of approximately $16.9 billion in budget authority and $9.6 billion in outlays is the only way in which all of the "requests" could be taken care of under either version of the First Resolution. Assume, however, a re-estimate of this as follows:

	Budget authority	Outlays
President's January Budget	$16,939	$9,612
Add CBO re-estimation of President's January Budget	7,742	326
CBO Re-estimate of Pres. Jan. Budget	24,681	9,938

It is important to point out that this particular example does not assume passage of the FY 1980 Conference Report, which does have a significant impact on 1981. The CBO re-estimates of the January budget consist mainly, in BA terms, of $5.5 billion for the IMF and a re-estimate of the FMS trust fund adding $2.1 billion, and in outlay terms an increase of nearly $300 million in the ESF program. As can readily be seen, even with this assumption, which is the lowest possible, the Senate Budget Committee's targets would be breached in both BA and outlay terms by significant amounts. The House Budget Committee's First Resolution would likewise be breached under this example.

2. Assume the President's January budget with the further asumption that the FY 1980 Conference Report has passed:

	Budget authority	Outlays
Re-estimate January budget	$24,681	$9,938
Add Conference Report	487	224
Total	25,168	10,162

Under this example both the House and Senate targets for Function 150 would be substantially breached. In the case of the House Budget Committee's First Resolution, the targets would be breached in BA by $1.168 billion and in outlays by $562 million. The Senate Budget Committee's First Resolution targets would be breached in BA by $1.768 billion and the outlays by $662 million.

3. The first two examples given in this analysis are, of course, moot, as the President submitted a new budget on March 31. That budget is as follows:

	Budget authority	Outlays
President's March Budget	$18,241	$10,085

The President's March request includes an assumption that the Conference Report for FY 1980 has passed but a few minor items are rescinded together with the add-on agreed to in conference for the Export-Import Bank. This latter fact reduces the Administration's request, using their figures, by $513 million in BA and $270 million in outlays. This March budget has not yet been officially re-estimated, though there are some preliminary re-estimates which should hold up. It is up to the Budget Committee to decide when those re-estimates will be put into the scorekeeping system.

4. Assume the President's March budget re-estimated as follows:

	Budget authority	Outlays
President's March Budget	$18,241	$10,085
Add re-estimates	6,126	157
Total	24,367	10,242

It is important to emphasize that under this assumption the additional amount provided for Ex-Im in the FY 1980 Conference Report is assumed to have not gone into effect. Even at that, under this set of assumptions, which are very probable, the Senate Budget Committee's target would be breached by $742 million in outlays, and $967 million in BA. Put another way, these are the amounts that would have to be cut from the President's request.

5. Assume the President's March budget re-estimated with the further assumption that the Ex-Im amount in the FY 1980 Conference Report is approved:

	Budget authority	Outlays
President's March Budget Request	$24,367	$10,242
Add Ex-Im Conference Report	487	327
	24,854	10,569

Under this set of assumptions, the Senate Budget Committee's First Resolution targets would be breached in outlays by $1.069 billion and in BA by $1.454 billion.

Clearly acceptance of the number as recommended by the Senate Budget Committee for Function 150 will require substantial cuts in the Foreign Aid programs. It is important to note that the most likely scenario is either of the last two examples given, the least of which would require a reduction in administration proposed foreign affairs programs of $742 million. However, it is likely that some additional amount for Ex-Im will be approved for FY 1980 above the $4.1 billion level assumed in the President's March budget, thus making it at least probable that cuts to the foreign aid programs of nearly $1.1 billion in outlays in FY 1981 will be necessary.●

BYELORUSSIAN ANNIVERSARY

● Mr. CHURCH. Mr. President, after the outbreak of the Russian Revolution in 1917, and the establishment of a provisional government, a congress of the Byėlorussian Socialist Hromade was convened in Minsk, the major city of Byelorussia.

That Congress called for the reorganization of the Russian empire as a federative state: Byelorussia was to enjoy autonomous status, with freedom and rights for all its citizens. Now, 62 years later, the dreams of these people have

yet to be realized, for Byelorussia is now one of the 15 Soviet Socialist Republics, having fallen as one of the first victims to the Communist takeover.

The history of the Byelorussian people is a proud and brave one. For centuries they suffered loss of their human rights under the regimes of many tyrants—be they German, Pole, Russian Tzar, or the current Communist government. Yet, in spite of this tortured past, they remain active in their pursuit of freedom, and are true to their traditions.

On March 23 of this year, the Byelorussian-American Communities of the United States gathered in New York City to commemorate the efforts that took place on that momentous occasion 62 years ago, and to renew their pledge to their cause.

They ask that their countryman, Michal Kukabaka, be freed from the prison in which he is currently being held. Mr. Kukabaka has strongly written and spoken in defense of human rights. For this "crime" he has spent more than 6 years in psychiatric prisons.

The Byelorussian community also asks that the Voice of America broadcast its messages in the Byelorussian language—something it currently does not do. I urge that we reconsider this policy.

On behalf of free peoples everywhere, I commend the Byelorussian American community in their quest for human rights. We in America, who often take our freedom for granted, should recall that there are still people within the Soviet Union who would throw off the yoke of oppression, if they could; who seek freedom of speech in the face of imprisonment; who pursue the right to worship as they please within a political system that will not tolerate it.

For it remains an inalienable truth—when people anywhere are denied their basic human rights, it endangers people everywhere.●

RECOGNITION OF A TAXING PROBLEM

● Mr. DOLE. Mr. President, yesterday the Wall Street Journal began a series of articles on the Federal income tax. Right at the outset, the Journal acknowledges the fundamental problem of the interaction of inflation with a progressive tax structure. As noted by Journal reporter John Pierson, "Rates on individual income go up because inflation reduces the value of exemptions, deductions, and credits, which are expressed in fixed dollars."

Mr. Pierson was also kind enough to quote the Senator from Kansas on the subject of inflation and taxes. As the article notes, last year I introduced the Tax Equalization Act, S. 12, which eliminates "taxflation" by automatic adjustments in response to the rise in the Consumer Price Index. This bill is a simple answer to the distorting effect of inflation and it deserves the urgent attention of Congress. Double-digit inflation means a $15 billion to $20 billion increase in personal income taxes. It is no wonder that popular resistance to income taxes is growing.

Mr. President, Mr. Pierson's article goes on to discuss other distorting effects that inflation has on taxes: Discouraging savings and investment, taxing illusory gains, inhibiting productivity, and overstating business income. Each of these problems is of great concern to this Senator, and Mr. Pierson's discussion is thoughtful and worth our attention. Accordingly, I ask that the article, headed "Taxing Problem," be inserted in the RECORD at this point.

The article follows:

POPULAR SUPPORT FADES FOR U.S. INCOME TAXES AS INFLATION LIFTS RATES

(By John Pierson)

WASHINGTON.—No one likes to pay taxes.

Yet, as taxes go, the one the U.S. government puts on income has long been praised as the best treaty possible among man's ever-warring demands for fairness, simplicity and economic sense. Since World War I, what's more, the federal income tax has supplied the main source of nourishment for a growing national government.

But support for the income tax is slipping away. Seven out of 10 Americans say it is too high, compared with five out of 10 two decades ago. The experts, too—economists, tax lawyers and politicians—have begun to doubt whether it can work in the future.

This decline in support has many causes. But two stand out: inflation and lagging investment.

"Inflation has undermined much of the moral support for income taxation," says James Wetzler, chief economist for Congress' Joint Committee on Taxation. Observes Harvard University economist Martin Feldstein: "We really do discourage savings and investment, in part because we have so much reliance on income taxes."

VARIOUS PROPOSALS

Proposed remedies being considered in Congress range from drastic to mild. Some people want the government to stop taxing income and start taxing consumption. Others would "index" the tax code to eliminate the effect of price changes. Still others seek huge cuts in income-tax rates.

More-traditional cures include faster write-offs for business structures and equipment, and tax breaks for interest income and dividends. Although President Carter still contends that a balanced budget is a better remedy for inflation than a tax cut, Republicans and some congressional Democrats hope to force additional tax reduction before the November elections.

Whether any of these tax remedies would help cure the ills of inflation and under-investment is in dispute, however. They could make things worse, some experts fear. Even where critics concede that a particular tax change would help slow price rises or quicken investment, some say the tax code would end up less fair, less simple, less efficient—a price they are unwilling to pay.

Inflation and lagging investment are like two bad children who keep urging each other on to worse and worse behavior. Inflation raises taxes on labor and capital and discourages work and investment. Less work and investment lead to less supply to meet demand, hence higher prices. They also result in lower productivity and lower real inflation-adjusted wages, which spur workers to demand higher pay. Employers, in turn, raise prices.

WHAT THE TROUBLE IS

And so on, round and round, worse and worse, until the public and the politicians—parents of these bad twins—begin to think it is time for a spanking. Before grabbing the paddle, let's take a closer look at the mischief.

Inflation acts on taxes in two ways. It twists the tax base, the measurement of income, out of shape. And it subjects that mismeasured income to a higher tax rate.

Rates on individual income go up because inflation reduces the value of exemptions, deductions and credits, which are expressed in fixed dollars. The personal exemption, for example, is set at $1,000, but a 10 percent rise in prices reduces its real value to $900. The tax brackets, from 14 percent to 70 percent are also set in fixed dollars. A single person owes the government 24 percent of any taxable income between $10,800 and $12,900. Between $12,900 and $15,000, he owes 30 percent.

Thus a pay raise, aimed at keeping someone even with inflation, can push him into a higher bracket and leave him with less real spending power. Overall, "bracket creep" will raise taxes perhaps $15 billion this year.

DAMAGE TO INCENTIVES

"Why should a man or woman try to become more productive on the job, in expectation of bettering his or her financial position?" Sen. Robert Dole asks. "Not only does the government undermine the value of each additional dollar earned by its working people, it proceeds to allow the tax rates on those dollars to rise automatically," the Kansas Republican says. He has sponsored one of many bills that would, as prices go up, increase the personal exemption, standard deduction, tax brackets and other fixed-dollar amounts.

Less familiar than the bracket creep but, many experts think, more important is the way inflation distorts the measurement of income—the tax base. For labor income, the mismeasurement is relatively small, because most people pay taxes on their wages or salary once a year. But for income from capital assets, often held for many years, the distortion can be great.

An investor, for example, buys stock for $1,000, and five years later sells it for $1,500. His apparent gain: $500. Meanwhile, prices have risen 50 percent. His real gain: zero. Yet the government taxes his $500 capital "gain." In the same way, interest on savings accounts and bonds is taxed as ordinary income, even though 10 percent inflation turns 5 percent interest into a 5 percent loss.

Congress tried, in 1978, to offset the overstatement of income from the sale of stocks, real estate and other capital assets. Among other things, it increased to 60 percent from 50 percent the amount of long-term gain that can be excluded from taxable income.

Inflation also causes overstatement and overtaxation of business income because usually the buildings and machinery that a company uses to produce income, as well as some materials, last more than one year and are deducted over more than one year. But if prices are rising, deductions based on original cost don't keep up with replacement cost.

For example, a corporation that buys a machine for $10,000 and writes it off $1,000 a year for 10 years doesn't get the full benefit of those deductions in a period of inflation. In the 10th year, for instance, the $1,000 deduction is worth only $508 in terms of the dollars originally invested, if inflation averages 7 percent annually over the decade.

In the case of materials, many companies soften the effect of inflation by using last-in-first-out accounting (LIFO), which bases tax deductions on the price last paid for similar items. In the case of buildings, Congress has tried to offset inflation by permitting businesses to deduct wear and tear over fewer years than it actually occurs and to take more than a single year's depreciation in each of the early years of a building's tax life. Business machinery gets accelerated depreciation, too, plus an investment credit.

ILLUSORY PROFITS

But in years of high inflation, inventory and depreciation deductions still have a way

of falling behind replacement costs. Corporations had pretax profits of $237 billion last year. But, according to the Commerce Department, $58.5 billion of that reflected inadequate inventory and depreciation deductions. Federal and state income taxes on those inflated profits totaled $92.7 billion. Thus, inflation turned an apparent income-tax rate of 39.1 percent into a rate of 51.9 percent.

While inflation raises business taxes, it also reduces them by paring the real cost of repaying loans. A lender's inflation loss is a borrower's gain, especially if inflation turns out to be more than expected when the interest rate was stipulated. Whether a company is a net gainer or loser from inflation depends on how much of its business is financed with debt and how much with equity, as well as the age of its capital stock and the way it accounts for inventories.

Economists Sidney Davidson of the University of Chicago and Roman Weil of Georgia Institute of Technology studied 30 industrial companies and concluded that taxable incomes in 1974 would have been higher for nine and lower for 21 if all inflation effects had been eliminated. But all 24 utilities studied would have shown higher taxable income, mainly because their financing relies so much on debt.

While inflation lowers taxes on some companies and raises taxes on others, the overall effect on corporations is harmful. According to Harvard's Mr. Feldstein, inflation raised the 1977 tax burden on income from corporate capital by more than $32 billion.

The overstatement of income from capital is more critical than inflation's tendency to push labor income into higher brackets because bracket creep is easier to correct. Congress has "cut" the individual income tax six times in the past 20 years, in part to offset the "inflation tax" on wages and salaries. In fact, total individual income taxes are almost as low now as they would be if they had been adjusted for the inflation that has occurred since 1960.

But tax reductions for capital income, which have been part of most tax bills, haven't kept up with inflation. Mr. Feldstein estimates that the effective tax rate on capital income of nonfinancial corporations rose to 66.3 percent in 1977 from 62.8 percent in 1960.

Thus, inflation has turned the tax on income from capital into a tax on capital itself, into a wealth tax. And because Congress has contented itself mainly with cutting rates on capital income rather than with correctly measuring the base, the relief has been arbitrary. It has aided, without distinction, holders of all capital assets regardless of how much inflation has hurt them.

BREAK FOR SAVERS

Savings accounts had been ignored altogether until Congress recently passed—as part of a bill imposing a "windfall profits" tax on U.S. oil companies—a tax break that will permit individuals to escape tax on up to $200 of interest or dividend income (up to $400 for couples). Nor has Congress been willing to count as income, and thus to tax, the gains that borrowers receive from inflation. On the contrary, interest expense is deductible, regardless of how much of it represents inflation.

The overtaxation of capital income because of inflation is said to be one of the reasons investment is lagging in the U.S. But it is too simple just to say "investment is lagging." Last year, business fixed investment was 10.6 percent of gross national product, high in the 8.5 percent to 11 percent range since World War II.

But the investment hasn't kept pace with the labor force, which has grown 28 percent in the past decade, compared with 19 percent in the preceding 10 years. That has driven down the ratio of capital to labor and has coincided with a decline in the growth of productivity (output per man-hour) in the private, non-farm economy from 2.25 percent a year between World War II and 1973 to less than 1 percent since then. More productivity is one of the few ways wages can grow relative to prices.

According to some observers, though, the problem isn't that we overtax capital—savings and investment—but that we tax it at all. This line of thought began with philosopher Thomas Hobbes (1588–1679), who maintained that people who save are helping society more than people who consume. Economist John Stuart Mill (1806–1873) said it was unfair to tax income from savings because savings come from income taxed already

CONSUMPTION TAXES

More recently, President Ford's Treasury Department and Britain's Meade Committee argued that both fairness and the economy would be served by switching from a tax on income to a tax on the part of income that is consumed—exempting savings. The U.S. tax system already contains examples of this kind of "consumption tax." Savings in the form of contributions to pension funds, and the income on those funds, aren't taxed until withdrawn.

The big argument between the income- and consumption-tax schools concerns the response of savings and investment to changes in the after-tax return on capital. The consumption-tax school says that the response is significant, that lower taxes on savings would mean more savings, investment, productivity and real wages.

The income-tax school doubts that savings and investment change much with taxes. But even if they do, income-tax supporters say, moving toward a consumption tax would make the tax code less fair because the poor consume more of their income than the rich. The proper target of taxation, they add, isn't consumption itself but the power to consume, even when consumption is temporarily forgone in favor of savings.●

DISTRICT OF COLUMBIA VOTING RIGHTS

● Mr. INOUYE. Mr. President, as Senator from Hawaii, I would like to express my appreciation to the Hawaii State Legislature for ratifying the District of Columbia Voting Rights Amendment. By a vote of 37 to 12 our State house of representatives took that action late Thursday. The State senate had acted earlier.

The people of Hawaii remember their struggle for the privileges of full citizenship rights and appreciate the opportunity to assist others who have been too long denied those rights. I am proud that my State has now demonstrated leadership in seeking to assure to the people of the District of Columbia, who so well deserve them, their full citizenship rights.

The District of Columbia has been part of our Nation for over two centuries. The almost three-quarters of a million inhabitants, almost as many as we have in the State of Hawaii, desire the opportunity to exercise their voting rights as do all Americans.

In becoming the ninth State to ratify the amendment, Hawaii has just marked an important milestone in that struggle. It will be a proud day when that amendment is finally ratified by the necessary three-fourths of our States. I am pleased Hawaii is now among that number.●

BUSINESS AS PROBLEM SOLVER

● Mr. GOLDWATER. Mr. President, the size of Government and the ever expanding burden of regulation confronts the American business community with enormous problems in years ahead. Some executives expect many changes and are giving serious thought to how their enterprises will deal with those changes—especially changes wrought by the role of Government. One of these officials who has given much consideration to subjects pertaining is Sam Segnar, the incoming President of the Gas Processors Association. In a recent article in the Oil & Gas Journal, Mr. Segnar points out that business must repair itself for a new role to handle the problems.

Mr. President, I ask that the article about Mr. Segnar and his views be printed in the RECORD.

The article follows:

NORTHERN'S CHIEF SEGNAR SEES BUSINESS AS PROBLEM-SOLVER

Sam Segnar expects many changes in the next decade.

Some can be anticipated, but many will be complete surprises.

Segnar, president and chief operating officer of Northern Natural Gas Co., Omaha, is the incoming president of the Gas Processors Association (GPA).

Slated to take over as chief executive officer of Northern, a diversified, energy-based corporation, Segnar thinks the years ahead will be "exciting—but we'll have to change how we manage, particularly how we deal with government."

Changing government role. Business has witnessed the changing role of government during the past several years. Although the change may not be completely understandable, there's no denying that government continues to grow increasingly bigger, more influential, and more powerful.

"During the past 20 years," Segnar says, "new societal concerns for environmental protection, worker safety, equal employment opportunity, consumer protection, and energy have been added to a growing list of governmental responsibilities. Many long to return to a simpler America when there were fewer regulations and enterprise was freer."

He agrees that the idea of returning to a free market society is attractive but doubts that the nation's going to back up. The government and the American system of free enterprise have changed, according to Segnar,, and business cannot succeed by battling government head on.

"Many in business are fighting to save the free enterprise system as they remember it," he says, "but in fact, the system and the role of government has changed. Business management also must change in order to be successful in the 1980s."

The fundamental change, says Segnar, is the shift from a way of life based upon individualism to more emphasis on group concerns and issues. Public pressure has been instrumental in focusing governmental attention on specific societal problems, and government has responded by legislating answers.

"Most would agree the problems are real. Protecting the environment, worker safety, equal employment opportunities, concern for energy, and care of the poor and elderly, are all legitimate social concerns. In the age of individualism, charity was often the answer. But modern American society has decided government can and should provide more effective answers."

New business role. Segnar notes that government turns to business as the agent to solve these problems, recognizing that business is best equipped to deal efficiently with the often complex issues.

Congress, after absorbing the public's demands, often creates or expands a bureaucracy to regulate or force business into solving a specific problem.

Although many argue the system isn't perfect, it does work. Significant progress has been made as a direct result of this partnership of government and business.

"Businessmen should recognize that government has changed because society and conditions have changed," says Segnar.

"We should concentrate on making the system work. The role of government, the role of business, and the relationship between the two has changed dramatically in the 200 years since we've started, and we can't expect to go back.

In Segnar's view, America in the 1980s will see more public pressure on government to have business develop more cures for society's problems. Government is likely to become established as the agency to decide which public problem business will be expected to solve. Demands on business to assume the major burden of solving these problems will grow, even though they may have little or nothing to do with the goods and services normally offered.

Americans, says Segnar, apparently are willing to ask business to trade off productivity for solutions to common problems. The costs of these solutions, he adds, will be passed through the marketplace to the public. "It will be increasingly important to balance these needs against business' need to remain competitive in world markets."

Segnar notes that businessmen are in the best position to solve these problems because they have the required knowledge and capability.

"After all," he says, "problem solving is what management is all about."

Rather than attacking the problem by attacking government, business will succeed only when it attacks the problems.

Acting on changes. Recognition of the changing roles and demands on business and government is important to success in the 1980s.

Segnar believes understanding these changes is critical and "it's irrelevant whether you like a change or not as long as you understand it." The question then becomes one of how to best deal with the solution.

The successful business manager of the 1980s will pay attention to public opinion. There are many ways to deal with changes but Segnar recommends "staying in touch with trends, knowing how and why the government works, planning as far ahead as you can, and getting involved in helping to make the system successful."

Segnar comments that the traditional business lobbyists in Washington are necessary to make sure Congress understands both sides of complex issues. But a new and perhaps more effective role will be in working with government bureaucrats rather than politicians.

Once legislation is enacted, the government's staff typically is buried in the problems of translating law into a workable program. Rather than a hopeless mess, this may represent an opportunity for business to step in and provide the expertise needed to develop workable and effective programs.

"I'm confident," Segnar adds, "that businessmen, working with government, can help implement these programs without the duplications and conflicts we see today.

"Business has the expertise and knowledge to solve any problem," Segnar concludes, "and the role of business and government is so interrelated, we cannot afford to attack each other. I'm confident that we can succeed in the 1980s."

The man. Segnar is a native of Arkansas. He attended Texas A&M University and the University of Oklahoma, receiving a degree in mechanical engineering in 1950, following military service in Korea.

He also attended the University of Mississippi and completed the Harvard Graduate School of Business Administration advanced management program in 1967.

Segnar began his professional career as a machinist's helper in a refinery owned by Cities Service and Continental Oil companies. He later was a draftsman and engineer for the same organization.

He began his pipeline engineering and construction activities in 1953. For the following 7 years, this included extensive office and field work on major and minor river crossings, cross country, offshore, marsh, and mountain installations, automated compressor stations, pump stations, and tank farms.

He joined a Northern subsidiary, Northern Gas Products Co., as manager of engineering and construction in 1961. He was named manager of employee relations for Northern Natural Gas Co. in 1963, vice-president of administration in 1966, assistant to the president in 1969, and group vice-president of liquid fuels in 1971.

The liquid fuels group consists of Northern Gas Products Co., Northern Propane Gas Co., United Petroleum Gas Co., Northern Helex Co., Hydrocarbon Transportation Inc., Weskem Corp., Northern Liquid Fuels International Ltd., and Protane Corp. Protane Corporation consists of several subsidiary companies operating in the Caribbean Islands and Latin America.

Segnar was elected president of Northern Natural Gas Co. in 1976. He serves on the corporate planning committee, investment committee, policy committee, compensation committee, and the board of directors of the company.●

EAST-WEST ACCORD COMMITTEE PROPOSES MILITARY NONINTERVENTION PACT

● Mr. McGOVERN. Mr. President, the American Committee on East-West Accord, a nonpartisan organization of prominent Americans concerned with the issues of United States-Soviet relations, recently issued a strong condemnation of the Soviet Union's military intervention in Afghanistan and proposed a new American diplomatic initiative to prevent future direct or proxy interventions. The proposal calls on the United States to explore the feasibility of proposing a military nonintervention agreement between the United States and the Soviet Union to close the loopholes in the 1972 basic principles agreement.

The committee's proposal and background paper are constructive alternatives to the current state of dangerous confrontation between the superpowers and they deserve serious consideration in the Senate.

I ask that the text of the proposals be printed in the RECORD.

The texts follow:

TEXT OF PROPOSALS

The American Committee on East-West Accord deplores the massive invasion and the use of Soviet combat forces in Afghanistan because it increases the danger of superpower confrontation and the possible escalation to nuclear war. New foreign policy initiatives and ground rules are urgently needed to arrest the rising tensions and to prevent future use of combat forces—the most dangerous element, leading to possible U.S.-Soviet nuclear confrontation.

As a first step, the American Committee, co-chaired by George F. Kennan, John Kenneth Galbraith and Donald Kendall, and whose President is Robert D. Schmidt, today called for an immediate and wide-ranging exploration by the governments of the United States and the Soviet Union of the measures necessary to negotiate a "Military Non-Intervention Pact" banning the use of combat forces directly or indirectly in Third World countries.

Under the proposed "Military Non-Intervention Pact", based on the attached background paper, both countries would agree:

Not to intervene directly with their own combat forces;

Not to facilitate intervention by combat forces of a proxy state or states;

Not to support the direct or covert use of mercenary, paramilitary forces, or so-called volunteer forces;

Not to respond with combat forces even if one of the states in the Third World territory should request such assistance.

Initially such a pact could apply to the geographic regions of Africa, the Middle East, the Subcontinent, Southwest and Southeast Asia. The negotiation of a bilateral pact could then serve as an example for consideration by other states.

The American Committee fully realizes that negotiation of a "Military Non-Intervention Pact" between the U.S. and the U.S.S.R. would be arduous and complex; yet the consequences of following the present course pose the ultimate danger.

All the other nations of the world, with the exception of China, want an end to U.S. and Soviet military confrontation. This includes all the states of Western and Eastern Europe, and the Third World states, whether pro-Soviet, pro-U.S., or non-aligned.

In the area of arms control, the American Committee urges:

An immediate return to arms control negotiations starting with a joint pledge to abide by the terms of the SALT I and SALT II agreements;

A freeze on the deployment of any additional strategic nuclear weapons;

A ban on testing of nuclear weapons;

And negotiations on the deployment of U.S. and U.S.S.R. medium-range nuclear weapons in Europe.

The American Committee calls for an early withdrawal of Soviet forces from Afghanistan combined with international guarantees against further intervention, permitting the formation of a neutral non-aligned government. In this connection the Committee notes with favor the initiatives of the British Government in the Common Market, the letter of President Tito to Presidents Brezhnev and Carter, the joint French-Indian communique, and similar efforts by non-aligned states.

The Committee also supports the exploration of a negotiated framework providing international guarantees to prevent military intervention in the Persian Gulf to insure the continuing flow of oil through normal commercial means to all states.

The American Committee supports a return to even-handedness in U.S. policies toward the U.S.S.R. and China, granting no special advantages to either state which are not granted to the other.

Further, the American Committee supports a greater U.S. effort to involve the United Nations in issues of world security, with special emphasis on strengthening and using U.N. machinery for international peacekeeping and observer forces in negotiating the resolution of conflicts.

BACKGROUND PAPER: PROPOSAL FOR U.S.-SOVIET MILITARY NON-INTERVENTION PACT

In the postwar era, both the U.S. and the U.S.S.R. frequently engaged in open and covert military intervention, the most recent being the deplorable Soviet invasion of Afghanistan. Among the places the U.S. intervened with its military forces, directly,

were Lebanon, the Dominican Republic, Vietnam, and Cambodia; and covertly in the Congo, Cuba, Guatemala, and Laos. The Soviet Union not only invaded Hungary, Czechoslovakia, and Afghanistan, but provided airlift, sealift, and military equipment for the proxy military intervention of Cuban forces in Angola and Ethiopia, and Cubans and East Germans in South Yeman. Further, the Soviets assisted Vietnamese forces in Cambodia.

With each of these military interventions came an increase in tensions between the powers. There is a long history of attempts to deal with concepts of military non-intervention; the principles are on record, and the intent is clear. They are contained in the non-intervention articles of the United Nations Charter, in the Basic Principles of U.S.-Soviet Conduct, signed in Moscow in 1972, in the Helsinki Accords, in the resolutions of peaceful coexistence approved by the non-aligned nations, and many other documents. But it is clear that, despite their merit, these principles have not prevented military intervention by the two great powers. There is a need for a more precise set of ground rules.

Continuing competition between the U.S. and the U.S.S.R. is inevitable. But the competition needs to be constrained by a code of conduct, if we are to survive. President Brezhnev says: "We make no secret of the fact that we see detente as the way to create more favorable conditions for peaceful communist construction". But neither U.S. nor Soviet military intervention has been "peaceful". Soviet leaders have been saying for years that they would give support to liberation movements throughout the world. The goal here is to spell out peaceful competition and to eliminate intervention by combat forces.

The U.S. has had the experience of living through a period when it did not engage in military intervention. From 1975 to 1980 the U.S. did not send its combat forces into action anywhere in the world. The U.S. had a covert paramilitary program in Angola, but this was closed down by Congress in 1975. Recently, however, advocates of military intervention in the United States have been moving to ascendancy. The Soviet invasion of Afghanistan has provided impetus for a greater increase in the defense budget, a quest for new military bases in the Middle East and the Persian Gulf, the creation of a rapid deployment force, the "unleashing" of C.I.A. covert operations, and less emphasis on arms control. The proponents of intervention refer to the post-Vietnam era of non-intervention as the "Vietnam syndrome".

The concepts of security developed after World War II have become obsolete. Soviet aspirations for world hegemony may linger in the minds of a few old Bolsheviks, but for many Russians, they died long ago. This is especially true of the young. Thirty million Russians were killed or crippled in World War II. It is not an overstatement to say that the Russians understand the consequences of war, even more fundamentally than Americans.

It is important to recall, too, that all the other nations of the world, with the exception of China, want an end to U.S. and Soviet military confrontation. This includes all the states of Western and Eastern Europe, and the Third World states, whether pro-Soviet, pro-U.S., or non-aligned. A military non-intervention pact would be welcomed enthusiastically throughout most of the world.

The Afghanistan invasion and U.S. reaction to it have sharpened awareness of the danger represented by military intervention by either superpower. Any such use of combat forces raises the odds for nuclear war because it escalates tensions between the superpowers. The consequence of such an increase in tensions is likely to be a nuclear alert. Such alerts are progressively more dangerous as nuclear weapons technology advances to first-strike capability, especially because they may trigger accidental war. What is needed is a pact between the two powers to refrain from intervention with combat forces anywhere in the Third World. Such a pact between the United States and the Soviet Union could set an example for other states.

In order to be effective, a U.S.-Soviet military non-intervention pact would require a total ban, without exception, of the direct and indirect intervention by combat forces, by either of the powers, in the Third World. This would mean that neither power could respond with combat forces, even if a state in the Third World territory should request such assistance. A pact such as is suggested does not cover the full range of forms of military intervention; for example, military aid programs, non-combat military advisors, arms trade, and small arms gun-running. But were the superpowers to mke progress on the most dangerous aspects of military intervention, it might be possible in time to limit other forms of intervention.

Initially, the geographic boundaries of such an agreement should include Africa, the Middle East, the Subcontinent, Southwest Asia, and Southeast Asia. Both powers would agree not to intervene in these designated Third World areas with their own combat forces, nor would they facilitate intervention by the combat forces of proxy states, nor would they support the covert or direct use of mercenary, paramilitary, or so-called volunteer combat forces. (It should be noted that covert paramilitary intervention does not remain secret or unattributable once combat begins.) U.S. and Soviet intelligence can easily ascertain the source of support for such combat operations. Existing intelligence is adequate to verify compliance with a military non-intervention pact.

It is recognized that it may be difficult for the two powers to control military intervention in the area by friendly states. For example, the Cuban government has claimed that it intervened at its own initiative in Angola and Ethiopia. The fact is, however, the Cuban forces were armed and equipped by the Soviet Union, and were airlifted to Africa in Soviet planes. The Vietnamese troops which invaded Cambodia were not only armed and equipped by the U.S.S.R., but they were accompanied by Soviet military advisors. Israel has invaded Lebanon several times using planes, tanks, and rockets provided by the United States. While it is true that the U.S. and the U.S.S.R. may not have full control over such interventions, both powers certainly have the means to make their opposition to such intervention unmistakable. They both have the power to withhold future military or financial assistance if their views are ignored. Furthermore, both powers together could have influence on the interventions of third powers. For instance, France has used its military forces to intervene directly several times in Africa, and China has invaded North Vietnam.

Specific action proposals for a Military Non-Intervention Pact should be prepared not only by the governments of the U.S. and the U.S.S.R., but should be studied by other governments as well. In the United States, such a pact needs urgent study, discussion and debate in Congress, the universities, the international research centers, and the press. There is a need for fresh and responsible thinking to contribute to this effort.

One should not be under any illusion that conclusion of a bilateral agreement for the superpowers to keep their combat forces out of Third World countries could be accomplished in the immediate future. The concept will require careful analysis by the Administration, and then careful preparation for negotiations. The effort should be seen as a first step in reversing the dangerous trend in U.S.-Soviet relations. Such negotiations will be complex and arduous; yet the consequences of following the present course pose the ultimate danger.

A military non-intervention pact between the U.S. and the U.S.S.R., though separable from the security benefits derived from strategic arms limitation, would facilitate the successful negotiation of substantial reductions and qualitative controls of nuclear weapons. It would enhance the political climate for arms control and other mutually beneficial programs in both Washington and Moscow, and contribute significantly to the avoidance of war.●

AIRLINE DEREGULATION

● Mr. CANNON. Mr. President, I submit for the RECORD a commentary which appeared in the Crawfordsville, Ind., Journal-Review on February 28, 1980. It highlights the economic burden of excessive Government regulation and praises the Civil Aeronautics Board, and implicitly, airline deregulation, for efforts at reducing this cost burden.

The commentary follows:

OVERREGULATION COSTS $100 BILLION

It is ironic that government regulation, which has as its purpose to make the marketplace more equitable for buyers and to sellers, has actually eliminated many of the bargains. As businessmen, we must deal each day with the thousands of regulations imposed by government in response to the perception that the private sector is in violation of the public good. Yet we witness increased costs to consumers and often denial of products that have value to the public.

Small business people find themselves stifled by the mass of government regulation. A report of a subcommittee of the Committee on Small Business of the United States House of Representatives determined that overregulation is discouraging competition because smaller companies cannot afford the cost of keeping track of and complying with all of the rules. That cost is estimated at more than $3,600 per year for every small business person.

The economic burden of excessive regulation is a matter of great concern to those of us in the business community for two reasons. First, the capital we must invest to comply with regulations cannot be used for new plants and equipment. Second, the cost of all regulation is passed on to the consumer.

It has been estimated that, for every dollar the government spends to enforce regulation, 20 are spent to comply . . . by some estimates as much as $100 billion in 1979. An average of $2,000 for each family of four!

Some regulations are necessary of course. Those of us who live on a residential street insist on a speed limit for the safety of our children and ourselves. In many instances we expect government to step in at times when a few members of the business community—or other segments of society—fail to recognize their responsibilities. However, government has moved from the position of referee to that of the opposing team.

Congress, the regulatory agencies, the public, and the business community all have a role in the reform process. The Congress must assume veto power over regulations and enact sunset legislation, establishing the date upon which each regulatory body will be terminated. Those in the federal agencies should take their cue from the Civil Aeronautics Board and devote some of their energies to reducing or eliminating regulatory functions.

But those of us in the business community have the greatest responsibility. We must work with the regulators to develop reasonable goals and the means to achieve them. We must not yield to the forces of big government. Business is not, and never was intended to be, a partner of government. The first duty of every man and woman in this country who considers himself or herself a bonafide business person, is to preserve the lifeblood of this nation—the free enterprise system—and to do it by example. When that happens, the need for regulation will be reduced, dramatically.●

SCIENTIFIC RESEARCH TODAY

● Mr. SCHWEIKER. Mr. President, my distinguished colleague Senator HATCH, who serves with me on the Senate Health and Scientific Research Subcommittee, recently spoke before a joint meeting of the Association of American Universities and the National Association of State Universities and Land Grant Colleges.

I have had the pleasure of reviewing his remarks and find them a refreshing and insightful review of the importance of federally supported scientific research in our country. Senator HATCH has worked very hard with other members of the Health and Scientific Research Subcommittee on the reauthorization legislation our subcommittee considers each year on the National Science Foundation, and so the state of our research and development efforts have been very important to him. I commend his remarks to our colleagues, and I look forward to working with Senator HATCH again on the fiscal years 1981 and 1982 authorization for NSF. I ask that the article be printed in the RECORD.

The article follows:

SPEECH OF SENATOR ORRIN G. HATCH

Ladies and Gentlemen: Thank you very much for inviting me to share some thoughts and observations with you this evening about science, government, and the extremely vital role our nation's universities and colleges play in meeting the technological needs of America. You people are professionals and all of us politicians are both proud and respectful of your knowledge and your thirst for more of it.

Sometimes we need a professional appraisal no matter what the cost. That was the advice Tallyrand once gave to King Louis XVIII. Louis was reading a tentative budget to Talleyrand, who was head of the provisional government. "Your Majesty," Talleyrand commented, "there is an omission—payment of the deputies." Louis responded, "It is an honorary position, they should perform their duties without payment." "But, Your Majesty," cried Talleyrand, "that would cost us too much!"

I have had the opportunity, as a member of the Subcommittee on Health and Scientific Research and the Technology Assessment Board, to have direct contact with a number of you and your colleagues in the university and scientific community. These associations have been most enjoyable as well as beneficial to me in my efforts in the Senate. I have spent the last three years, since I took my seat as the junior Senator from Utah in January, 1977, trying to promote a solid policy for scientific research and technological development, because I know that our successes in the laboratory are key to our successes in handling the domestic economy and boosting international trade.

I know some of you have taken issue with some of my initiatives, but I think we have all benefited from them, directly or indirectly, and I have learned from being involved with these issues how you are affected by government. I think I have obtained a little better "feel" for what needs to be done in the Federal Government to help you perform the best and most effective research possible.

First of all, it is uncertain that the university's role in our national successes is really understood. In the area of science and technology, higher education's contribution is two-fold. First, our colleges and universities are responsible for educating and training our young people in the sciences, without whose future expertise America could not hope to go forward technologically. This traditional role of the university should never be dismissed as old-fashioned or passé, and indeed, in my opinion, society owes you in the academic community a round of applause for continuing to take your teaching duties seriously. You have not foresaken them for more lucrative positions, for additional time on your own research work, or even during periods of student unrest and apathy. What we are really talking about is the future of science in our country. If our students are not taught by dedicated teachers as well as the best researchers, how will we ever expect to excel in the future? In other words, I think we must remember that there is a sense in which scholarship is an end in itself.

Second, our colleges and universities are primary sites for the performance of critical research and development activity. It is necessary that they continue their independent work, particularly in basic research. Universities are in a unique position in that they are free to pursue topics and experiments without the pressure of the marketplace. While American industry, I believe, must be encouraged, and given the appropriate incentives to do so, to take on more of the R & D load, I am convinced that much of the fundamental basic research needed to develop promising new technologies is performed admirably by our Nation's universities and colleges.

If I could just add, parenthetically, at this point, a plug for some of the outstanding smaller institutions, I believe that their contributions to research and the education of future scientists is also of high quality. I realize that this distinguished group is representative of our country's state universities and land-grant schools, but if we are talking purely about the role of higher education in the future of science and technology, then I would hesitate not to mention the efforts of the smaller, private colleges and universities.

We all recognize basic research as the life's blood of all advances in science and technology. The quality of American basic research relates directly to our nation's total potential for success economically, internationally, and intrinsically. As many of you may have heard me say before, I am a strong believer in national spirit. I think Americans are justified in feeling good about the accomplishments of fellow citizens, whether they are Olympians or scientists. I also think there is a positive subsidiary effect of such pride on the will of others to forge ahead in the pursuit of new knowledge.

It almost goes without saying that basic research has contributed enormously to America's economy and to our international trade position. Basic research, largely conducted in our universities, has lent us the ability to develop the new techniques and processes which have sustained American productivity even in the face of a changing labor force. Our current economic problem is, in part, that such innovation is declining and our level of productivity with it. Our technological leadership in the world is being challenged by most of the other industrialized nations, particularly West Germany and Japan, and the realism of the situation is demonstrated by the present stiff competition in the electronics and automobile industries. The technological advances of our chief trading partners have now manifested themselves in the marketplace, creating uncertainty and crisis in American industry and employment.

In 1963, America was spending nearly three percent of GNP on research and development and Japan was only spending one and one-quarter percent. In 1976, however, the U.S. expenditure for R & D decreased to about two and one-quarter percent, equal to West Germany which increased its average percentage from slightly more than one and one-half percent in 1963. Japan increased its average to a full two percent. We should also note that the regulatory policies of these nations are far more conducive to research than are the policies of the United States. These statistics can also be related to the rates of inflation. The West Germany wholesale price index increased only 44 percent between 1970 and 1977, Japan's 68 percent and the United States' 76 percent. In 1978, the national expenditure for R & D in the United States was $47 billion, but in constant dollars, only about $30 billion. This estimate uses 1967 as the base year and an assumed six percent inflation rate. Since, however, inflation is now hovering around 18 percent, this total is quite conservative and the negative effect of inflation on research is really much greater.

Another policy which may be hindering U.S. innovation in the comparative context is our willingness to export technology. I am especially concerned about those technologies which are critical to our national security and the transfers of that technology to nations whose motives are clearly dubious and I was pleased to note consideration of a possible boycott of exchanges with the USSR by 50 scientific and professional associations. I do not oppose exports of technology to our allies, but it should be a consideration, however, that the transfer of American technology abroad is filling in the gaps of foreign scientists and narrowing the U.S. lead in many fields. Scientists should carefully assess whether the benefits of international exchanges outweigh the losses. For other than controls on militarily sensitive technologies, the government cannot rightly or accurately evaluate the successes of these programs. Only those involved in the search for scientific information can make these judgments. I think it would be prudent to take stock of the advantages of this policy on a periodic basis.

What are the stumbling blocks to our research capability? In addition to the overriding deterrent of inflation, there are several obstacles in the way of more and better American R & D. It has been pointed out that the atmosphere for basic research is much too variable to provide the stability required for long range problems. I agree that one minute the emphasis is on basic research and the next it is on applied. One minute we are consumed with space applications and the next with environment. The fact of the matter is that we ought to promote a more even distribution of our research emphasis to encourage the undertaking of long-range research as well as increase the likelihood that such research will be brought to fruition.

Second, there is the present patent policy. This is a major wrench in promoting R & D in universities and in securing funds from the private sector for university conducted basic research. A measure introduced by Senator Birch Bayh, S. 414, to reform patent procedures for universities and small business, is currently pending before the full Senate. Enactment of the bill, of which I am pleased to be a cosponsor, will remove some of the worst barriers to university and small business sponsored research.

Third, there is a serious problem faced by

our university laboratories in maintaining adequate and up-to-date instrumentation. Dr. William Partridge, my good friend from Utah and here with us tonight, emphasized the need for greater federal support for instrumentation during his testimony last year on the Fiscal Year 1980 authorization for the National Science Foundation. He aptly pointed out that inferior equipment leads to less than the best possible research results and a danger that the training of students on outmoded instruments would automatically put those students behind in a research world of more sophisticated technology. It is evident that these "lags" and periods of "catch-up" time, all totalled, add up to a considerable deficit in terms of our overall science and technology strength.

Finally, the need for accountability in the awarding of federal funds demands that scientists devote an increasing amount of time to paperwork. I must regrettably point out that some of this red tape has come about due to the discovery by university officials and department chairmen, and by the federal funding agencies themselves, of fraudulent travel vouchers, dependence on graduate assistants to perform work contracted to a full professor as the principal investigator, and other abuses of taxpayer funds as well as the high standards you expect from your colleagues and by which you judge yourself. I find myself in complete sympathy with honest, dedicated researchers who must probably spend an inordinate degree of energy on the science of filing government forms.

This is a big problem for universities, as it is for all of us. For example, the Library of Congress estimated in 1976 that the 250 major colleges and universities had spent $75 million just to comply with federal surveillance of their affirmative action activities. Obviously, this figure must be much larger now—and it doesn't include the administrative time consumed. Now, I think affirmative action is wholly incompatible with a liberal society—and it is illegal to boot. But however you look at it, it is a lot of money.

As a matter of fact, not long ago, I came across the testimony of an official from Louisiana. He related a story to a Subcommittee of the House Post Office Committee which warmed my heart.

It seems that a development company was planning a new complex in this official's county, or parish, as it is called, in Louisiana.

The developer secured the approval of no less than 23 local, parish, and state agencies. Following that, he was informed that he also needed to apply to the U.S. Department of Housing and Urban Development (HUD) for its approval.

The developer's attorney filled out the additional forms and mailed them off to Washington. In return, the attorney received the following letter.

"We received, today, your letter enclosing application for your client and supported by abstract of title. We have observed, however, that you have not traced the title previous to 1803. Before final approval can be granted, you must trace the title previous to that year."

The developer and the attorney were stunned by this letter from HUD and the attorney sent the following response:

"Gentlemen: Your letter regarding title received. I noted that you wish title to be traced further back than I have done it.

"I was unaware that any educated man failed to know that Louisiana was purchased from France in 1803. The title of that land was acquired by France by right of conquest from Spain.

"The land came into possession of Spain in 1492 by right of discovery by an Italian sailor named Christopher Columbus. The good Queen Isabella took the precaution of securing the blessing of the Pope of Rome upon Columbus' voyage before she sold her jewels to help him.

"The Pope is the emissary of Jesus Christ who is the Son of God. God made the world. I believe it is safe to assume that He also made that part of the world known as the United States; and that part of the United States called Louisiana. I hope to hell you're satisfied."

I was very pleased to note that help may be on the way. The National Science Foundation has come up with a new concept that may spell salvation for researchers in terms of the time expended on meeting the Federal requirements for accountability. The "master grants" idea, even though still in its infancy, appears to be a viable solution to the regulatory burden. It will effectively consolidate into the university's department all of the reporting for any individual grantees within the department.

The additional benefit is the flexibility to "trade" funds from one chemistry project to another. A master contract entered into by the university and NSF would state the basic requirements for grants administration and then leave the university free to consolidate the paperwork and reporting of individual grants by department. This innovation in grants management shows promise for saving countless hours of paper shuffling by researchers and will preserve the purpose for which these regulations were made in the first place.

I have already mentioned patent reform. It is my hope that S. 414 will go through the Congress and become public law, but I think we may need to look at U.S. patent policy with even greater scrutiny. These may be further revisions necessary to boost American invention in both the university and industrial laboratories.

There is an interesting thought that I had, not long ago, and on which I would personally appreciate your insight. The National Science Foundation has created several "University Corporations" to perform research in various scientific disciplines. These "Corporations," consisting of around thirty or so universities, impress me as highly effective structures for the federal support of basic research. I would like to see these corporations expanded, perhaps by making the definition of a given discipline more liberal, perhaps by bringing in more universities, perhaps by establishing more of them, or perhaps by permitting an independent financing program for certain projects. These "University Corporations," I believe, have made valuable contributions to American science and I would like to see their capabilities expanded.

Further, the University Corporations may also be a way of promoting greater cooperative projects with industry. The NSF has already undertaken a successful program, which I have supported, of university-industry joint research, but I wonder if the University Corporation might be a vehicle for even better cooperation. Our concern is really for the health of the American scientific and technological enterprise.

While it is vital that we maintain the separate strength of each institution sponsoring research, that is, the university, industry, and government, advancement from a pooling of knowledge and resources is a corollary policy we may not want to overlook.

Finally, I would like to briefly discuss the absolute necessity, which I am sure all of you recognize, of adjusting economic policy in this country to inspire private sector initiative in R & D.

Effective policies to control inflation, caused by huge deficits and high rates of taxation, must go hand in hand with any coherent and stable effort to revive American science and technology. A significant, across-the-board income tax reduction, as well as further consideration in capital gains taxation would provide incentive and working capital for the risk-taking all institutions must justify. The present tax rates make business expansion or research endeavor almost prohibitive. The rate of return is not great enough to take the risk—the greater the risk, the greater the hope for profit. Whereas business as a whole has lately been working only on subtle improvements to existing technologies, a tax cut would encourage a more concentrated, long-term commitment to R & D on radically new and innovative technologies. In my view, one of the major institutional beneficiaries of an increased propensity to fund basic research will be the universities.

There are many possibilities for strengthening U.S. basic research and innovation. Certainly one of our nation's greatest resources, her institutions of higher education, will be key to helping us in Washington develop the right policies to encourage this kind of scientific incentive. I hope you will consider this a sincere invitation to share your personal comments or ideas with me at any time. Again, thanks for allowing me to be here with you this evening. My best to each of you and your respective universities.●

KAMEHAMEHA SCHOOLS WARRIOR BAND AND COLOR GUARD

● Mr. INOUYE. Mr. President, it is with great pride that I bring your attention to the Kamehameha Schools Warrior Band and Color Guard from my home State of Hawaii. The honor and distinction of being selected as one of the top 10 high school bands in the United States by the National Band Association deserves highest commendation. The Kamehameha Schools Warrior Band and Color Guard have added another dimension of musical contribution to the Hawaiian community and to the State of Hawaii.

The Kamehameha Schools Warrior Band and Color Guard is a unit of 160 young men and women representing all seven islands of the State of Hawaii. The precision performance of these young people began several years ago under the leadership of Mr. John Riggle who has been the band director since 1977. The continued support of the "Kamehameha Band Parents Boosters" should also be acknowledged for their assistance in hosting a myriad of musical and marching performances.

I submit a list of the musical and band honors achieved by the Kamehameha Schools Warrior Band and Color Guard since the inception of competitive marching band and color guard tournaments.

The list follows:

1977

Aloha Week Parade—Division I Award.

Captain Cook Bicentennial Parade—Kauai Island—Sweepstakes Award.

Established 1st Annual Kamehameha Tournament of Bands.

Oahu Interscholastic Association Festival of Marching Bands—Division I Award.

Oahu Band Directors Association Parade of Stage Bands—Superior rating.

Kamehameha Day Parade—Division A, 1st Place Sweepstakes Award—Most Outstanding Overall Parade Unit.

1978

Performed at half-time for University of Hawaii-New Mexico football game.

Aloha Week Parade—Division I Award.

1st Annual Kahuku Marching Band Competition:

1st Place—Division A.

Color Guard Award.

Percussion Award.
Marching and Maneuvering Award.
General Effect Award.
Music Award.
Drum Major Award.
Sweepstakes Award.
Merry Monarch Parade—Hawaii Island—1st Place.
Hosted 2nd Annual Kamehameha Tournament of Bands.
1st Annual Mililani Marching Band Festival, 1st Place—Division A.
Kuhio Day Parade—1st Place and Color Guard Award.
Kamehameha Day Parade—1st Place Division A—Sweepstakes Award—Most Outstanding Overall Parade Unit.

1979

Represented the State of Hawaii in the 90th Annual Tournament of Roses Parade, Pasadena, Calif.
Guest Band Performances:
Magic Mountain Theme Park.
Knotts Berry Farm.
Disneyland.
Half Time Performance—University of Hawaii football game.
2nd Annual Kahuku High School Marching Band Competition:
1st Place—Division A.
Color Guard Award.
Marching and Maneuvering Award.
Soloist Award.
General Effect Award.
Music Award.
Drum Major Award.
Sweepstakes Award.
Hosted 3rd Annual Kamehameha Tournament of Bands—Special National Band Association Award and Nomination for Top Ten Bands Consideration.
Carol Kai Bed Race Parade—Sweepstakes Award.

1980

Established 1st Annual Kamehameha Schools Band-o-Rama.
Selected by the National Band Association as one of the Top Ten High School Bands in the United States and Invitation to Perform at the N.B.A. National Convention in Knoxville, Tenn.●

SOMALIAN REFUGEES

● Mr. McGOVERN. Mr. President, as concerns of national security lead us to focus increasing attention upon African countries bordering the Indian Ocean, a human tragedy is developing in this region which we cannot allow to go unnoticed or unaddressed. After years of regional war, Somalia now faces a refugee crisis likely to parallel that of Southeast Asia in the brutal human costs of sickness and starvation. The State Department estimates that over 3,500 people—91 percent of whom are women and children—are presently entering Somalia every day from southern and eastern Ethiopia. Many are living in refugee camps with populations over 40,000. Others have fled to the towns, and still others have tried to eke out a nomadic existence in the Somali interior. In all, at current rates of entry, this country of 4 million will have an additional population of well over 1 million refugees by the end of 1980.

The problems of Somalia's refugees are those which we have come to know in other similar tragedies around the world. The sudden, massive influx of people—coupled with the beginnings of a drought throughout Somalia and eastern Africa—makes starvation the most pressing danger. Lack of safe drinking water and the growing incidence of infectious diseases pose additional threats to the refugees' survival, particularly to the children.

It is fortunate that one problem which the refugees do not have is with the Somali Government itself. Unlike Southeast Asia, where some unwilling host governments literally pushed refugees back across borders or out into the sea, the Somali Government has sought to accommodate refugees to the greatest extent possible. Since many of these refugees are ethnic Somalis, the Government has contributed up to $15 million for their care—even though Somalia has serious problems of growing debt and dwindling reserves of foreign exchange. The Somali Government has also welcomed outside assistance for refugees. Accordingly, the United Nations has recently called for $120 million from the international community for Somalia, in addition to the relief programs already underway.

Despite the scope of the problem and the scale of requested relief, the plight of Somalia's refugees has received remarkably little publicity. Other crises around the world have shifted attention away from internal problems developing in the Horn of Africa. Perhaps it is also a telling sign of the times that after floods of refugees have become so much a present reality in so many areas of the world, new instances of massive suffering are no longer headline news. Yet for the hundreds of thousands now crowding into Somalia, the situation is desperate. Unless more can be done, many will die.

In the United States, we can do more. Though the refugees face shortages on every front, I would like to concentrate here on efforts the United States can make to supply urgently needed food relief. The United States has already shipped some food and supplies to the Somali refugee camps, but the Agency for International Development estimates that at least 47,000 tons of grain, worth about $12 million, will be required by early summer.

American farmers are more than able to supply the needed food. This is a time of record harvests for the United States—and of constricted markets abroad in the wake of the Soviet grain embargo. In announcing its decision to cut grain shipments to the Soviet Union, the administration noted that one positive result of this move would be the availability of greatly expanded food resources for constructive diplomacy. With its escalating refugee population and a growing significance for U.S. strategic considerations in the Indian Ocean, Somalia presents an especially strong case for the food aid which the United States is now able to send abroad.

I would urge my colleagues in both the Senate and the House to make the securing of additional food aid for Somalia a top priority. I can think of few instances where a U.S. Government program could make such a widespread difference between suffering and survival.●

ABORTION BY THE COURTS

● Mr. SCHWEIKER. Mr. President, on April 3, 1980, the Washington Post carried an editorial by George F. Will entitled "Abortion by the Courts." Mr. Will makes reference to the recent Federal district court decision which overruled the congressional mandate that no Federal funds should be used to finance abortions except when the life of the mother is threatened or in the case of rape or incest. Mr. Will, in his article, identifies the danger inherent in the court's action from a constitutional viewpoint. It is a point of view which I believe my colleagues, whatever their position on abortion, should consider. The constitutional issue involved is as equally important as the abortion issue and certainly may be separated. I therefore ask that this editorial be printed in the RECORD and I commend it to all my colleagues.

The editorial follows:

ABORTION BY THE COURTS

Supreme Court rulings have made abortion the most divisive issue confronting Congress. But now a district court, acting true to the Supreme Court's legislative spirit, has overreached in an abortion ruling, and has caused a remarkable coming-together in Congress.

The controversy concerns Rep. Henry Hyde's amendment to the act appropriating money for Medicaid. The amendment says that Congress is not appropriating money to pay for abortions except in limited, specified situations.

A district court has declared, for many reasons (as is common when a court is surer of the result it wants than it is of a reason justifying the result), that the Hyde Amendment is unconstitutional. And the court has ordered the government to pay for abortions contrary to provisions of the appropriation act.

Now, the Supreme Court, which will review the district court's ruling, has received a "friend of the court" brief from 247 representatives and senators, including a majority of the House of Representatives, which is the originator of appropriations measures. The brief argues that the ruling "in the most fundamental way subverts the Constitution of the United States by making meaningless the reservation to Congress of the right to determine when 'Money shall be drawn from the Treasury.'"

Nothing in the Constitution is clearer than the following as a textual commitment of a particular power to a coequal branch: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law. . . ." And the first words of the first article of the Constitution are: "All legislative powers herein granted shall be vested in a Congress of the United States. . . ."

Clearly, the district court's order, commanding the government to subsidize abortions in situations where Congress has decided not to subsidize them, is an attempt to draw money from the Treasury. It is an attempt by the judiciary to exercise a power vested exclusively elsewhere. It seems to assume that federal judges have something like a "line-item veto," only even more powerful: they can turn a negative into an affirmative. As the congressional brief says:

"The power which a federal judge can thereby exercise is greater than the veto power of the president. The president can only reject entire acts, and he can never turn a non-appropriation into an appropriation. The district court's theory permits a federal judge to pick a specific provision, invalidate it, and by the very invalidation make appropriated what Congress had declined to appropriate."

The brief warns that such judicial redistributions of federal funds will multiply if

tolerated: "In an age marked by an immense increase in constitutional litigation it is remarkably easy to convert any disappointment on policy into a claim that a constitutional right has been infringed." So, "a multitude of fiscal and budgetary questions will be laid at the courthouse door. Every loser in the representative processes will seek a judicial appropriation for his program."

The attempt to overturn the Hyde Amendment is additional evidence that when representative processes do not yield liberal results, some liberals clearly demonstrate that their commitment to those results takes precedence over a commitment to representative processes.

The Hyde Amendment is just one of several recent uses of the words: "None of the funds contained in this act shall be used" for this or that purpose. As the congressional brief notes, "the explicit refusal to appropriate money for a specific purpose is an essential tool of democratic control of the business of bureaucratic government," a tool used recently to end the Vietnam War and to prevent the CIA from undertaking certain kinds of activities.

When President Nixon selectively impounded funds in appropriation acts, he was rightly denounced for usurping power and threatening the separation of powers. Now some of the political forces that opposed Nixon are defending the district court's even more drastic usurpation of congressional power. Liberals worried about the waning moral force of their movement should consider the contrast between their result-oriented behavior and their rhetorical celebrations of democratic due process and other principles.

On both sides of the abortion issue there are strong passions, hot words and some indefensible actions. Some antiabortion extremists have committed intolerable vandalism against abortionists' facilities. But the most lasting damage is being done by judges and their inciters who want the already inflated notion of judicial review further swollen to encompass the power to superintend fiscal policy and appropriate money.

A double negative, although stylistically awkward, expresses the awkwardly antidemocratic doctrine of the district court and other pro-abortion extremists: Congress cannot not subsidize abortions of all sorts.

That is vandalism against the Constitution.●

A GASOHOL SUCCESS STORY

● Mr. CHURCH. Mr. President, recently the National Alcohol Fuels Commission, of which I am a member, conducted a major fact-finding conference in Idaho Falls, Idaho, on the future of gasohol in this country.

It was a lengthy conference with the full alcohol fuels story presented. A major conclusion, shared by the several hundred in attendance, was that gasohol is workable now and is an essential alternative energy source for this country.

At this time Mr. President, I wish to single out one individual who has taken the initiative, with little help from the Government, in establishing an alcohol fuels plant in his backyard in the small farming community of Pingree, Idaho. I think it is appropriate that a recent news article praising Gene Whitworth for his efforts, be entered into the RECORD to illustrate what gasohol can do for both our country's energy supplies and for establishing another market for the sale of farmer's crops.

Gene Whitworth, owner and operator of Spudcohol, has taken the first steps on his own and he deserves high praise for what he has accomplished in just 1 year. His efforts should prove an example to others that gasohol is feasible and that we ought to get on with it.

Mr. President I ask that the article appear in the RECORD.

The article follows:

[From the Idaho State Journal, Apr. 9, 1980]

SHAH OF PINGREE TURNS SPUDS INTO LIQUID GOLD

(By O. K. Johnson)

PINGREE.—Move over OPEC. The Shah of Pingree has arrived.

Well, he's not really a Shah, but that's what Gene Whitworth's neighbors are calling him these days. Whitworth has spent $350,000 and 18 months of time and energy planning and building the first commercial small potato processing alcohol plant in the United States.

Whitworth is quite proud of his 100-by-60-foot processing plant two miles south of Rockford, and beams when he says it's the first commercial alcohol plant west of the Mississippi.

"I'm just as proud as a peacock," Whitworth said of his plant scheduled to open May 1. "That's not too bad for a dumb sheep herder."

Whitworth may think he's a "dumb sheep herder," but the man stands to make a fortune. Whitworth already has all of his 1,500-gallon-per day capacity contracted to a Boise firm and says he's already planning three similar plants to be built in Sugar City, Shelley and Hermeston, Ore.

The Pingree plant, according to Whitworth, has been carefully scrutinized by a host of federal officials. Idaho Gov. John Evans, U.S. Senator Frank Church and other Washington, D.C., officials were scheduled to visit the plant Tuesday afternoon.

Whitworth said he "has the jump" on others building small production plants across the country, and that those people are using his plant as a model.

"We've had some problems with the gasohol technology," Whitworth said. "We didn't think it would take this long to get things going, but others across the country are using my plant as the model for their design."

The Pingree farmer began planning his alcohol plant in September 1979 and had intended to only produce 160-proof alcohol. Whitworth changed his mind, invested an extra $200,000 for additional refining equipment and will begin producing 200-proof anhydrous ethanol that can be sold to distributors for mixing with gasoline.

"I think this is just super," Whitworth said excitedly about his "Spudcohol" business venture. "Gasohol used to be about 10 cents a gallon higher than unleaded. Now it's the same price as regular and five cents below unleaded. That makes us really happy."

It should also make area potato farmers happy. Whitworth said he plans to buy cull potatoes for processing, giving farmers in an already depressed potato market an outlet to recoup some of their losses.

Just last week he purchased a load of cull potatoes at 75 cents a hundredweight, a full 25 cents higher than what area process plants were willing to pay.

Whitworth, however, has already contracted his business to Trimble Oil Company of Boise. That means individuals and gas stations won't be able to buy directly from the new fuel producer. They'll have to buy from Trimble outlets.

Farmers, though, will get a better deal.

"I've been told we can work out some sort of agreement with them," Whitworth said.

The bright-red metal building houses several conveyor belts, sorting machines and fermentation tanks to distill the potatoes into usable 200-proof alcohol.

The potatoes are brought into a pressurized water pit and cleaned of dirt and rocks. They then will travel up a precision-made conveyor belt to be dumped into three 900-pound capacity storage bins.

They travel along a second conveyor to a final wash and then travel on yet a third conveyor to be mashed, heated and stirred before going into two separate fermentation tanks and a beer storage tank.

Water is taken out and the end result is 200-proof alcohol. The entire process takes 14 hours. Whitworth said he has the capacity to store as much as 45,000 gallons of the fuel mixture.

Whitworth said his plant will be 75 percent finished by April 15 and that all he's really waiting on is Idaho Power Co. to run 2½ miles of heavy-duty cable so he can hook up his 690-kilowatt boiler.

"It should be hooked up by May 1," Whitworth said. "When they do, we'll start producing."

Ironically, Whitworth himself is responsible for the wait. When he went to the 200-proof alcohol processing, he needed a larger boiler. Then he discovered he couldn't hook it up without "melting all the power lines around him."

The new energy producer said he is quite critical of the U.S. Department of Energy for allocating funds for a process plant in West Germany but failing to give American farmers financial assistance.

"They've (DOE) treated us very shabbily," Whitworth charged. "As of today, nobody in the country has received any money from them."

The Pingree businessman was scheduled to speak before the National Alcohol Fuels Commission on Gasohol panel today in Idaho Falls. Whitworth said he planned to criticize the U.S. Department of Agriculture for "sitting on $100 million in direct loans that are already available for the stimulation and production of renewable fuel sources."

He also said the new fuel mixture would help cut down on pollution by making a higher-octane fuel that would burn cleaner in internal combustion engines. He also said it would provide additional jobs in agriculture to take care of surpluses and slow the flow of U.S. dollars out of the country.

One thing the plant should do is put some money in Gene Whitworth's pocket.

And the "Shah of Pingree" is smiling about that prospect.●

RUSSIAN IMPERIALISM AND PERSIAN INDEPENDENCE

● Mr. HARRY F. BYRD, JR. Mr. President, to understand fully the forces in conflict in Iran, a thorough appreciation of Russian and Persian history is of much value. Although the international and aggressive characteristics of Communism add a new dimension to Russian imperialism, the fundamental historic goals of Russia remain, in many respects, the same.

The April 1980 issue of the Armed Forces Journal contains a superb article which describes the aspects of Russian history to which I refer. The article is by Jack Maury whom many Senators recall as an Assistant Secretary of Defense and earlier as Chief of the Soviet Operations Branch of the Central Intelligence Agency. Mr. Maury's article is entitled, "Russia and Iran: Cold War and Warm Water."

I recommend the article to the Senate and ask that it be printed in the RECORD.

The article follows:

RUSSIA AND IRAN: COLD WAR AND WARM WATER

WHY IRAN IS NEXT ON RUSSIA'S HIT LIST

(By Jack Maury)

To Winston Churchill, Russia was "a riddle wrapped in a mystery inside an enigma." To the late Chip Bohlen, probably the most clearheaded Kremlinologist of our time, Russia was "a land of many secrets but few mysteries." For my money, Bohlen was nearer the mark. If there is anything surprising about the Soviet invasion of Afghanistan it is that sensible people seem surprised. Certainly few nations have been more candid than the Soviet Union in proclaiming their foreign aims or more consistent in pursuing them. Nowhere has this been so true as in what the Kremlin has loosely referred to as "the direction of the Persian Gulf"—Iran and Afghanistan—where considerations of ideology, history, and geography combine to create a special Soviet interest.

From the earliest days of the revolution Soviet leaders perceived such undeveloped and "colonial" areas, whose resources were an easy prey for foreign exploitation, as "the weakest link in the imperialist chain." At the XII Party Congress in 1923 the comrades were called upon to "inflame the . . . semi-colonial countries . . . and thus hasten the fall of imperialism." In later years the pursuit of this policy has met with mixed success. But where the taste of the Soviet carrot may have soured, the increasing clout of the Soviet stick, whether wielded by Soviet or surrogate hands, has usually done the trick. Thus, the Kremlin appears firmly committed to a policy of subverting or seducing third world nations with one hand while holding NATO at bay with the other.

The application of such a policy "in the direction of the Persian Gulf" has deep historical roots. In the mid-17th century the Czar Alexis launched a short-lived invasion of Persian territory. In 1722 his son, Peter the Great, under pretext of aiding Persia in her war against the Afghans (whose invading forces had driven all the way to Isfahan) dispatched an army into northwestern Persia and occupied the three provinces bordering the Caspian. Although Peter's interest in Persia was no doubt dominated by his life-long dream of warm water ports on the Gulf, his successors found the Persian provinces difficult to defend and administer and in 1732 they reverted to Persia.

The next military confrontation between Russia and Persia resulted from two unsuccessful attempts—in 1812 and again in 1825—by the Persians to reconquer Georgia, which in 1801 had been annexed by Russia, to whom she had turned for protection against Persian predacity.

Another crisis in Russo-Persian relations arose as an outgrowth of the Anglo-Russian Agreement of 1907 under which northern and central Persia fell within the Russian sphere of commercial interest. Under pretext of protecting Russian nationals in accord with the spirit of this agreement, the Russians, following the 1909 Persian revolution, dispatched some 6.000 troops to the Qazvin area (100 miles northwest of Tehran) and threatened Tehran itself.

Russian troops remained in northern Persia throughout World War I. Following the 1917 Russian Revolution the new Soviet government sought to win Persian friendship by withdrawing troops from Persian soil and renouncing Russian concessions in, and debt claims against, Persia. In 1920 during the Russian Civil War, however, Red forces pursuing the Caspian flotilla of the White General Deniken invaded and occupied a sector of the Persian Caspian coast where they attempted to establish a puppet Soviet government. This effort was abandoned in 1921 following the signing of a Soviet-Persian non-intervention treaty. At about the same time, however, the Soviets inspired and supported the formation in Persia of an underground Marxist student group, the forerunner of the present Tudeh ("Masses") party.

Continued Russian interest in Persian real estate was further demonstrated in 1939 when Soviet Foreign Minister Molotov explained to his German counterpart, von Ribbentrop, that a Nazi-Soviet pact would be possible only if the area "in the general direction of the Persian Gulf is recognized as the focal point of the aspirations of the Soviet Union."

Iran (the official name adopted in 1935) viewed the approach of World War II with deep concern and divided sympathies. Fear of Russia led the Shah and some of the military to lean toward the Axis. Anxious to take no chances and in order to insure Russian access to supply lines safe from Axis interdiction, Russia occupied the northern half of the country and England the south. This arrangement was formalized in a 1942 treaty whereby the occupying powers guaranteed Iranian territorial integrity and promised to withdraw their forces within six months after the war's end.

It was Moscow's violation of this agreement by installing a puppet communist regime in Iranian Azerbaijan and refusing to withdraw its troops that created the first post-war confrontation between the Soviet Union and the West. The Soviets eventually withdrew their troops in the face of united opposition in the UN Security Council, but left behind the puppet regime in the hands of the Moscow-controlled Tudeh party. This regime collapsed when troops were sent into Azerbaijan by the Tehran government in December 1946. But the real reason for the Azerbaijan regime's collapse, as American Ambassador George Allen reported at the time, was that all concerned knew the U.S. was not bluffing in its support of the Tehran government.

The Tudeh party, which went underground after the Tzerbaijan venture, may have had a part in the assassination of Iranian Premier Razmara in 1951. In any event it surfaced during the regime of Razmara's successor, the volatile and colorful Mossadegh. The Tudeh found Mossadegh useful in making trouble for western oil interests and Mossadegh welcomed Tudeh political support. After Mossadegh's ouster in 1953 the Tudeh again went underground, to resurface last year. Its Secretary General, Nurredin Kianuri, gave interviews in late November to two European journalists applauding Khomeini.

And indeed if the Tudeh and its Muscovite mentors liked Mossadegh why shouldn't they love Khomeini? Rarely have Kremlin strategists been offered a more tempting array of the classical ingredients of a revolutionary situation: anarchy in the target area; impotence among the "imperialists" who might be tempted to intervene; easy and safe access for Soviet military intrusion when called for. Rarely have the aims of Russian nationalism and the theories of communist doctrine been in closer harmony. And, lest there be any misunderstanding about the Kremlin's readiness to take appropriate action when confronted with such opportunities, hear the words of Comrade Brezhnev addressing the XXV Party Congress: "Detente does not in the slightest . . . change the laws of the class struggle. . . . In the developing countries . . . we are on the side of the forces of progress." Or, as the late Defense Minister Grechko put it: "At the present stage, the historic purpose of the Soviet Armed Forces is not limited merely to their function in defending our motherland and other socialist countries. In its foreign policy activity the Soviet state actively and purposefully . . . supports the national liberation struggle . . . in whatever distant region of our planet it may appear."

Should we have been surprised by what has happened in Afghanistan? Should we be surprised when it happens in Iran? And in the next "weak link in the imperialist chain" after that—Pakistan perhaps, where there are now some 5,500 Soviet technicians (no doubt including hundreds of KGB operatives)? Or maybe Saudi Arabia? For unless we stand firm, happen it will—maybe not today or tomorrow, perhaps only after the current surge of American concern and vigilance has subsided. But with her unrelenting quest for warm waters, her impending need for oil imports and the growing geopolitical significance of the Arabian Sea-Indian Ocean littoral we can be sure that the days ahead will bring no diminution in Russia's age-old aspirations "in the direction of the Persian Gulf."●

FRAUD IN GOVERNMENT

● Mr. SASSER. Mr. President, the magnitude of fraud in Government is absolutely astounding. The Comptroller General has recently expressed his astonishment to find that a total of 130,000 cases of fraud and related types of illegal acts have been alleged against 21 major agencies in the 2½-year period ending March 31, 1979. Individual losses range from under $100 to over $1 million. Some involve Federal employees, while others involve grantees, welfare recipients, and contractors.

DEPARTMENT OF TRANSPORTATION EXAMPLE

The lack of internal accounting controls at Federal agencies makes Uncle Sam a pushover for fraud.

One well-known example involved a low-level employee in the Department of Transportation accounting department. This employee had the responsibility for preparing vouchers for the legitimate payment of individuals, grantees, and contractors. After preparing the voucher, and with the knowledge that the certifying officer only glanced at the vouchers before signing them, the employee apparently put his own name and address down along with amounts ranging from $55,000 to $315,000.

The Treasury then routinely issued the checks to the employee, who cashed them and subsequently bought, among other things, several Lincoln Continentals and a tavern.

The employee might never have been detected, except that an alert bank employee began to question the sizable Federal checks this individual was depositing in his personal account.

In this case the employee was caught and charged with embezzling $800,000. But I ask, Mr. President, does anyone know how many similar instances of embezzlement are taking place right now and which will never be detected because of a lack of internal accounting controls in Federal agencies?

MEDICAL CARE EXAMPLE

In another case of fraud, an individual allegedly embezzled medical care funds. Because of inadequate internal controls, this individual was able to falsify claim forms which he then certified as correct.

He simply inflated the cost of the medical care provided by hospitals, had the checks mailed to a post office box he controlled, cashed the check, paid off the hospital for the legitimate charges and kept the difference.

The inadequacy of internal accounting controls allowed this individual to pull off this scheme 3,300 times, to the tune of $1.8 million before he was caught

One wonders, Mr. President, if this individual would have ever been apprehended if he had not been so greedy. And, how many times are similar episodes taking place in the Federal Government right now?

TIGHTER CONTROLS NEEDED

Mr. President, I am convinced that the solution to this problem lies in establishing tighter internal accounting controls in the Federal Establishment.

Mr. President, the General Accounting Office staff, in looking into this problem, found instances of blank Government checks lying around, easily accessible to anyone during and after business hours.

In other cases, cash collections were not logged in when received at Federal agencies, so no one could be sure that all the cash is accounted for.

Other instances involved collections—cash and checks—lying around for days and even weeks before being deposited. Thus, ample opportunity is allowed for someone to "lose" the funds, not to mention the lost interest on these funds.

Mr. President, there is no doubt in my mind that Federal agencies must work much harder to establish the kinds of internal cost controls that will prevent fraud, abuse, waste, and error and restore integrity to the operation of Federal programs. It seems to me that this is what the hard-pressed American taxpayer is demanding. We can demand no less.

FRAUD HOTLINE

As the Members may recall, a fraud hotline was established, at my request, at the General Accounting Office in January of 1979. This hotline was established with the strong support of the former ranking minority member of our Legislative Branch Subcommittee, the distinguished senior Senator from Pennsylvania (Mr. SCHWEIKER) and the full cooperation of Comptroller General Staats. The national toll free hotline is 800-424-5454. In the Washington, D.C., area the number is 644-6987.

Mr. President, this hotline was resulted in over 5,000 allegations of intentional wrongdoing or fraud being written up and referred to agency Inspectors General for investigation or the Justice Department for prosecution—cases that might never have come to light had it not been for the establishment of the hotline.

CONCLUSION

Mr. President, as important as the detection of fraud and abuse may be, the establishment of systematic internal accounting controls for the prevention of fraud also merits close attention. To his credit, the Comptroller General of the United States has recognized this dual need and has incorporated the mission to prevent fraud in the mandate of fraud task force operating at GAO. The Comptroller General is to be commended for recognizing that internal accounting control systems are in a state of disrepair in Federal agencies—and that more often than not the reason is that Federal managers devote most of their concern and emphasis to delivering funds and services—and very little attention to effective controls over the tasks and functions which lead to the delivery of these funds and services. The President and his staff have also taken some steps to identify those programs that appear vulnerable to fraud, abuse, waste, and error and to tighten up the internal controls. Nevertheless, I am convinced that the various Federal agencies must do much more along the lines suggested by the President and the Comptroller General to get a handle on the matter of detection and prevention of fraud and abuse.

The fact that 130,000 cases of fraud and related types of illegal acts have been alleged against 21 major agencies in 2½ years involving millions of dollars of taxpayer's funds is just one indication of the task facing Federal agencies. I am hopeful that my colleagues will take note of this problem of the vulnerability of Federal agencies to fraud and abuse and question governmental witnesses about this problem whenever such witnesses appear before the respective subcommittees.●

COMPLIANCE WITH BEVERAGE CONTAINER LAWS

● Mr. GRAVEL. Mr. President, upon the introduction of S. 2547, there was inadvertently omitted reference to three of my colleagues who had agreed to cosponsor this legislation which would insure that tax exempt industrial development bonds are available to finance facilities for recyclable beverage containers required by State bottle deposit laws. These new facilities mandated by State law do not contribute to the profitability of a firm, but are a drain on capital. The bill will lower the financing costs for these new facilities.

My three colleagues joining me in sponsoring this bill have been strong supporters of recycling for a healthy environment. I am proud to have them joining me on this bill. They are Mr. LEVIN, Mr. HATFIELD, and Mr. HAYAKAWA. I wish to apologize for the omission of their names from the bill as printed in the RECORD of April 3, 1980 and make it clear that they are original sponsors of this bill.●

AUSTRIA'S RECOGNITION OF THE PLO

● Mr. HEINZ. Mr. President, Austria's decision to grant diplomatic recognition to the Palestinian Liberation Organization comes as an extreme disappointment to all of us who have been working for a peaceful resolution of the Mideast's problems.

For the first time, a Western nation has decided to treat the PLO—an organization that has had the audacity to appoint itself the representative of the Palestinian people—as if it were a legitimate member of the world's constellation of governments.

What concerns me is not merely the PLO's terrorism and its commitment to the extermination of the nation of Israel and all her people. The recent attack on Israeli children in the kibbutz of Misgav Am is ample reminder of the goals and methods of the PLO. For that alone, Austria's extension of diplomatic recognition at this time is unconscionable.

What particularly concerns me is the damage that Austria's decision will inflict upon efforts to work out a peaceful accord between Israel and her neighbors. To achieve this end through diplomacy, it is necessary to lend as much credence and support as possible to the more moderate and tractable Arab governments. It is necessary to insure internal stability to governments capable of recognizing the long-term advantages of cooperation with the Israelis. It is necessary to cultivate new generations who are willing to work out their differences with the Israelis, rather than generations committed to eliminating the Jewish state.

Austria's recognition of the PLO may very well shake the stability of the moderate Arab governments. After all, it shows to the people of the Mideast that the most extreme and militant Palestinian organization is recognized in the West as a legal and permanent entity. It thereby confirms the legitimacy of allegiance to the PLO—and the withdrawal of allegiance to the present governments of Arab states. It makes it difficult for a progressive Arab government to assure the support of its citizens for any future agreement or treaty with Israel.

I do not want to speculate on what prompted the Austrian Government to this unfortunate decision. Maybe it just represents a misguided attempt of a small neutral country to put itself on the map. Whatever the case may be, there can be no justification for Austria's action.

I call upon my colleagues at this time to work to prevent Austria's move from becoming a precedent. I ask them to recall the U.S. policy of neither recognizing nor negotiating with the PLO so long as it refuses to accept U.N. Resolutions 242 and 338 and refuses to acknowledge Israel's right to existence. Only if this policy is maintained by all Western nations can we hope for a solution to the Mideast's problems that is durable and fair.●

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, the order is for the Senate to recess at the close of business today until 10 o'clock tomorrow morning; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, so that Senators may know that there will be no rollcall votes today, and the Senate will not be in very much longer, I ask unanimous consent that upon the

conclusion of the remarks by Mr. BAYH in support of the conference report, the Chair recess the Senate over until 10 o'clock tomorrow morning.

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

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS—CONFERENCE REPORT

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings in the RECORD of April 22, 1980.)

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, so that our colleagues may be reminded of the issue before us tomorrow, at which time a more extensive and, I fear, prolonged debate will commence, the Senator from Indiana will make a few remarks just sort of summarizing where we are, and then urge my colleagues to give the matter serious consideration so that we can dispense with this matter as quickly as possible.

The measure before us is the result of a several-years study of conditions affecting citizens of this country who, for one reason or another, have been institutionalized.

The hearings conducted by the Senator from Indiana and some of his colleagues on the Subcommittee on the Constitution were extensive and brought forward some of the most unbelievable acts of inhumanity that the Senator from Indiana has had the opportunity to witness. We were told of physical and mental abuse almost beyond description.

During the debate on this matter on the Senate floor some of the opponents of this legislation pointed out or, should I say, expressed the opinion that these incidents were merely that, isolated instances. Would that that had been the case, Mr. President. Unfortunately, in some institutionalized settings we have found a clear, continuous pattern of physical and mental abuse that most of us would not permit to be directed at animals, and yet we, like ostriches, stick our heads in the sand and try to ignore the existence of and consequences of these acts directed at human beings, human beings who are institutionalized as a result of governmental action.

We are talking about mental patients subjected to the sadistic traits and inhibitions of other mental patients who are consigned the role of supervisors. We are talking about death by scalding, mutilation by brutality, and the destruction of the mental capacity of human beings who enter the institutionalized setting with an already impaired mental capacity.

Perhaps the most touching and irresponsible of all these acts—and I admit it is difficult to pick and choose to find which is the most irresponsible—are the acts or the practices which are directed at some of the children of our society who come into this world in a less fortunate state than others.

When this committee started investigating this matter, we found that the common practice in all too many of our mental institutions was to physically tie—in some instances handcuff—minor children to their beds for periods of time, often in excess of 24 hours.

We found children and adults kept restrained in a straitjacket or in straitjackets for extended periods of time, often exceeding several days.

Mr. President, this was not an isolated practice, nor were only a few people affected this way. If that had been the case, then perhaps the Senator from Indiana would suggest it should be resolved by some other manner than passing a Federal law.

Mr. President, we found that this practice was followed to such an extent, and affected sufficient numbers of people, to the point where we could not ignore it as isolated examples.

We found that when the white heat of publicity caused the managers of these mental institutions to take off the handcuffs and remove the ropes, where evidence of both of these practices could be found and those who participated in them ostracized, we found that the practices became more subtle. So today, in most instances, instead of handcuffs or ropes, we find the more subtle debilitating practices of using barbituates or other kinds of psychotropic drugs.

In essence, the practice has become one of using mental handcuffs instead of physical handcuffs. Children who are mentally retarded are given regular doses of sedatives to the point where they just lie there.

The particular tragedy of this practice, Mr. President—and I think most all of us love children, and the Senator from Indiana no more than any—but I would like to point out the particular heinousness of this particular kind of practice because of the significant advancement of medical science and of the number of people who have dedicated themselves to the study of mental illness, because of the millions of dollars that have been donated, because of tax moneys that have gone into medical research in the area of mental illness, we have found remarkable ways to take children who come into this world in a mentally retarded state, and sometimes cure them, or oftimes significantly improve their capacity to provide for themselves and oftimes to live meaningful productive lives.

However, we have found that unfortunately, a child who has the capacity to be rehabilitated, who is subjected to prolonged periods of sedation, regresses rapidly and this regression is more often than not permanent. So the practice of these institutions that use sedation as a way of treating patients, the practical reality and effect of this practice is to find a child who has sufficient mental capacity to be rehabilitated and made a producing, self-supporting member of society who has been sedated continuously, and has regressed, to the point of being unreachable as far as subsequent therapy is concerned.

We take a live, vibrant—if retarded, nevertheless capable of being rehabilitated and improved—child and by a public institutionalized program turn that young child into a hunk of flesh that is no more and nor less than that, unable to provide for his or her bodily functions, unable to produce, to live any meaningful life. He or she just lies there, cowers there in a corner in a manner which is unfortunate that all Members of the Senate have not had the opportunity to witness.

Now I am not suggesting that those on the other side of this legislation condone this kind of activity. I am suggesting that the Senator from Indiana and those who are sponsoring this legislation and urge the support of the conference report are determined to do something about it.

I think this Senate would be derelict in its duty if it does not stay here as long as is necessary to hear this issue out, if it takes 1 day, 1 week or a month. I think we have a responsibility to those children and those institutionalized citizens and their families to say once and for all the Congress of the United States is determined to put an end to this kind of inhumane practice.

I think that the conference report that is before us is a better bill than that which was originally introduced by the Senator from Indiana so many, many months ago. We have taken into consideration the States' rights question and have placed the primary responsibility where it should be—with the States. We have required ample notice before the Federal Government can get involved. We have required that efforts at reconciliation, at negotiation, at resolving this matter without going to court be exhausted before the Federal Government gets involved.

In essence, we have said, "States, you do the job and the provisions of H.R. 10 will not be applicable."

We have also said, "States, if you don't do the job to clean up your own house then the U.S. Government is not going to ignore U.S. citizens who also happen to be institutionalized citizens of State A, B, or C."

And I am hopeful that once this legislation is passed it will be a stimulus for States to do what they should already be doing, but which in some instances unfortunately they are not.

I have listened attentively while some of our colleagues who oppose this legislation have stressed the rights of States and the fact that we are talking about State citizens who are institutionalized in State institutions. And, Mr. President, that is true. We are talking about citizens who are institutionalized by a State action in State institutions most of the time, by and large.

However, we are also talking about citizens of the United States. And it seems to me that we have a right to enforce the Constitution of this country and if States refuse to recognize the rights of their citizens then we in the Congress cannot ignore the responsibility we have to protect the rights of those same citizens, who happen to be citizens of the United States, protected by more than the rights of their State but protected by the inalienable rights of the Constitution of the United States. And that is what we are talking about.

We are talking about enforcing the

right that each citizen has to be treated as a full-fledged citizen of the United States.

One of the blessings of our democracy is that a citizen may come into this world partially impaired mentally and partially impaired physically, but a citizen does not come into this world as an American citizen with those citizenship rights partially impaired.

You may have an IQ of 35, but you have a U.S. constitutional right of 100. Heaven help us if it gets to be otherwise.

Mr. President, one word with reference to the procedural point, and then the Senator from Indiana will cease and desist and we will rejoin this discussion on tomorrow.

The Senate bill, through the legislative process, both in the committee and on the floor, had several restrictions and limitations placed on it that were not present in the House bill. I think any fair assessment—and I have not heard any to the contrary—is that the Senate bill is significantly more cognizant of States' rights than the House bill. Any fair assessment would say there are more restrictions and more protections placed against unwarranted, arbitrary Federal action against the States in the Senate bill than in the House bill. Indeed, some people would say we have gone too far.

I suggest it is a pretty reasonable compromise and although it is not a perfect bill, it certainly is better than the situation which exists today.

Having said that, I would like to ask my colleagues to carefully compare the provisions of the conference report which is before us with the Senate bill and the House bill. Again, I think any fair assessment must conclude that that conference report is almost identical to the Senate bill. So the conferees in determining how to resolve this problem are presenting us with a compromise that is almost identical to the bill on which the Senate voted, the Senate version of H.R. 10. It is much closer to the Senate version than to the House version of H.R. 10.

If there is any question about being able to get the Senate's views expressed, they have been very well expressed, I believe, in the conference report which is now before us.

I would hope that our colleagues would seriously consider this matter over the evening and tomorrow be prepared to act on it, or in the relatively near future be able to act upon it. We are, in essence, confronted with the following alternatives:

Either we pass this conference report, which permits the Federal Government to get involved in protecting the rights of institutionalized citizens, if and when the State refuses to do so, and let me emphasize, if and when the State refuses to do so, or, we are faced with the alternative of permitting those conditions which presently exist to continue unabated with American citizens institutionalized having no recourse to resolve the problems which confront them.

I would hope that the Senate in its wisdom would reaffirm its belief, expressed when H.R. 10 passed the Senate, that institutionalized citizens are human beings and we do not intend to sit still and let them be treated like animals.

The PRESIDING OFFICER. Will the Senator yield?

Mr. BAYH. I yield.

RECESS UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 10 o'clock tomorrow morning.

Thereupon, the Senate, at 4:35 p.m., recessed until Thursday, April 24, 1980, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate April 23, 1980:

DEPARTMENT OF TRANSPORTATION

Thomas George Allison, of Washington, to be General Counsel of the Department of Transportation, vice Linda Kamm, resigned.

IN THE AIR FORCE

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of Section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force.

MEDICAL CORPS

To be colonel

Murdock, Kenneth A., xxx-xx-xxxx.
Stoebner, Darrold A., xxx-xx-xxxx.

To be lieutenant colonel

Corpening, William S., Jr., xxx-xx-xxxx.
Ginsberg, Harold N., xxx-xx-xxxx.

To be major

Guzman, Maria A., xxx-xx-xxxx.

To be captain

Brandon, Gary K., xxx-xx-xxxx.
Coffman, Avon C. II, xxx-xx-xxxx.
Dodd, Lloyd E., Jr., xxx-xx-xxxx.
Lyons, Terence J., xxx-xx-xxxx.

To be first lieutenant

Conte, Frederic A., xxx-xx-xxxx.
Georgelas, Timothy J., xxx-xx-xxxx.
Lally, Richard E., xxx-xx-xxxx.
Protzer, William R., xxx-xx-xxxx.
Rosado, Melissa L., xxx-xx-xxxx.
Tilton, Frederick E., xxx-xx-xxxx.
Yasuhara, Thomas T., xxx-xx-xxxx.

DENTAL CORPS

To be captain

Smith, Keith S. II, xxx-xx-xxxx.

To be first lieutenant

Clark, Starr W., xxx-xx-xxxx.
Fancher, James P., xxx-xx-xxxx.
Girvan, Thomas B., xxx-xx-xxxx.

The following persons for appointment as Reserve of the Air Force, in grade indicated, under the provisions of section 593, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated.

MEDICAL CORPS

To be lieutenant colonel

Alerre, Ricardo U., xxx-xx-xxxx.
Berezoski, Robert N., xxx-xx-xxxx.
Biehl, Albert G., III, xxx-xx-xxxx.
Falco, Domenic M., xxx-xx-xxxx.
Green, William T., xxx-xx-xxxx.
Hoekstra, Dale V., xxx-xx-xxxx.
Kayson, Matthew A., xxx-xx-xxxx.
Keegan, Kirk A., Jr., xxx-xx-xxxx.
Kercher, Eugene E., xxx-xx-xxxx.
Mercil, Charles B., xxx-xx-xxxx.
Moyer, John A., xxx-xx-xxxx.
Rose, Donald D., xxx-xx-xxxx.
Schaeffer, Berton T., xxx-xx-xxxx.
Smith, Leonard, xxx-xx-xxxx.
Stratbucker, Robert A., xxx-xx-xxxx.
Trent, William G., xxx-xx-xxxx.
Tuchscher, Thomas J., xxx-xx-xxxx.
Vanbuskirk, Ronald, xxx-xx-xxxx.
Werner, Wolfgang K., xxx-xx-xxxx.

DENTAL CORPS

To be lieutenant colonel

Rocco, James J., xxx-xx-xxxx.

JUDGE ADVOCATE GENERAL DEPARTMENT

To be lieutenant colonel

Pattison, Norman S., xxx-xx-xxxx.

The following person for appointment as Reserve of the Air Force in the grade indicated, under the provisions of section 593, title 10, United States Code.

LINE OF THE AIR FORCE

To be lieutenant colonel

Gavin, Kenneth L. A., xxx-xx-xxxx.

The following persons for appointment as Reserve of the Air Force (ANGUS) in the grade indicated, under the provisions of sections 593 and 8351, title 10, United States Code, with a view of designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated.

MEDICAL CORPS

To be lieutenant colonel

Bendixen, Romain L., xxx-xx-xxxx.
Miles, Edward L., xxx-xx-xxxx.

The following-named officers for promotion in the Regular Air Force, under the appropriate provisions of chapter 835, title 10, United States Code, as amended. Officers are subject to physical examinations required by law.

LINE OF THE AIR FORCE

Captain to major

McCabe, Fredric E., xxx-xx-xxxx.

LINE OF THE AIR FORCE

First lieutenant to captain

Leonard, Johnnie W., xxx-xx-xxxx.

LINE OF THE AIR FORCE

Second lieutenant to first lieutenant

Wallington, Cary R., xxx-xx-xxxx.

The following officers for promotion in the Air Force Reserve, under the provisions of sections 593 and 8376, title 10, United States Code.

MEDICAL CORPS

Lieutenant colonel to colonel

Abramson, Bernard, xxx-xx-xxxx.
Anderson, Harris R., xxx-xx-xxxx.
Andrada, Manuel T., xxx-xx-xxxx.
Beirne, Clinton G., xxx-xx-xxxx.
Bowden, Wayne, M., xxx-xx-xxxx.
Brichta, Edgar S., xxx-xx-xxxx.
Carroll, Herman G., Jr., xxx-xx-xxxx.
Church, McGregor L., xxx-xx-xxxx.
Dawson, Alan D., xxx-xx-xxxx.
Fredd, Sumner G., xxx-xx-xxxx.
Howarth, Joseph C., xxx-xx-xxxx.
Joder, Donald K., xxx-xx-xxxx.
Kerwood, Robert I., xxx-xx-xxxx.
Malin, Sarah A., xxx-xx-xxxx.
Miller, Gilbert, xxx-xx-xxxx.
Nitzberg, Benjamin W., xxx-xx-xxxx.
Ogg, Billy D., xxx-xx-xxxx.
Pendell, Paul W., xxx-xx-xxxx.
Rayos, Blas O., Jr., xxx-xx-xxxx.
Rose, Donald E., xxx-xx-xxxx.
Rudin, Norman, xxx-xx-xxxx.
Sapio, Fred J., xxx-xx-xxxx.
Sears, Robert F., xxx-xx-xxxx.
Semler, Leonard, xxx-xx-xxxx.
Shillinglaw, Richard G., xxx-xx-xxxx.
Tindall, John P., xxx-xx-xxxx.
Wells, James R., xxx-xx-xxxx.
Ziesmer, Carl B., xxx-xx-xxxx.

LINE OF THE AIR FORCE

Major to lieutenant colonel

Baker, John E., xxx-xx-xxxx.
Christianson, Don R., xxx-xx-xxxx.
Collmer, Philip R., Jr., xxx-xx-xxxx.
Daboll, Louis F., Jr., xxx-xx-xxxx.
Davis, William E., xxx-xx-xxxx.
Edick, Floyd K., xxx-xx-xxxx.
Ernst, Larry M., xxx-xx-xxxx.
Fiederer, Nancy E., xxx-xx-xxxx.
Flynn, Lawrence D., xxx-xx-xxxx.
Grau, David W., xxx-xx-xxxx.
Gurner, Roger A., xxx-xx-xxxx.
Harrell, Maxey L., xxx-xx-xxxx.
Hulen, Dennis E., xxx-xx-xxxx.
Hull, Edgar L., xxx-xx-xxxx.
Lemen, William R., xxx-xx-xxxx.
Look, Horace H., xxx-xx-xxxx.
Lupton, David E., xxx-xx-xxxx.
Mahar, John J., xxx-xx-xxxx.
Martin, Charles E., xxx-xx-xxxx.
McGuire, George G., xxx-xx-xxxx.
Meesig, Robert T., xxx-xx-xxxx.
Molyneaux, William L., xxx-xx-xxxx.
Moore, Donald W., xxx-xx-xxxx.
Morrissey, Kathleen R., xxx-xx-xxxx.
Parish, Anson G., xxx-xx-xxxx.
Schaub, Paul H., xxx-xx-xxxx.
Schlegel, John B., xxx-xx-xxxx.
Schutz, Van W., xxx-xx-xxxx.
Thornton, Richard M., xxx-xx-xxxx.
Vasquez, Jesse S., xxx-xx-xxxx.
Wade, William E., xxx-xx-xxxx.
Walsh, Robert B., xxx-xx-xxxx.
Watson, Robert N., xxx-xx-xxxx.
Way, Carolyn, E. L., xxx-xx-xxxx.
Weikel, John D., xxx-xx-xxxx.
Wilson, Thomas L., xxx-xx-xxxx.
Wunderlf, Robert W., xxx-xx-xxxx.

CHAPLAIN CORPS

Keller, Ralph E., xxx-xx-xxxx.

MEDICAL CORPS

Gabatin, Angelita R., xxx-xx-xxxx.
Manrique, Mauro A., xxx-xx-xxxx.
Mataban, Antonio, A. B., xxx-xx-xxxx.
Quinonesromeu, Edwin M., xxx-xx-xxxx.
Sanidad, Leonard G., xxx-xx-xxxx.
Schull, Jerry L., xxx-xx-xxxx.
Shane, Jeffrey A., xxx-xx-xxxx.
Villasis, Felipe C., xxx-xx-xxxx.
Wilson, David K., xxx-xx-xxxx.

The following-named Air Force officer for reappointment to the active list of the Regular Air Force, in the grade of major, Regular Air Force, under the provisions of sections 1210 and 1211, title 10, United States Code.

LINE OF THE AIR FORCE

Stine, Terrence P., xxx-xx-xxxx.

The following-named Air Force officer for reappointment to the active list of the Regular Air Force, in the grade of lieutenant colonel, Regular Air Force, under the provisions of sections 1210 and 1211, title 10, United States Code, with active duty grade of lieutenant colonel, in accordance with sections 8442 and 8447, title 10, United States Code.

CHAPLAIN CORPS

Blitch, Eugene A., Jr., xxx-xx-xxxx.

CONFIRMATION

Executive nominations confirmed by the Senate, April 23, 1980:

NATIONAL LABOR RELATIONS BOARD

William A. Lubbers, of Maryland, to be General Counsel of the National Labor Relations Board for a term of 4 years.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.